

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

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

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

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

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

**IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK (445 PRINCESS
STREET) INC.**

**AND IN THE MATTER OF AN APPLICATION UNDER 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)**

B E T W E E N:

**GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED
TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE
CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE
CORPORATION AND 7743718 CANADA INC.**

Applicant

- and -

**TEXTBOOK (774 BRONSON AVENUE) INC., TEXTBOOK ROSS PARK INC. and
MCMURRAY STREET INVESTMENTS INC.**

Respondents

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

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B E T W E E N:

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND TEXTBOOK ROSS PARK INC.

Plaintiffs

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, JAMES GRACE, BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC., JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE

Defendants

MOTION RECORD
(Returnable May 13, 2021)

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Steven L. Graff (LSO # 31871V)
Tel: (416) 865-7726
Fax: (416) 863-1515
Email: sgraff@airdberlis.com

Ian Aversa (LSO # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Miranda Spence (LSO # 60621M)
Tel: (416) 865-3414
Fax: (416) 863-1515
Email: mspence@airdberlis.com

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

**ONTARIO
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THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

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

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Respondent

**IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK (445 PRINCESS
STREET) INC.**

**AND IN THE MATTER OF AN APPLICATION UNDER 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
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B E T W E E N:

**GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED
TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE
CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE
CORPORATION AND 7743718 CANADA INC.**

Applicant

- and -

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MCMURRAY STREET INVESTMENTS INC.**

Respondents

**IN THE MATTER OF A MOTION PURSUANT TO SUBSECTION 243(1) OF THE
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Plaintiffs

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AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, JAMES GRACE, BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC., JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE

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TAB A

**ONTARIO
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THE SUPERINTENDENT OF FINANCIAL SERVICES

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

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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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Defendants

JOINT NOTICE OF MOTION (returnable May 13, 2021)

Grant Thornton Limited (“**GTL**”), in its capacity as the Court-appointed trustee (in such capacity, the “**Trustee**”) of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation (such corporations collectively being the “**Tier 1 Trustee Corporations**”), and KSV Restructuring Inc. (formerly KSV Kofman Inc.) (“**KSV**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) 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., Textbook (555 Princess Street) Inc., and Textbook (445 Princess Street) Inc., Textbook (Ross Park) Inc., Textbook (774 Bronson Avenue) Inc. and McMurray Street Investments Inc. (such corporations collectively being the “**Receivership Corporations**”), will make a joint motion to a judge presiding over the Commercial List on Thursday, May 13, 2021 at 10:00 a.m., or as soon after that time as the motion can be heard, via videoconference due to the COVID-19 pandemic or in such other manner as the Court may direct. Please refer to the videoconference details attached at Schedule “A” hereto in order to attend the motion and advise if you intend to join the motion by emailing Miranda Spence at mspence@airdberlis.com.

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

1. **THE MOTION IS FOR**, among other things:
 - (a) if necessary, an Order abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;
 - (b) an Order approving the Proposed Elliott Settlement (as defined below);

- (c) an Order authorizing and directing the Trustee and the Receiver to take any and all steps necessary to give effect to the Proposed Elliott Settlement; and
- (d) such further and other relief as counsel may advise and this Court may permit.

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

- (a) pursuant to the Order of the Honourable Mr. Justice Newbould made October 27, 2016 (the “**Appointment Order**”), GTL was appointed as the Trustee, without security, of all the assets, undertakings and properties of each of the Tier 1 Trustee Corporations;
- (b) the purpose of the Trustee’s appointment (the “**Appointment**”) is to protect the interests of the investing public, who, through the Tier 1 Trustee Corporations (and now the Trustee), are syndicated mortgage investors (the “**Investors**”) with secured lending positions registered (or previously registered, as applicable) on title to real property owned (or previously owned, as applicable) by 16 borrowers/developers (the “**Developers**”), including, without limitation, the Receivership Corporations;
- (c) the Tier 1 Trustee Corporations (prior to the Trustee’s Appointment) were special purpose entities required under their relevant constating agreements to hold the mortgages in trust for the Investors and to act in a fiduciary capacity to administer and enforce the mortgages;
- (d) the Tier 1 Trustee Corporations are distinct entities from the Developers;
- (e) the circumstances leading to the Trustee’s Appointment are summarized in the Fourteenth Report of the Trustee dated May 3, 2021 (the “**Trustee’s 14th Report**”, with detailed background information contained in the affidavit of Mohammed Ali Marfatia sworn October 20, 2016 (the “**Marfatia Affidavit**”), which was filed by the Superintendent of Financial Services in support of the Appointment and which is available on the Trustee’s website, together with the other materials filed in this proceeding, at www.grantthornton.ca/tier1;

- (f) pursuant to the Order of the Honourable Mr. Justice Hainey made January 24, 2017, Chaitons LLP was appointed as counsel for all the Investors in the Tier 1 Trustee Corporations (in such capacity, “**Representative Counsel**”), subject to certain opt-out provisions;
- (g) pursuant to the Orders of the Honourable Messrs. Justices Wilton-Siegel (made February 2, 2017) and Myers (made April 28, 2017, January 9, 2018 and May 30, 2018), KSV was appointed as the Receiver, without security, of certain property of the Receivership Corporations;
- (h) the Trustee and the Receiver are seeking a total of \$106 million (amongst other relief) by way of litigation commenced on October 3, 2018 against several parties involved with the Tier 1 Trustee Corporations and the Receivership Companies (the “**Litigation**”), which sum represents the anticipated Investor losses from their aggregate investment of approximately \$131.3 million;
- (i) for the reasons set out in the Trustee’s 14th Report and the Twenty-first Report of the Receiver (the “**Receiver's 21st Report**”), the Trustee and the Receiver have, subject to this Court’s approval, resolved the Litigation as against the defendants, Nancy Elliott and Elliott Law Professional Corporation, (the “**Proposed Elliott Settlement**”) such that, for greater certainty, the Litigation would remain active with respect to all other defendants to the Litigation and continue as against these parties;
- (j) the Proposed Elliott Settlement represents a fair and commercially reasonable compromise in all the circumstances and for the purposes of these proceedings;
- (k) the Trustee and the Receiver therefore seek an Order of the Court approving the Proposed Elliott Settlement and authorizing and directing the Trustee and the Receiver to take any and all steps necessary to give effect to the Proposed Elliott Settlement;
- (l) the Trustee’s 14th Report and the appendices thereto;

- (m) the Receiver's 21st Report and the appendices thereto;
- (n) the *Bankruptcy and Insolvency Act* (Canada);
- (o) the *Courts of Justice Act* (Ontario);
- (p) rules 1.04, 1.05, 2.01, 2.03, 3.02, 16.04 and 37 of the *Rules of Civil Procedure* (Ontario);
- (q) the inherent and equitable jurisdiction of this Court; and
- (r) such further and other grounds as counsel may advise and this Court may permit.

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

- (a) the Trustee's 14th Report and the appendices thereto;
- (b) the Receiver's 21st Report and the appendices thereto; and

(c) such further and other material as counsel may submit and this Court may permit.

Date: May 4, 2021

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

AIRD & BERLIS LLP
Barristers & Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Sean Zweig (LSO # 57307I)
Tel: (416) 777-6254
Fax: (416) 863-1716
Email: zweigs@bennettjones.com

Steven L. Graff (LSO # 31871V)
Tel: (416) 865-7726
Fax: (416) 863-1515
Email: sgraff@airdberlis.com

Jonathan Bell (LSO # 55457P)
Tel: (416) 777-6511
Fax: (416) 863-1716
Email: bellj@bennettjones.com

Ian Aversa (LSO # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Joseph Blinick (LSO # 64325B)
Tel: (416) 777-4828
Fax: (416) 863-1716
Email: blinickj@bennettjones.com

Miranda Spence (LSO # 60621M)
Tel: (416) 865-3414
Fax: (416) 863-1515
Email: mspence@airdberlis.com

Lawyers for the Receiver

Lawyers for the Trustee

TO: ATTACHED SERVICE LISTS

SCHEDULE A

Zoom videoconference details

Topic: Trustee and Receiver's Motion for Settlement Approval and Fee Approval | Grant Thornton Limited. et al v. Aeolian Investments Ltd. et al | CV-18-606314-00CL

Time: May 13, 2021 10:00 AM Eastern Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/92560064475?pwd=ODM4N3NYQzBXOUUpCanR2RmJ0c0t5UT09>

Meeting ID: 925 6006 4475

Passcode: 718778

Dial by your location

+ 1 647 374 4685 (Canada)

Meeting ID: 925 6006 4475

Passcode: 718778

Find your local number: <https://zoom.us/u/abzzDoBILJ>

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and - **TEXTBOOK STUDENTS SUITES (525 PRINCESS STREET)
TRUSTEE CORPORATION ET AL.**

Respondents

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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, ET AL.

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

KINGSETT MORTGAGE CORPORATION

Applicant

- and - **TEXTBOOK (445 PRINCESS STREET) INC.**

Respondent

Court File No. CV-17-589078-00CL

**GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-
APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (774
BRONSON AVENUE) TRUSTEE CORPORATION, ET AL.**

Applicant

- and - **TEXTBOOK (774 BRONSON AVENUE) INC., ET AL.**

Respondents

Court File No. CV-18-598788-00CL

**GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE
COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES
(525 PRINCESS STREET) TRUSTEE CORPORATION, ET AL, AND
KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-
APPOINTED RECEIVER AND MANAGER OF CERTAIN
PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, ET
AL.**

Plaintiffs

- and - **AEOLIAN INVESTMENTS LTD., ET AL.**

Defendants

Court File No. CV-18-606314-00CL

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

**PROCEEDING COMMENCED AT
TORONTO**

JOINT NOTICE OF MOTION

BENNETT JONES LLP

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

Sean Zweig (LSO# 57307I)

Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSO# 55457P)

Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSO# 64325B)

Phone: (416) 777-4828
Email: blinickj@bennettjones.com

Fax: (416) 863-1716

Lawyers for KSV Restructuring Inc. (formerly KSV Kofman Inc.), solely in its capacity as the Court-Appointed Receiver 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., Textbook (555 Princess Street) Inc., and Textbook (445 Princess Street) Inc. and in its capacity as Proposed Court-Appointed Receiver of Textbook (Ross Park) Inc., Textbook (774 Bronson Avenue) Inc. and McMurray Street Investments Inc.

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSO# 31871V)

Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Ian Aversa (LSO# 55449N)

Phone: (416) 865-3082
Email: iaversa@airdberlis.com

Miranda Spence (LSO# 60621M)

Phone: (416) 865-3414
Email: mspence@airdberlis.com

Fax: (416) 863-1515

Lawyers for Grant Thornton Limited, solely in its capacity as court-appointed Trustee of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation

TAB B

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

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

**NOTICE OF MOTION
(returnable May 13, 2021)**

Grant Thornton Limited (“**GTL**”), in its capacity as the Court-appointed trustee (in such capacity, the “**Trustee**”) of the named Respondents in this proceeding (the “**Tier 1 Trustee Corporations**”), will make a motion to a judge presiding over the Commercial List on Thursday, May 13, 2021 at 10:00 a.m., or as soon after that time as the motion can be heard, via videoconference due to the COVID-19 pandemic or in such other manner as the Court may direct.

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

1. **THE MOTION IS FOR**, amongst other things:
 - (a) if necessary, an Order abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;

- (b) an Order approving the Fourteenth Report of the Trustee dated May 3, 2021 (the “**Fourteenth Report**”) and the activities of the Trustee set out therein;
- (c) an Order approving the fees and disbursements of the Trustee and its counsel; and
- (d) such further and other relief as counsel may advise and this Court may permit.

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

- (a) pursuant to the Order of the Honourable Mr. Justice Newbould made October 27, 2016 (the “**Appointment Order**”), GTL was appointed as the Trustee, without security, of all the assets, undertakings and properties of each of the Tier 1 Trustee Corporations;
- (b) the purpose of the Trustee’s appointment (the “**Appointment**”) is to protect the interests of the investing public, who, through the Tier 1 Trustee Corporations (and now the Trustee), are syndicated mortgage investors (the “**Investors**”) with secured lending positions registered (or previously registered, as applicable) on title to real property owned (or previously owned, as applicable) by 16 borrowers/developers (the “**Developers**”);
- (c) the Tier 1 Trustee Corporations (prior to the Trustee’s Appointment) were special purpose entities required under their relevant constating agreements to hold the mortgages in trust for the Investors and to act in a fiduciary capacity to administer and enforce the mortgages;
- (d) the Tier 1 Trustee Corporations are distinct entities from the Developers;
- (e) the circumstances leading to the Trustee’s Appointment are summarized in the Thirteenth Report, with detailed background information contained in the affidavit of Mohammed Ali Marfatia sworn October 20, 2016, which was filed by the Superintendent of Financial Services in support of the Appointment and which is available on the Trustee’s website, together with the other materials filed in this proceeding, at www.granthornton.ca/tier1;

- (f) pursuant to the Order of the Honourable Mr. Justice Hainey made January 24, 2017, Chaitons LLP was appointed as counsel for all the Investors in the Tier 1 Trustee Corporations, subject to certain opt-out provisions;
- (g) the Fourteenth Report describes the Trustee's activities since the Trustee's activities were previously approved by the Court;
- (h) the Trustee and its counsel, Aird & Berlis LLP, have accrued fees and expenses in their capacity as Trustee and counsel thereto, respectively, which fees and expenses require the approval of this Court pursuant to the Appointment Order;
- (i) the facts set out in the Fourteenth Report;
- (j) the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario);
- (k) rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure* (Ontario); and
- (l) such further and other grounds as counsel may advise and this Court may permit.

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

- (a) the Fourteenth Report, inclusive of the fee affidavits filed on behalf of the Trustee and its counsel; and
- (b) such further and other material as counsel may submit and this Court may permit.

Date: May 3, 2021

AIRD & BERLIS LLP

Barristers & Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Steven L. Graff (LSO # 31871V)

Tel: (416) 865-7726
Fax: (416) 863-1515
Email: sgraff@airdberlis.com

Ian Aversa (LSO # 55449N)

Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Miranda Spence (LSO # 60621M)

Tel: (416) 865-3414
Fax: (416) 863-1515
Email: mspence@airdberlis.com

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

TO: ATTACHED SERVICE LIST

SCHEDULE A

Zoom videoconference details

Topic: Trustee and Receiver's Motion for Settlement Approval and Fee Approval | Grant Thornton Limited. et al v. Aeolian Investments Ltd. et al | CV-18-606314-00CL

Time: May 13, 2021 10:00 AM Eastern Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/92560064475?pwd=ODM4N3NYQzBXOUUpCanR2RmJ0c0t5UT09>

Meeting ID: 925 6006 4475

Passcode: 718778

Dial by your location

+ [1 647 374 4685](tel:16473744685) (Canada)

Meeting ID: 925 6006 4475

Passcode: 718778

Find your local number: <https://zoom.us/u/abzzDoBILJ>

THE SUPERINTENDENT OF FINANCIAL SERVICES

-and-

**TEXTBOOK STUDENT SUITES (525 PRINCESS STREET)
TRUSTEE CORPORATION, et al.**

Applicant

Respondents

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

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

Proceedings commenced at Toronto

**NOTICE OF MOTION
(returnable May 13, 2021)**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, 181 Bay Street
Toronto, ON M5J 2T9

Steven L. Graff (LSO # 31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa (LSO # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Miranda Spence (LSO # 60621M)

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: mspence@airdberlis.com

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

TAB C

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

THE HONOURABLE MR.) THURSDAY, THE 13TH
)
JUSTICE HAINEY) DAY OF MAY, 2021
)

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

**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

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

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

**IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK (445 PRINCESS
STREET) INC.**

**AND IN THE MATTER OF AN APPLICATION UNDER 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)**

B E T W E E N:

**GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED
TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE
CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE
CORPORATION AND 7743718 CANADA INC.**

Applicant

- and -

**TEXTBOOK (774 BRONSON AVENUE) INC., TEXTBOOK ROSS PARK INC. and
MCMURRAY STREET INVESTMENTS INC.**

Respondents

**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)**

B E T W E E N:

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND TEXTBOOK ROSS PARK INC.

Plaintiffs

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, JAMES GRACE, BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC., JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE

Defendants

SETTLEMENT APPROVAL ORDER

THIS MOTION, made by Grant Thornton Limited (“GTL”), solely in its capacity as the Court-appointed trustee (in such capacity, the “Trustee”) of each of the Trustee Companies (as defined below), and not in its personal capacity or in any other capacity, and by KSV Restructuring Inc. (formerly KSV Kofman Inc.), solely in its capacity as receiver (in such capacity, the “Receiver” and, together with the Trustee, the “Moving Parties”) of certain property of the Development Companies (as defined below), and not in its personal capacity or in any other capacity, for an Order, *inter alia*: (i) approving and giving effect to the Settlement Agreement dated April 19, 2021 and all schedules attached thereto (collectively, the “Agreement”) as between the Trustee and the Receiver, on the one hand, and the defendants, Nancy Elliott and Elliott Law Professional Corporation (respectively, “Ms. Elliott” and “ELPC,” and collectively, the “Settling Defendants”), on the other hand, subject in all cases to the terms, conditions and exceptions provided in the Agreement; and (ii) authorizing and directing the Moving Parties to take any and all steps necessary to give effect to the Agreement, was heard this day via video conference due to the COVID-19 pandemic,

ON READING the Fourteenth Report of the Trustee dated May 3, 2021, the Twenty-First Report of the Receiver dated <*>, and the Factum and Brief of Authorities of the Moving Parties dated May 3, 2021, and on hearing the submissions of counsel for the Trustee, counsel for the Receiver, and such other counsel as were present, no one appearing for any other person on the service lists although duly served as appears from the affidavits of service of <*>, sworn <*>, 2021,

1. **THIS COURT ORDERS** that, to the extent necessary, the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT DECLARES** that the Agreement is fair and reasonable in all the circumstances and for the purposes of these proceedings.
3. **THIS COURT ORDERS AND DECLARES** that the Agreement is hereby approved, that the Moving Parties and the Settling Defendants are hereby authorized and directed to

comply with their obligations thereunder and that the Moving Parties are hereby authorized to take such further acts and steps as may be necessary to give effect to the terms of the Agreement and this Order.

4. **THIS COURT ORDERS AND DECLARES** that the Settling Defendants and, as applicable, their predecessors, successors, heirs and insurers (collectively, the “**Released Parties**”) are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all manners of action, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues, damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief, losses, injuries and liabilities of any and every nature whatsoever, whether in law or in equity (each a “**Claim**”, and collectively, the “**Claims**”) that the Trustee (as defined in the Agreement) and/or the Receiver (as defined in the Agreement) has or may have against them arising out of or in any way relating to the Released Matters (as defined below).

5. **THIS COURT ORDERS AND DECLARES** that the Released Parties are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any Claim or Claims that the Non-Settling Defendants (as defined in the Agreement) or any one of them, including Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc., and/or Michael Cane, has or may have against them for contribution or indemnity in the Action or in a separate claim or proceeding commenced by the Trustee or the Receiver, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action or which in any way relate to the Released Matters (as defined below).

6. **THIS COURT ORDERS AND DECLARES** that the Receiver and the Trustee shall not be entitled to recover from the Non-Settling Defendants (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) any damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief (“**Monetary Relief**”) that corresponds to the proportion of any judgment that, had the Settling Defendants not settled, the Court would have apportioned to the Settling Defendants. The Receiver and the Trustee shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) only be entitled to recover from the Non-Settling Defendants such claims for Monetary Relief attributable to the aggregate of the several liability of the Non-Settling Defendants. For greater certainty, if the Court ultimately awards Monetary Relief to the Receiver or the Trustee against the Non-Settling Defendants, the Trustee and the Receiver shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) have no right to recover any such portion of such Monetary Relief attributable to the Settling Defendants.

7. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the “**Released Matters**” means: (1) the proceedings in the Ontario Superior Court of Justice (Commercial List) in Toronto bearing Court File No. CV-18-606314-00CL (the “**Action**”); (2) all of the known and unknown facts and issues in dispute amongst the Trustee (as defined in the Agreement) and the Receiver (as defined in the Agreement), on the one hand, and the Settling Defendants, on the other hand, and all of the known and unknown Claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendants, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action; and (3) facts and issues arising from or relating to: (i) the syndicated mortgage investments with 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 (collectively, the “**Trustee Companies**”); and (ii) the real estate development projects 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., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc. (collectively, the “**Development Companies**”).

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

- (a) the pendency of the Trustee Proceedings (as defined in the Agreement);
- (b) the pendency of the Receiver Proceedings (as defined in the Agreement);
- (c) the pendency of the Action;
- (d) any applications for any bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of one or more of any of the Settling Defendants, the Non-Settling Defendants, the Trustee Companies, the Development Companies or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
- (e) any assignment in bankruptcy made in respect of any of the Identified Parties.

the payment to the Trustee and the Receiver, or as they may direct, of the Guaranteed Settlement Funds (as defined in the Agreement) and the Contingent Settlement Funds (as defined in the Agreement) (collectively, the “**Payments**”) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS** that, in respect of the policy of insurance issued by LAWPRO to the Settling Defendants bearing Policy #2021-001 and effective January 1, 2018 (the “**Policy**”):

- (a) The Payments made on behalf of the Settling Defendants do not violate the interests of any person or entity potentially covered under the Policy;
- (b) The Payments constitute covered Loss as defined in the Policy;
- (c) The Payments reduce the Liability Coverage Limit of Liability (as defined in the Policy) under the Policy for all purposes, regardless of any subsequent finding by any court, tribunal, administrative body or arbitrator, in any proceeding or action, that the Settling Defendants engaged in conduct that triggered or may have triggered any exclusion, term or condition of the Policy, or any of them, so as to disentitle them to coverage under the Policy;
- (d) The Payments are without prejudice to any coverage position or reservations of rights taken by LAWPRO in relation to any other matter advised to LAWPRO or any other Claim (as defined in the Policy) made or yet to be made against the Insured (as defined in the Policy), provided that neither coverage nor Payments in respect of the settlement as set out in the Agreement will be voided or impacted by any such coverage position or reservation of rights;
- (e) The Payments fully and finally releases LAWPRO from any further obligation, and from any and all claims against it under or in relation to the Policy, in respect of the portion of the Liability Coverage Limit of Liability that were expended to fund the Payments; and
- (f) LAWPRO is directed to make the Payments on behalf of the Settling Defendants in full satisfaction of the payment obligations under the Agreement.

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

11. **THIS COURT ORDERS** that leave be and is hereby granted to amend the Third Amended Statement of Claim in the form attached hereto as Schedule "A".

12. **THIS COURT ORDERS** that the Trustee and the Receiver may from time to time apply to this Court for advice and directions in the discharge of their powers, duties and obligations under the Agreement and hereunder.

The Honourable Mr. Justice Hailey

SCHEDULE "A"

Court File No. CV-18-606314-00CL

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

B E T W E E N:

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND KSV RESTRUCTURING INC. (FORMERLY KSV KOFMAN INC.), IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND TEXTBOOK ROSS PARK INC.

Plaintiffs

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, ~~NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION~~, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, ~~JAMES GRACE, BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC.~~, JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE

Defendants

FOURTH AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

DATE: October 3, 2018

Issued by:

Local Registrar

Address of Court Office:
330 University Avenue
9^h Floor
Toronto, Ontario
M5G 1R7

TO: **JOHN DAVIES**
24 Country Club Drive
King City, ON L7B 1M5

AND TO: **AEOLIAN INVESTMENTS LTD.**
2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

- and -

24 Country Club Drive
King City, ON L7B 1M5

AND TO: **JUDITH DAVIES**
24 Country Club Drive
King City, ON L7B 1M5

AND TO: **GREGORY HARRIS**
295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

- and -

95 Loch Erne Lane
Nobleton, ON L0G 1N0

AND TO: **HARRIS + HARRIS LLP**
295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

~~**AND TO:** **NANCY ELLIOTT**
5000 Yonge Street, Suite 1901
Toronto, ON M2N 7E9~~

~~**AND TO:** **ELLIOT LAW PROFESSIONAL CORPORATION**
5000 Yonge Street, Suite 1901
Toronto, ON M2N 7E9~~

AND TO: WALTER THOMPSON
18 Brookfield Road
Toronto, ON M2P 1A9

- and -

1248 Atkins Drive
Newmarket, ON L3X 0C3

AND TO: 1321805 ONTARIO INC.
9140 Leslie Street
Richmond Hill, ON L0H 1G0

AND TO: BRUCE STEWART
127 Teskey Drive, RR2
Clarksburg, ON N0H 1J0

AND TO: THE TRADITIONS DEVELOPMENT COMPANY LTD.
127 Teskey Drive, RR2
Clarksburg, ON N0H 1J0

AND TO: DAVID ARSENAULT
5186 Dundas Street West
Toronto, ON M9A 1C4

~~**AND TO: JAMES GRACE**~~
~~266 Oriole Parkway~~
~~Toronto, ON M5P 2H3~~

~~**AND TO: BHAKTRAJ SINGH A.K.A. RAJ SINGH**~~
~~7 Bowam Court~~
~~Toronto, ON M2K 3A8~~

~~-and-~~

~~20 Damian Drive~~
~~Richmond Hill, ON L4B 3Z9~~

~~AND TO: RS CONSULTING GROUP INC.
20 Damian Drive
Richmond Hill, ON L4B 3Z9~~

~~-and-~~

~~2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6~~

~~-and-~~

~~295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4~~

~~AND TO: TIER 1 TRANSACTION ADVISORY SERVICES INC.
7 Bowan Court
Toronto, ON M2K 3A8~~

~~-and-~~

~~2100 Steeles Avenue East, Suite 902
Markham, ON L3R 8T3~~

AND TO: JUDE CASSIMY
445 Snowball Crescent
Scarborough, ON M1B 1S5

- and -

337 Castlemore Ave.
Markham, ON L6C 2Y1

AND TO: FIRST COMMONWEALTH MORTGAGE CORPORATION
337 Castlemore Ave.
Markham, ON L6C 2Y1

AND TO: MEMORY CARE INVESTMENTS LTD.
51 Caldari Road, Suite #A1M
Concord, ON L4K 4G3

- and -

24 Country Club Drive
King City, ON L7B 1M5

AND TO: TEXTBOOK STUDENT SUITES INC.
2355 Skymark Avenue
Suite 300
Mississauga, ON L4W 4Y6

- and -

51 Caldari Road, Suite #A1M
Concord, ON L4K 4G3

- and -

295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

AND TO: TEXTBOOK SUITES INC.
2355 Skymark Avenue
Suite 300
Mississauga, ON L4W 4Y6

- and -

51 Caldari Road, Suite #A1M
Concord, ON L4K 4G3

- and -

295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

AND TO: MICHAEL CANE
320 Tweedsmuir Ave, Suite 902
York, ON M5P 2Y3

CLAIM

Definitions

1. The following definitions apply for the purpose of this pleading:
 - (a) “**445 Princess**” means Textbook (445 Princess Street) Inc.;
 - (b) “**445 Trust Co.**” means Textbook Student Suites (445 Princess Street) Trustee Corporation;
 - (c) “**525 Princess**” means Textbook (525 Princess Street) Inc.;
 - (d) “**525 Trust Co.**” means Textbook Student Suites (525 Princess Street) Trustee Corporation;
 - (e) “**555 Princess**” means Textbook (555 Princess Street) Inc.;
 - (f) “**555 Trust Co.**” means Textbook Student Suites (555 Princess Street) Trustee Corporation;
 - (g) “**Aeolian**” means the defendant Aeolian Investments Ltd.;
 - (h) “**Brokers**” means Tier 1 Mortgage and the defendant FCMC;
 - (i) “**Bronson**” means Textbook (774 Bronson Avenue) Inc.;
 - (j) “**Bronson Trust Co.**” means Textbook Student Suites (774 Bronson Avenue) Trustee Corporation;
 - (k) “**Burlington**” means 1703858 Ontario Ltd.;

- (l) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (m) “**Dachstein**” means Dachstein Holdings Inc.;
- (n) “**Davies Children**” means the children of Mr. and Ms. Davies: Jessica Deborah Davies, Sarah Ramona Davies, Andrew John Davies and Walter Robert Jackson Davies;
- (o) “**Davies Defendants**” means Aeolian, Mr. Davies, Ms. Davies and Mr. Harris (solely in his capacity as trustee and representative of the Family Trust and not in his personal capacity or any other capacity):
- (p) “**Davies, Thompson, Stewart and Singh Defendants**” means the Davies Defendants, the Thompson Defendants, the Stewart Defendants and the Singh Former Defendants;
- (q) “**Development Companies**” means the Receivership Companies and the Non-Receivership Development Companies;
- (r) “**Elliot Co.**” means the former defendant Elliot Law Professional Corporation;
- (s) “**Elliot Former Defendants**” means Ms. Elliot and Elliot Co.;
- (t) “**FCMC**” means the defendant First Commonwealth Mortgage Corporation;
- (u) “**Guildwood**” means 1416958 Ontario Inc.;
- (v) “**Grant Thornton**” means Grant Thornton Limited;
- (w) “**Harris Defendants**” means Mr. Harris (in his personal capacity) and Harris LLP;

- (x) “**Harris LLP**” means the defendant Harris + Harris LLP;
- (y) “**Hazelton**” means Hazelton Development Corporation;
- (z) “**Hazelton Trust Co.**” means Hazelton 4070 Dixie Road Trustee Corporation;
- (aa) “**Keele Medical**” means Keele Medical Properties Ltd.;
- (bb) “**Keele Medical Trust Co.**” means Keele Medical Trustee Corporation;
- (cc) “**Kitchener**” means Memory Care Investments (Kitchener) Ltd.;
- (dd) “**Kitchener Trust Co.**” means MC Trustee (Kitchener) Ltd.;
- (ee) “**KSV**” means KSV Restructuring Inc. (formerly KSV Kofman Inc.);
- (ff) “**Legacy Lane**” means Legacy Lane Investments Ltd.;
- (gg) “**Loan Agreements**” means the loan agreements respectively between the Development Companies and the Tier 1 Trust Companies;
- (hh) “**MC Burlington**” means Memory Care Investments Burlington Ltd.;
- (ii) “**McMurray**” means McMurray Street Investments Inc.;
- (jj) “**McMurray Trust Co.**” means 7743718 Canada Inc.;
- (kk) “**MCIL**” means the defendant Memory Care Investments Ltd.;
- (ll) “**Moscowitz**” means Moscovitz Capital Mortgage Fund II;
- (mm) “**Mr. Arsenault**” means the defendant David Arsenault;

- (nn) “**Mr. Cane**” means the defendant Michael Cane;
- (oo) “**Mr. Cassimy**” means the defendant Jude Cassimy;
- (pp) “**Mr. Davies**” means the defendant John Davies in his personal capacity and, separately, in his capacity as trustee and/or representative of both the Davies Arizona Trust and the Davies Family Trust;
- (qq) “**Mr. Grace**” means the former defendant James Grace;
- (rr) “**Mr. Harris**” means the defendant Gregory Harris;
- (ss) “**Mr. Singh**” means the former defendant Raj Singh;
- (tt) “**Mr. Stewart**” means the defendant Bruce Stewart;
- (uu) “**Mr. Thompson**” means the defendant Walter Thompson;
- (vv) “**Ms. Davies**” means the defendant Judith Davies in her personal capacity and, separately, in her capacity as trustee and/or representative of the Davies Family Trust;
- (ww) “**Ms. Elliott**” means the former defendant Nancy Elliott;
- (xx) “**Ms. Harris**” means Erika Harris;
- (yy) “**Non-Receivership Development Companies**” means Vaughan Crossings, Silver Seven, Keele Medical, Guildwood, and Hazelton;
- (zz) “**Oakville**” means Memory Care Investments (Oakville) Ltd.;

- (aaa) “**Oakville/Burlington/Guildwood/Legacy Lane Trust Co.**” means 2223947 Ontario Limited;
- (bbb) “**Project**” means, for each Development Company, the real estate development project that was to have been developed by such Development Company;
- (ccc) “**Receiver**” means KSV, solely in its capacity as the court-appointed receiver and manager or, as applicable, receiver, of certain property of the Receivership Companies and not in its personal capacity or any other capacity;
- (ddd) “**Receivership Companies**” means 445 Princess, 525 Princess, 555 Princess, Bronson, Burlington, Kitchener, Legacy Lane, McMurray, Oakville, Ross Park and Scollard;
- (eee) “**Ross Park**” means Textbook Ross Park Inc.;
- (fff) “**Ross Park Trust Co.**” means Textbook Student Suites (Ross Park) Trustee Corporation;
- (ggg) “**Scollard**” means Scollard Development Corporation;
- (hhh) “**Scollard/Vaughan Crossings/Silver Seven Trust Co.**” means Scollard Trustee Corporation;
- (iii) “**Silver Seven**” means Silver Seven Corporate Centre Inc.;
- (jjj) “**Singh Co.**” means the former defendant RS Consulting Group Inc.;
- (kkk) “**Singh Former Defendants**” means Mr. Singh, Singh Co. and Tier 1 Advisory;

- (lll) “**SMIs**” means syndicated mortgage investments, specifically in respect of the Tier 1 Trust Companies;
- (mmm) “**Stewart Co.**” means the defendant Traditions Development Company Ltd.;
- (nnn) “**Stewart Defendants**” means Mr. Stewart and Stewart Co.;
- (ooo) “**Thompson Co.**” means the defendant 1321805 Ontario Inc.;
- (ppp) “**Thompson Defendants**” means Mr. Thompson and Thompson Co.;
- (qqq) “**Tier 1 Advisory**” means the former defendant Tier 1 Transaction Advisory Services Inc.;
- (rrr) “**Tier 1 Mortgage**” means Tier 1 Mortgage Corporation;
- (sss) “**Tier 1 Trust Companies**” means 445 Trust Co., 525 Trust Co., 555 Trust Co., Bronson Trust Co., Hazelton Trust Co., Keele Medical Trust Co., Kitchener Trust Co., McMurray Trust Co., Oakville/Burlington/Guildwood/Legacy Lane Trust Co., Ross Park Trust Co, and Scollard/Vaughan Crossings/Silver Seven Trust Co.;
- (ttt) “**Trust Companies**” means 445 Trust Co., 525 Trust Co., 555 Trust Co., Bronson Trust Co., Kitchener Trust Co., McMurray Trust Co., Oakville/Burlington/Guildwood/Legacy Lane Trust Co. (solely in its capacity as lender to Oakville, Burlington and Legacy Lane), Ross Park Trust Co, and Scollard/Vaughan Crossings/Silver Seven Trust Co. (solely in its capacity as lender to Scollard);

(uuu) “**Trustee**” means Grant Thornton, solely in its capacity as the court appointed trustee of the Trust Companies and not in its personal capacity or any other capacity;

(vvv) “**TSI**” means the defendant Textbook Suites Inc.;

(www) “**TSSI**” means the defendant Textbook Student Suites Inc.; and

(xxx) “**Vaughan Crossings**” means Vaughan Crossings Inc.

Relief Sought

2. The plaintiffs, the Trustee and the Receiver, as applicable, make the following claims as against the defendants on a joint and several basis (as particularized in more detail below):

(a) ~~As against the Singh Defendants:~~

(i) ~~a constructive trust and/or damages in the sum of \$106 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for fraud, deceit, conspiracy, conversion and/or unjust enrichment, and, additionally, as against Mr. Singh, for breach of fiduciary duty, knowing assistance in breach of fiduciary duty and/or negligence;~~

(ii) ~~a declaration that the liability of Mr. Singh in his personal capacity arises out of fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity; and/or that the liability of the Singh Defendants arises from obtaining property or services by false pretenses or fraudulent misrepresentation, for purposes of sections 178(1)(d) and/or~~

~~178(1)(c) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended;~~

- ~~(iii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Singh Defendants or any person, corporation or other entity on any of their behalf;~~
- ~~(iv) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of the Singh Defendants, and a declaration that the Singh Defendants hold those assets, properties, and funds as constructive trustees for the plaintiffs; and~~
- ~~(v) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Singh Defendants or any person, corporation or other entity on any of their behalf, and in respect of all the traceable products thereof.~~

(b) As against the Davies Defendants:

- (i) a constructive trust and/or damages in the sum of \$84 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for fraud, deceit, conspiracy, conversion and/or unjust

enrichment, and, additionally, as against Mr. Davies, for breach of fiduciary duty, knowing assistance in breach of fiduciary duty and/or negligence;

- (ii) a declaration that the liability of Mr. Davies in his personal capacity arises out of fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity; and/or that the liability of the Davies Defendants arises from obtaining property or services by false pretenses or fraudulent misrepresentation, for purposes of sections 178(1)(d) and/or 178(1)(e) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended;
- (iii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Davies Defendants or any person, corporation or other entity on any of their behalf;
- (iv) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of the Davies Defendants, and a declaration that the Davies Defendants hold those assets, properties, and funds as constructive trustees for the plaintiffs; and
- (v) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the

Davies Defendants or any person, corporation or other entity on any of their behalf, and in respect of all the traceable products thereof; ~~and~~.

~~(vi) an interim, interlocutory and permanent order, in the form of a worldwide *Mareva* injunction, restraining the Davies Defendants, and, as applicable, their respective servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, whether directly or indirectly, from selling, liquidating, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of their assets, wherever situated.~~

(c) As against the Stewart Defendants:

- (i) a constructive trust and/or damages in the sum of \$30 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for unjust enrichment, and, additionally, as against Mr. Stewart, for breach of fiduciary duty, knowing assistance in breach of fiduciary duty and negligence;
- (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Stewart Defendants or any person, corporation or other entity on any of their behalf;

- (iii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of the Stewart Defendants, and a declaration that the Stewart Defendants hold those assets, properties, and funds as a constructive trustee for the plaintiffs; and
 - (iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Stewart Defendants, or any person, corporation or other entity on any of their behalf, and in respect of all the traceable products thereof.
- (d) As against the Thompson Defendants:
- (i) a constructive trust and/or damages in the sum of \$40 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for unjust enrichment, and, additionally, as against Mr. Thompson for breach of fiduciary duty, knowing assistance in breach of fiduciary duty and negligence;
 - (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Thompson Defendants or any person, corporation or other entity on any of their behalf;

- (iii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of the Thompson Defendants, and a declaration that the Thompson Defendants hold those assets, properties, and funds as a constructive trustee for the plaintiffs; and
 - (iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Thompson Defendants, or any person, corporation or other entity on any of their behalf, and in respect of all the traceable products thereof.
- (e) As against Mr. Arsenault:
- (i) a constructive trust and/or damages in the sum of \$3.5 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for breach of fiduciary duty, knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;
 - (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to Mr. Arsenault or any person, corporation or other entity on his behalf;
 - (iii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into

the hands of Mr. Arsenault, and a declaration that Mr. Arsenault holds those assets, properties, and funds as a constructive trustee for the plaintiffs; and

- (iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to Mr. Arsenault, or any person, corporation or other entity on his behalf, and in respect of all the traceable products thereof.

(f) ~~As against Mr. Grace:~~

- (i) ~~a constructive trust and/or damages in the sum of \$8.4 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for breach of fiduciary duty, knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;~~
- (ii) ~~orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to Mr. Grace or any person, corporation or other entity on his behalf;~~
- (iii) ~~a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of Mr. Grace, and a declaration that Mr. Grace holds those assets, properties, and funds as a constructive trustee for the plaintiffs; and~~

(iv) ~~a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to Mr. Grace, or any person, corporation or other entity on his behalf, and in respect of all the traceable products thereof.~~

(g) As against Mr. Cassimy:

(i) a constructive trust and/or damages in the sum of \$8.4 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for, breach of fiduciary duty, knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;

(ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies, and improperly diverted by or to Mr. Cassimy or any person, corporation or other entity on his behalf;

(iii) a declaration that the Trustee is entitled to trace the assets, properties and funds of the Tier 1 Trust Companies into the hands of Mr. Cassimy, and a declaration that Mr. Cassimy holds those assets, properties, and funds as a constructive trustee for the Trustee; and

(iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies, and

improperly diverted by or to Mr. Cassimy, or any person, corporation or other entity on his behalf, and in respect of all the traceable products thereof.

(h) As against FCMC:

(i) a constructive trust and/or damages in the sum of \$106 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;

(ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies, and improperly diverted by or to FCMC or any person, corporation or other entity on its behalf;

(iii) a declaration that the Trustee is entitled to trace the assets, properties and funds of the Tier 1 Trust Companies into the hands of FCMC, and a declaration that FCMC holds those assets, properties, and funds as a constructive trustee for the Trustee; and

(iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and improperly diverted by or to FCMC, or any person, corporation or other entity on its behalf, and in respect of all the traceable products thereof.

(i) As against each of the Harris Defendants:

- (i) damages in the sum of \$106 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for negligence, breach of contract, breach of fiduciary duty and/or knowing assistance in breach of fiduciary duty; and
 - (ii) disgorgement of all costs and legal fees paid by the Tier 1 Trust Companies and the Receivership Companies to the respective Harris Defendants.
- (j) ~~As against each of the Elliot Defendants:~~
- (i) ~~damages in the sum of \$84.6 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for negligence, breach of contract, breach of fiduciary duty and/or knowing assistance in breach of fiduciary duty; and~~
 - (ii) ~~disgorgement of all costs and legal fees paid by the Tier 1 Trust Companies and the Receivership Companies to the Elliot Defendants.~~
- (k) As against Mr. Cane:
- (i) damages in the sum of \$88 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for negligence and breach of contract; and
 - (ii) disgorgement of all costs and fees paid by the Receivership Companies to Mr. Cane.
- (l) As against each of MCIL, TSI and TSSI:

- (i) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to MCIL, TSI and TSSI, or any person, corporation or other entity on any of their behalf;
 - (ii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of MCIL, TSI and TSSI, and a declaration that MCIL, TSI and TSSI hold those assets, properties, and funds as constructive trustees for the plaintiffs; and
 - (iii) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to MCIL, TSI and TSSI or any person, corporation or other entity on any of their behalf, and in respect of the traceable products thereof.
- (m) In addition to the above, as against each of the Defendants, as applicable:
- (i) special damages, including all costs and expenses arising out of the detection, investigation, and quantification of the losses suffered by the Tier 1 Trust Companies and the Receivership Companies, in an amount to be particularized prior to trial;
 - (ii) punitive and/or exemplary damages in an amount to be particularized prior to trial;

- (iii) pre-judgment and post-judgment interest on a compound basis or, alternatively, pursuant to the *Courts of Justice Act*, RSO 1990, c C 43, as amended;
- (iv) costs of this action, including the costs of any and all interim and interlocutory motions, on a full indemnity or other appropriate scale, including all applicable taxes; and
- (v) such further and other relief, including equitable relief and constructive trusts in favour of the plaintiffs, as this Honourable Court deems just.

Overview

3. This action is in respect of a SMI scheme involving 16 different real estate development Projects, including (1) eleven Projects respectively undertaken by the eleven Receivership Companies (collectively, the “**Receivership Projects**”); and (2) five other distinct Projects respectively undertaken by the five Non- Receivership Development Companies (the “**Non- Receivership Projects**”).

The Receivership Projects

4. As it relates to the Receivership Projects, this action is in respect of a fraudulent scheme whereby the Davies Defendants and Singh Former Defendants conspired with each other to have the Trust Companies, and their underlying investors, loan moneys through SMIs to the Receivership Companies based on false, inaccurate and misleading statements and covenants. The Davies Defendants and Singh Former Defendants then misappropriated tens of millions of dollars of those loans from the Receivership Companies by improperly diverting funds to themselves,

related defendant parties and others through management fees, professional fees, broker and referral fees, consulting fees, dividends and/or other means using corporate structures, directly and/or indirectly controlled by and/or related to them.

5. The Davies Defendants and Singh Former Defendants were aware that appraisals used to promote investment in the SMIs were inflated and inaccurate, and that assurances that money loaned by the Trust Companies to the Receivership Companies would be fully secured were false, inaccurate and misleading. They were further aware that covenants in the applicable Loan Agreements between the Trust Companies and the Receivership Companies restricting the use of loaned funds would not be fully honoured, but instead such funds would be diverted for other purposes to the Defendants' direct and indirect personal benefit.

6. Notwithstanding this knowledge, the Davies Defendants and Singh Former Defendants continued to raise, and/or facilitated the raising of, further funds from public investors which were then advanced by the Trust Companies to Receivership Companies and other related entities they directly or indirectly owned, perpetuating a "Ponzi Scheme".

7. The actions of the Davies Defendants and Singh Former Defendants were facilitated by some or all of the other Defendants, who failed to discharge their respective duties as outlined below, and who, in many cases, benefited financially from their improper actions and from the improper actions taken by the Davies Defendants and Singh Former Defendants.

8. In this action, the Trustee and the Receiver both seek relief in respect of the Receivership Projects.

The Non-Receivership Projects

9. As it relates to the five Non-Receivership Projects, this action is in respect of a scheme whereby the Singh Former Defendants, in conjunction with others, caused the Tier 1 Trust Companies, and their underlying investors, to loan moneys through SMIs to the Non-Receivership Development Companies based on undisclosed conflicts of interest and other false, inaccurate and misleading statements and covenants. The Singh Former Defendants also then improperly diverted funds raised for two of the Non-Receivership Projects to related defendant parties and others. These actions led to millions of dollars of realized or anticipated losses, as applicable, for four of the five SMIs.

10. The Singh Former Defendants were aware that appraisals used to promote investment in three of the five SMIs were inflated and inaccurate, and that assurances that money loaned by at least two of the Tier 1 Trust Companies to the Non-Receivership Development Companies would be fully secure were false, inaccurate and misleading. They were further aware that covenants in the applicable Loan Agreements between at least two of the Tier 1 Trust Companies and the Non-Receivership Development Companies restricting the use of loaned funds would not be fully honoured, but instead such funds would be diverted for other purposes.

11. The actions of the Singh Former Defendants were facilitated by some or all of the other Defendants, who failed to discharge their respective duties as outlined below, and who, in certain cases, benefited financially from their improper actions and from the improper actions taken by the Singh Former Defendants.

12. In this action, only the Trustee seeks relief in respect of the Non-Receivership Projects. The Receiver seeks no relief in respect of the Non-Receivership Projects.

Parties

(a) Plaintiffs

13. The plaintiff, Grant Thornton, is the court-appointed Trustee, over all of the assets, undertakings and properties of the Tier 1 Trust Companies, appointed pursuant to an order of the Court dated October 27, 2016.

14. The purpose of the Trustee's appointment is to, among other things, protect the interests of the investing public, who were or are (through the Tier 1 Trust Companies and subsequently the Trustee) mortgagees with secured lending positions registered on title to real properties owned by the Development Companies. The mortgages registered on title in favour of the Tier 1 Trust Companies were or are also co-registered in favour of Olympia Trust Company, which acted as administrative agent for RRSP and other registered investments made through the Tier 1 Trust Companies.

15. The plaintiff, KSV, is the court-appointed Receiver of certain property of the Receivership Companies appointed pursuant to orders of the Court dated February 2, April 28 and May 2, 2017 (for all Receivership Companies other than 445 Princess, McMurray, Bronson and Ross Park), January 9, 2018 (for 445 Princess) and May 30, 2018 (for McMurray, Bronson and Ross Park).

16. The Receiver's mandate includes pursuing litigation claims on behalf of the Receivership Companies and maximizing recoveries on behalf of their creditors, including the Trust Companies, which are the largest creditors in each receivership, by far. In this action, the Receiver is seeking relief strictly on behalf of the Receivership Companies and not on behalf of the broader group of Development Companies or any other entities.

(b) Davies Defendants

17. The defendant, Mr. Davies, is an individual residing in King City, Ontario. He was, at all material times, a director and officer of the Receivership Companies. He was also, at all material times, the trustee and/or representative of the Davies Family Trust, together with Ms. Davies and Mr. Harris (further identified below), and the sole trustee and/or representative of the Davies Arizona Trust.

18. The defendant, Ms. Davies, is an individual residing in King City, Ontario. She is Mr. Davies' spouse. She was, at all material times, a trustee and/or representative of the Davies Family Trust, together with Mr. Davies and Mr. Harris.

19. The Davies Family Trust and the Davies Arizona Trust are trusts that were established by, or at the direction of, Mr. Davies in or around 2003 and 2013, respectively. The beneficiaries of the Davies Family Trust are Mr. Davies, Ms. Davies and the Davies Children, as well as any future children and issue of Mr. Davies. The beneficiaries of the Davies Arizona Trust are the Davies Children.

20. The defendant, Aeolian, is a company incorporated pursuant to the laws of Ontario. Aeolian's mailing address is Mr. and Ms. Davies' personal residence in King City, Ontario.

21. Aeolian is directly owned by Ms. Davies and the Davies Children. Mr. Davies is Aeolian's sole officer and director.

22. Aeolian is a direct shareholder of Scollard and Legacy Lane and an indirect shareholder of each of the other Receivership Companies (other than McMurray, which is owned, in part, by the Davies Family Trust).

23. Aeolian is also a shareholder of:

(a) MCIL, which is a shareholder of Kitchener, Oakville and MC Burlington. MC Burlington is the sole shareholder of Burlington;

(b) TSSI, which is a shareholder of 525 Princess, 555 Princess and Ross Park; and

(c) TSI, which is a shareholder of 445 Princess and Bronson.

(c) Thompson Defendants

24. The defendant, Mr. Thompson, is an individual residing in Aurora, Ontario.

25. He was, at all material times, a director and officer of certain of the Receivership Companies, including 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park.

26. He was also, at all material times, a director and officer of TSI and TSSI.

27. The defendant, Thompson Co., is a company incorporated pursuant to the laws of Ontario. Mr. Thompson is Thompson Co.'s sole officer and director.

28. Thompson Co. is an indirect shareholder of certain of the Receivership Companies. Specifically, Thompson Co. is a shareholder of TSI and TSSI, which are shareholders of 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park.

(d) Stewart Defendants

29. The defendant, Mr. Stewart, is an individual residing in Clarksburg, Ontario. He was, at all material times, a founder and directing mind of MCIL and associated with certain Receivership Companies.

30. Mr. Stewart previously had an indirect ownership interest in MCIL and Legacy Lane.

31. He was formerly a director and officer of certain Receivership Companies, including Legacy Lane, Kitchener, Burlington and Oakville.

32. The defendant, Stewart Co., is a company incorporated pursuant to the laws of Ontario. Mr. Stewart is a director and officer of Stewart Co.

(e) Singh Former Defendants

33. The former defendant, Mr. Singh, is an individual residing in Richmond Hill, Ontario.

34. He is the sole director, officer and shareholder of each of the Tier 1 Trust Companies (other than 445 Trust Co. and Hazelton Trust Co., for both of which Mr. Cassidy is the sole registered director and officer, although Mr. Singh was a de facto director and officer of these entities).

35. Mr. Singh was also the sole director and officer of three of the five Non-Receivership Development Companies, being Keele Medical, Guildwood and Hazelton.

36. Mr. Singh was also a director and the sole officer of Tier 1 Mortgage, which was a licensed mortgage brokerage firm that promoted and sold the SMIs to public investors.

37. Mr. Singh was also previously a licensed mortgage broker with FCMC, which was also a licensed mortgage brokerage firm that promoted and sold the SMIs to public investors.

38. Mr. Singh's and Tier 1 Mortgage's mortgage brokerage licenses were ultimately revoked by the Financial Services Commission of Ontario in connection with its investigation into the SMIs that form the subject matter of this litigation.

39. The former defendant, Singh Co., is a company incorporated pursuant to the laws of Ontario. Singh Co. is owned by Mr. Singh, and he is the sole director and officer of Singh Co.

40. Singh Co. is a direct shareholder of certain Development Companies, including 555 Princess, 525 Princess, 445 Princess, Bronson and Ross Park, and one or more of the Singh Former Defendants is or was also a shareholder of Vaughan Crossings.

41. Singh Co. is also a shareholder of TSI and TSSI, which are also shareholders of 555 Princess, 525 Princess, 445 Princess, Bronson, and Ross Park.

42. The former defendant, Tier 1 Advisory, is a company incorporated pursuant to the laws of Ontario. Mr. Singh is the sole director, officer and shareholder of Tier 1 Advisory.

43. Tier 1 Advisory arranged and facilitated the SMIs that the Brokers marketed and sold to public investors. In particular, Tier 1 Advisory performed marketing and project development consultation services and structured deals with the Development Companies, it prepared investment information and it developed and presented promotional materials for the various Projects to solicit investments in the Projects.

(f) The defendant Jude Cassimy

44. The defendant, Mr. Cassimy, is an individual residing in Markham, Ontario.

45. He was a director and officer of 445 Trust Co. and Hazelton Trust Co. He was also the sole director and officer of the defendant, FCMC.

46. Mr. Cassimy was a licensed mortgage broker. He was the principal broker of FCMC.

47. Mr. Cassimy's and FCMC's licenses were also ultimately revoked by the Financial Services Commission of Ontario in connection with its investigation into the SMIs that form the subject matter of this litigation.

(g) The defendant FCMC

48. The defendant, FCMC, was formerly a licensed mortgage brokerage firm, which promoted and sold the SMIs to public investors.

(h) The defendant David Arsenault

49. The defendant, Mr. Arsenault, is an individual residing in Toronto, Ontario. At all material times, he was an officer of McMurray. At all material times, he was also an indirect shareholder of McMurray through his holding company, D. Arsenault Holdings Inc.

(i) The former defendant James Grace

50. The former defendant, Mr. Grace, is an individual residing in Toronto, Ontario. At all material times, he was an officer of 445 Princess.

(j) Harris Defendants

51. The defendant, Mr. Harris, is an individual residing in the Town of Nobleton, Ontario.

52. He is a licensed Ontario lawyer in private practice and a partner at Harris LLP.

53. As noted above, Mr. Harris was a trustee and/or representative of the Davies Family Trust, together with Mr. Davies and Ms. Davies. The Receiver has no knowledge of any material facts indicating that Mr. Harris in his capacity as a trustee and/or representative of the Davies Family

Trust engaged in any fraudulent, deceitful or other misconduct relating to the Davies Family Trust. Nevertheless, given that the Davies Family Trust improperly received and retained funds that were initially sourced from SMI monies advanced to the Receivership Companies, one or more of the trustees of the Family Trust caused, directed and/or had knowledge of such improper transfers. The role that each of the trustees played (or did not play) in these improper transfers is known only to the Davies Defendants. In any event, each of the trustees of the Family Trust must be named as a defendant to allow the Receiver to obtain the sought after relief regarding the assets improperly funneled to the Davies Family Trust.

54. Mr. Harris was also legal counsel at all material times to each of the Development Companies except for Vaughan Crossings and Silver Seven, and served as legal counsel providing ongoing legal advice to all the Tier 1 Trust Companies at material times.

55. The defendant, Harris LLP, is an Ontario limited liability partnership of lawyers which carries on business from an office located in Mississauga, Ontario.

56. At all material times, Harris LLP acted as the solicitors for each of the Development Companies except for Vaughan Crossings and Silver Seven.

57. At material times, Harris LLP also acted as the solicitors for each of the Tier 1 Trust Companies and provided ongoing advice and representation to the Tier 1 Trust Companies.

58. Throughout the material period, Harris LLP held itself out as being experienced in advising clients on corporate and real estate law matters, including in relation to commercial real estate transactions, real estate financing, property and asset acquisitions, and general corporate law matters.

59. One or more of the Harris Defendants is or was also a shareholder of Vaughan Crossings.

(k) Elliott Former Defendants

60. The former defendant, Ms. Elliott, is an individual residing in Toronto, Ontario. She is a licensed Ontario lawyer in private practice and the principal and sole director of Elliot Co.

61. The former defendant, Elliot Co., is a professional corporation incorporated pursuant to the laws of Ontario.

62. The Elliot Former Defendants specialize in Canadian immigration law, providing immigration and related legal services to individual and corporate clients.

63. At material times, the Elliott Former Defendants acted as the solicitors for the Tier 1 Trust Companies except for McMurray Trust Co. and Scollard/Vaughan Crossings/Silver Seven Trust Co. to the extent of its advancement of monies to Vaughan Crossings and Silver Seven. In other words, the Elliot Former Defendants provided advice and representation to the lenders in respect of their loans to the following Development Companies: 445 Princess, 525 Princess, 555 Princess, Bronson, Scollard, Legacy Lane, Burlington, Ross Park, Oakville, Kitchener, Keele Medical, Guildwood and Hazelton.

(l) The defendant MCIL

64. The defendant, MCIL, is a company incorporated pursuant to the laws of Ontario. Mr. Davies is the sole officer and director of MCIL. MCIL is owned by Aeolian and Ms. Harris. MCIL is a shareholder of Kitchener, Oakville and MC Burlington, which is the sole shareholder of Burlington.

(m) The defendant TSI

65. The defendant, TSI, is a company incorporated pursuant to the laws of Ontario. The only officers and directors of TSI are Messrs. Davies and Thompson.

66. TSI is owned by Aeolian, Thompson Co., Singh Co. and Dachstein.

67. TSI is a shareholder of 445 Princess and Bronson.

(n) The defendant TSSI

68. The defendant, TSSI, is a company incorporated pursuant to the laws of Ontario. The only officers and directors of TSSI are Messrs. Davies and Thompson.

69. TSSI is owned by Aeolian, Thompson Co., Singh Co. and Dachstein.

70. TSSI is a shareholder of 525 Princess, 555 Princess and Ross Park.

(o) The defendant Michael Cane

71. The defendant, Mr. Cane, is an individual residing in the City of Toronto, Ontario.

72. He is an appraiser of real property, with over 40 years of experience, who focuses on the valuation of commercial real estate on behalf of developers, mortgage lenders and others.

73. He is a member of the Appraiser Institute of Canada, a fellow of the Royal Institution of Chartered Surveyors and Professional Land Economist from the Association of Ontario Land Economists, among other professional accreditations.

74. At all material times, he acted as the appraiser for each of the Development Companies in respect of their real properties and related Projects, except for Vaughan Crossings and Silver Seven. Mr. Cane was aware that his appraisals were used and relied upon to promote and solicit the SMIs in the various Projects.

Capital Raised Through SMIs

75. SMIs are mortgages for which there are more than one lender or investor. SMIs are a financial instrument used by real estate developers to finance real estate development.

76. The Brokers, in conjunction with Tier 1 Advisory, promoted and sold SMIs to investors in relation to the Projects.

77. The Tier 1 Trust Companies were incorporated to hold the SMIs in trust and to administer the SMIs on behalf of investors.

78. The Tier 1 Trust Companies are distinct entities from the Development Companies. They are the lenders to the Development Companies.

79. Approximately \$131 million was raised through SMIs administered by the Tier 1 Trust Companies and advanced for the benefit of the Development Companies' in respect of their Projects, of which approximately \$94 million was advanced, on a secured basis, by the Trust Companies for the benefit of the Receivership Companies. The Development Companies further raised an additional amount of approximately \$62 million from other mortgage lenders, for a combined total of approximately \$193 million in secured loans.

Mortgages by the Tier 1 Trust Companies to the Development Companies

80. The relevant mortgages between the Tier 1 Trust Companies and the Development Companies are as follows:

Real Property Project	Development Company (Mortgagee)	Tier 1 Trust Company (Mortgagor)	Approximate Principal Amount of SMI
445 Princess Street	445 Princess	445 Trust Co.	\$8.4 million
525 Princess Street	525 Princess	525 Trust Co.	\$6.4 million
555 Princess Street	555 Princess	555 Trust Co.	\$7.9 million
Bronson Ave.	Bronson	Bronson Trust Co.	\$10.8 million
Scollard Project	Scollard	Scollard/Vaughan Crossings/Silver Seven Trust Co.	\$13.6 million
Legacy Lane Project	Legacy Lane	Oakville / Burlington / Guildwood / Legacy Trust Co.	\$3.5 million
Memory Care Burlington	MC Burlington	Oakville / Burlington / Guildwood / Legacy Trust Co.	\$8.3 million
Memory Care Oakville	Oakville	Oakville / Burlington / Guildwood / Legacy Trust Co.	\$9 million
Memory Care Kitchener	Kitchener	Kitchener Trust Co.	\$10.6 million
McMurray Street	McMurray	McMurray Trust Co.	\$3.5 million
Ross Park	Ross Park	Ross Park Trust Co.	\$11.6 million
TOTAL FOR ALL RECEIVERSHIP COMPANIES			\$93.6 million
Keele Medical Project	Keele Medical	Keele Medical Trust Co.	\$4.1 million
Highlands Mississauga	Hazelton	Hazelton Trust Co.	\$6.4 million
Guildwood Project	Guildwood	Oakville / Burlington / Guildwood / Legacy Trust Co.	\$6.4 million

Real Property Project	Development Company (Mortgagee)	Tier 1 Trust Company (Mortgagor)	Approximate Principal Amount of SMI
Silver Seven Project	Silver Seven	Scollard/Vaughan Crossings/Silver Seven Trust Co.	\$6 million
Vaughan Crossings Project	Vaughan Crossings	Scollard/Vaughan Crossings/Silver Seven Trust Co.	\$14.8 million
TOTAL FOR ALL NON-RECEIVERSHIP DEVELOPMENT COMPANIES			\$37.7 million
TOTAL FOR ALL DEVELOPMENT COMPANIES			\$131.3 million

81. As described further below, these various Development Companies continue to owe, in each case, millions of dollars to the corresponding Tier 1 Trust Companies without the means to satisfy such indebtedness (other than Hazelton, which paid its indebtedness in respect of the Hazelton SMI, and Guildwood and Silver Seven, which entered into settlement agreements to pay less than the indebtedness owing in respect of the Guildwood SMI and the Silver Seven SMI). Apart from the Hazelton SMI, the other SMIs, including all of the SMIs for which the Receivership Companies were borrowers, were effectively doomed to fail from the outset, and they did in fact fail. In this action, the plaintiffs seek no relief from any of the Defendants with respect to the Hazelton SMI (which was the only SMI that was repaid in full) or the Guildwood SMI (the settlement agreement for which treats the Guildwood SMI's indebtedness as having been repaid in full).

Faulty and Misleading Appraisals

82. To support the amounts raised for the SMIs, all the Receivership Companies and certain of the Development Companies retained the defendant Mr. Cane as an appraiser to provide estimated hypothetical market values of the subject sites, assuming they could be developed.

83. The appraisals were based on several other assumptions, including: (i) development costs, as estimated by the applicable Development Company and as set out in the applicable Project pro forma, remaining consistent with the budget; (ii) the necessary planning approvals being obtained in a timely manner; and (iii) the development being commenced, and completed, in a timely manner.

84. Importantly, certain of the Project pro formas on which the appraisals were based contained false, inaccurate and/or materially misleading information. For instance, certain of the pro formas:

- (a) reflected an equity injection by the shareholders of the respective Development Company in cases where no such equity contribution was ever made by Mr. Davies, Aeolian, Mr. Thompson, Thompson Co., Mr. Stewart, Stewart Co., Mr. Singh, Singh Co., Mr. Arsenault, D. Arsenault Holdings Inc., or any of the other shareholders of the applicable Development Companies;¹
- (b) failed to account for a significant portion of the initial costs, consisting of fees payable to Tier 1, amounts paid or payable to agents who sold the SMIs to investors, professional costs and amounts to fund a one-year interest reserve; and

¹ Oakville raised \$1 million from five individuals through the issuance of preference shares. These individuals were also investors in the Oakville SMI.

- (c) did not reflect the payment of dividends, which, as described in more detail below, were paid from the initial SMI advances for each of 525 Princess, 555 Princess, Bronson and Ross Park.

85. Further, certain appraisals were based on unrealistic and unattainable development plans that could never come to fruition given, among other things, zoning, planning and other restrictions.

86. Other appraisal reports contained development timelines that had already lapsed by the time Mr. Cane was asked to prepare a further appraisal report for that same property at a higher value.

SMIs Under Secured

87. Each SMI was registered on title in favour of the applicable Tier 1 Trust Company (and, as set out above, Olympia Trust for administrative purposes).

88. The Singh Former Defendants and/or Mr. Davies (in the latter case in relation to the Receivership Companies), and/or individuals and/or entities acting on their instruction or behalf, led the SMI investors to believe that the advances from the Tier 1 Trust Companies to the Development Companies would be used for, and fully secured against, specific real property projects of the applicable Development Companies with a first-ranking security interest (which would only be subordinated to construction financing intended to advance the applicable Project).

89. Based on these assurances, investors invested in the SMIs and the Tier 1 Trust Companies advanced the funds raised from investors through SMIs to the Development Companies.

90. However, contrary to the above representations made to investors and the Tier 1 Trust Companies that the SMIs would have first-ranking security, certain Development Companies, including Scollard, Oakville, Kitchener, Burlington and McMurray, borrowed funds on a first-ranking secured basis against the applicable real property after funding for the SMIs was raised and advanced.

91. Furthermore, and more generally, each SMI, together with any applicable pre-existing encumbrances, significantly exceeded the purchase price of the real property, resulting in the advances from each of the Tier 1 Trust Companies to the Development Companies being under-secured from the day they were made.

92. In particular, at all material times, the only assets of material value owned by the Development Companies were their real properties, for which they paid, collectively, approximately \$77 million.

93. All of the Receivership Companies' properties remain in the pre-construction phase, with the exception of Burlington, which has footings and foundations.

94. Of the approximately \$94 million advanced by the Trust Companies to the Receivership Companies, only approximately \$12.4 million was spent on development costs.

95. With the exception of Oakville (which was purchased for \$1.945 million and sold for \$4.25 million during the receivership proceedings), none of the Receivership Companies' properties has increased materially in value from the time it was purchased, including as a result of any development activities undertaken by the Receivership Companies. The increase in Oakville's value is not attributable to any activity performed by the Davies Developers but, rather, it is mainly

a result of the increase in the value of real estate in the Greater Toronto Area during the relevant period.

96. Further, as at each of the respective receivership dates, none of the Receivership Companies had any cash or any access to capital to further develop their Projects.

97. All the Receivership Companies, and some of the non-Receivership Development Companies, were insolvent from the date of the first SMI advance, and the Projects undertaken by these Development Companies had virtually no prospect of success due to, among other things, the lack of capital (which necessitated further borrowing to advance the Projects), the significant initial costs, the improper use of monies to fund expenses on other unrelated projects and the front-end loading of excessive dividends, management fees and other undue payments directly or indirectly to some or all of the Davies, Thompson, Stewart and Singh Former Defendants and Mr. Cassimy and to affiliates of, and persons related to, the Davies, Thompson, Stewart and Singh Former Defendants and Mr. Cassimy, as well as others, as described in more detail below.

98. Had there not been new financings in other projects that raised additional funds from new investors, which funds were loaned to and among the Receivership Companies to fund pre-existing liabilities and future costs, the Receivership Companies would have been unable much earlier to service interest and other obligations they were required to pay. Accordingly, the scheme as among the Receivership Companies had the hallmarks of a Ponzi scheme as its continuance was dependent upon the raising of ever-increasing sums of new money.

Restrictions on Use of Advanced Funds under the Loan Agreements

99. Under the Loan Agreements between the respective Development Companies and the applicable Tier 1 Trust Companies, the funds advanced from the Tier 1 Trust Companies to the Development Companies were to be used to purchase real property and to pay the soft costs associated with the Projects for which the funds were invested and advanced.

100. Under the Loan Agreements, the Development Companies covenanted that they would not, without the consent of the applicable Tier 1 Trust Company (subject to certain limited exceptions), “use the proceeds of any Loan Instalment for any purposes other than the development and construction of the project on the Property”.

101. Despite these restrictions, as particularized below, the Defendants collectively received at least \$45 million from the Development Companies making use of the funds advanced under the SMIs

(a) Prohibited Management Fees

102. Pursuant to Section 7.02(c) of the Loan Agreements with Scollard, Oakville, Kitchener, Burlington, Legacy Lane, McMurray, Silver Seven and Vaughan Crossings, the payment of management fees to shareholders is prohibited absent the written consent of the applicable Tier 1 Trust Company.

103. Pursuant to Section 7.02(c) of the Loan Agreements with 525 Princess, 555 Princess, 445 Princess, Ross Park, Bronson and Keele Medical, ordinary course payments to shareholders for amounts related to the management, development and operation of the property are permitted, but

only if such payments are reasonable in relation to the services rendered, unless the written consent of the applicable Tier 1 Trust Company is obtained.

104. Contrary to the terms of these Loan Agreements and the Receivership Companies' other legal obligations, and contrary to Messrs. Davies', Thompson's and Stewarts' respective fiduciary and other obligations, Mr. Davies caused, and Messrs. Thompson and/or Stewart allowed, certain Receivership Companies to improperly pay millions of dollars in management fees directly to Aeolian, Thompson Co. and Stewart Co., notwithstanding that, among other things, the Receivership Companies never:

- (a) received the written consent of the Trust Companies for these payments (or, alternatively, to the extent such consent was provided, it was provided unlawfully given the clear conflict of interest of Mr. Singh who was the controlling mind of the Trust Companies and simultaneously held a financial interest in each of the Receivership Companies to which the funds were advanced by the Trust Companies);
- (b) entered into any management services agreements; or
- (c) received services that would justify such payments.

105. Specifically, Mr. Davies caused, and in some instances Mr. Stewart allowed, certain Receivership Companies, including Scollard, Oakville, Kitchener, Burlington, Legacy Lane and McMurray, to transfer approximately \$4.069 million in prohibited management fees directly to Aeolian, as follows:

- (a) Scollard transferred approximately \$1,244,000;

- (b) Oakville transferred approximately \$1,112,000;
- (c) Kitchener transferred approximately \$506,000;
- (d) Burlington transferred approximately \$592,000;
- (e) Legacy Lane transferred approximately \$341,000; and
- (f) McMurray transferred approximately \$274,000.

106. Mr. Davies further caused, and Mr. Stewart allowed, certain Receivership Companies, including Kitchener, Burlington, Oakville and Legacy Lane, to transfer approximately \$1.487 million in prohibited management fees directly to Stewart Co.

107. These payments are all prohibited under the Loan Agreements. In addition, these payments were caused and/or allowed to be made on the basis of knowingly false representations and/or material omissions made by Mr. Davies.

108. Mr. Davies also caused, and Mr. Thompson allowed, 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park to transfer to Aeolian and Thompson Co. (purportedly in respect of management fees) amounts that are unreasonable, particularly given that these Receivership Companies never entered into any management agreements with Aeolian or Thompson Co., the Projects for which the funds were advanced have achieved very limited progress (they all remain in the pre-development phase), and the intended Projects are unlikely to ever be developed because of, among other things, zoning and other restrictions that preclude such developments. Specifically, Aeolian received approximately \$500,000 and Thompson Co. received

approximately \$947,000 in management fees from 525 Princess, 555 Princess, 445 Princess, Ross Park and/or Bronson.

109. These payments are also all prohibited under the Loan Agreements.

110. The management fees in respect of each of the Projects were also paid at an accelerated rate inconsistent with the stage of development of the Projects.

(b) Improper Transfers to TSI, TSSI and MCIL

111. Contrary to the terms of the Loan Agreements and the Receivership Companies' other legal obligations, Mr. Davies caused, and Messrs. Thompson and/or Stewart allowed, certain of the Receivership Companies to improperly transfer approximately \$5.5 million to TSI, TSSI and MCIL, the parent companies of Kitchener, Oakville, Burlington, 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park.

112. TSI and TSSI are both owned by Aeolian, Thompson Co., Singh Co. and Dachstein.

113. MCIL is owned by Aeolian and Ms. Harris.

114. Of the approximately \$5.5 million transferred to TSI, TSSI and MCIL, approximately \$4.1 million was transferred by cheque. The memo line on each of the cheques indicated that payment was a "loan", notwithstanding that:

(a) none of these "loans" were documented;

(b) no interest has been received by any of the applicable Receivership Companies on account of any such "loan"; and

- (c) the relevant Loan Agreements do not permit the applicable Receivership Companies to make these loans absent the applicable Trust Company's consent.

115. The balance of approximately \$1.4 million was also transferred by the relevant Receivership Companies to TSI, TSSI and MCIL for which no explanation is available in the books and records of the applicable Receivership Companies or the books and records of TSI, TSSI and MCIL.

(c) Improper Dividends

116. Mr. Davies also caused, and Mr. Thompson allowed, certain Receivership Companies to improperly pay significant dividends to Aeolian, Thompson Co. and Singh Co. Specifically, Mr. Davies caused, and Mr. Thompson allowed, each of 525 Princess, 555 Princess, Bronson and Ross Park to pay:

- (a) \$250,000 in dividends to Aeolian (for a total of \$1 million);
- (b) \$250,000 in dividends to Thompson Co. (for a further total of \$1 million); and
- (c) \$250,000 in dividends to Singh Co. (for a further total of \$1 million).

117. While the payment of dividends is permitted under the Loan Agreements in certain circumstances, dividends are only to be paid from the "excess proceeds after the [real estate development property] has been acquired". In each instance, Mr. Davies caused, and Mr. Thompson allowed, the dividends to be paid to Aeolian, Thompson Co. and Singh Co. immediately after 525 Princess, 555 Princess, Bronson and Ross Park received the funds from the applicable Trust Company at a time when each of 525 Princess, 555 Princess, Bronson and Ross Park had no profits and insufficient cash to develop their respective Projects. As a result of the payment of

dividends and other payments to related parties, 525 Princess, 555 Princess, Bronson and Ross Park essentially had no further monies to advance their respective Projects.

118. The payment of improper dividends as set out above was done on the basis of knowingly false representations and/or material omissions made by Mr. Davies.

119. These dividend distributions caused 525 Princess, 555 Princess, Bronson and Ross Park to become insolvent or contributed to their insolvency (if they were not already insolvent at the time of payment).

120. At or around the same time of the above-noted dividend payments to Aeolian, Thompson Co. and Singh Co., an additional \$250,000 in dividends was paid by each of 525 Princess, 555 Princess, Bronson and Ross Park to Dachstein (for a total payment of \$1 million to Dachstein). The Receiver and the Trustee recently entered into a settlement with Dachstein pursuant to which the full amount of \$1 million was returned to the Receiver and the Trustee by Dachstein. In this action, the plaintiffs seek no relief from any of the Defendants with respect to the dividend payments made by 525 Princess, 555 Princess, Bronson and Ross Park to Dachstein.

(d) Improper Inter-Company Transfers and Transfers to Affiliates

121. In further contravention of the Loan Agreements, and their own legal and contractual obligations, Mr. Davies routinely caused, and/or Messrs. Thompson, Stewart and/or Singh routinely allowed, the Receivership Companies to improperly transfer monies between entities and to affiliates, including over \$17 million to and among the Receivership Companies.

122. Mr. Davies caused, and/or Messrs. Thompson, Stewart and/or Singh allowed, such intercompany transfers to be made as the Receivership Companies' Projects were facing a liquidity

crisis, which necessitated the making of intercompany loans to perpetuate the scheme and avoid defaulting on the loans from the Trust Companies and the Receivership Companies' other obligations. This has the hallmarks of a Ponzi scheme.

123. Mr. Davies caused, and Messrs. Thompson Stewart and/or Singh allowed, certain Receivership Companies to improperly transfer monies to Lafontaine Terrace Management Corporation and Memory Care Investments (Victoria) Ltd. – two companies in respect of which Mr. Davies is the sole director and officer. Specifically:

- (a) Scollard, Legacy Lane, Burlington and Oakville improperly transferred a total of \$324,000 to Lafontaine Terrace Management Corporation; and
- (b) Legacy Lane improperly transferred \$15,000 to Memory Care Investments (Victoria) Ltd.

124. These transfers are prohibited under the applicable Loan Agreements and constitute a breach of the Loan Agreements.

(e) Misappropriation of Funds to Finance the Purchase of the Ottawa Property

125. Mr. Davies improperly diverted and Mr. Thompson allowed the diversion of further funds from 555 Princess, Kitchener and Ross Park (and the respective Projects in which the funds were required to be invested) to a company they controlled, Generx (Byward Hall) Inc. (formerly Textbook (256 Rideau St.) Inc.) (“**Rideau**”), to finance its purchase of real property municipally described as 256 Rideau Street, Ottawa, Ontario and 211 Besserer Street, Ottawa, Ontario (collectively, the “**Ottawa Property**”).

126. The Ottawa Property was purchased by Rideau on or around November 6, 2015 for \$11 million.

127. Immediately prior to Rideau's purchase of the Ottawa Property, on October 27, 2015, Mr. Davies caused, and Mr. Thompson allowed, 555 Princess to improperly transfer \$1.39 million to Rideau, Mr. Davies caused Kitchener to improperly transfer \$111,000 to Rideau, and Mr. Davies caused, and Mr. Thompson allowed, Ross Park to transfer approximately \$1.25 million to Rideau, all by way of cheque. The cheques were all signed by Mr. Davies. These monies were used to fund the purchase price of the Ottawa Property. The balance of the purchase price was funded by way of a mortgage.

128. The funds were transferred from 555 Princess, Kitchener and Ross Park to Rideau for no consideration, with no security, for an illegitimate business purpose and in contravention of the relevant Loan Agreements.

129. Despite the fact that the funds were required to be used for specific projects to be respectively undertaken by 555 Princess, Kitchener and Ross Park, Mr. Davies caused, and Mr. Thompson allowed, the funds to be transferred to Rideau with complete disregard for the separate corporate identities of 555 Princess, Kitchener, Ross Park and Rideau and the contractual and other legal obligations of the parties, which had the result of sheltering assets and frustrating creditors of each of 555 Princess, Kitchener and Ross Park.

130. Following Rideau's acquisition of the Ottawa Property, Mr. Davies and/or Mr. Thompson caused and/or allowed a further \$900,900 to be improperly transferred to Rideau from 555 Princess, 525 Princess, Burlington, 445 Princess, Bronson and Ross Park by way of cheques, each

of which was also signed by Mr. Davies. Specifically, Mr. Davies caused, and Mr. Thompson allowed, these Receivership Companies to transfer the following amounts to Rideau:

(unaudited; \$)	
Transferor	Amount
445 Princess	766,500
Bronson	56,200
555 Princess	43,000
Ross Park	17,000
525 Princess	16,000
Burlington	2,200
Total	900,900

131. Despite the fact that these funds were required to be used for the specific Projects to be respectively undertaken by 555 Princess, 525 Princess, Burlington, 445 Princess, Bronson and Ross Park, the \$900,900 was transferred to Rideau for no consideration, with no security, for an illegitimate business purpose and in contravention of the relevant Loan Agreements.

132. The above misappropriations were based on knowingly false representations and/or material omissions made by Mr. Davies.

133. The Ottawa Property was recently sold through a Court-approved receivership sale, and, given the purchase price and the quantum of the liens registered against the property, there are no funds available to satisfy any of the plaintiffs' claims with respect to this property.

(f) Improper Payments to Mr. Davies' Family Members

134. Mr. Davies also caused certain of the Receivership Companies to make further payments, totaling approximately \$423,000 to Ms. Davies and certain Davies Children for services purportedly rendered by them in connection with the Projects. To the extent these services were

not provided, or the payments in respect of any services that were provided are unreasonable, these payments are prohibited under the applicable Loan Agreements and constitute a breach of the Loan Agreements.

(g) Prohibited Payments in Respect of Mr. and Ms. Davies' Mortgage on their Personal Residence

135. Mr. Davies improperly caused McMurray to make prohibited payments in the total amount of approximately \$935,000 to Moscowitz, a mortgage lender. Moscowitz is not a mortgagee on the property owned by McMurray; however, it is a mortgagee on Mr. and Ms. Davies' personal residence (and formerly on their cottage, which they recently sold). The Loan Agreement between McMurray and McMurray Trust Co. prohibits these payments. There is no legitimate reason why SMI funds were used to service Mr. Davies' mortgage payments, or any of the other personal obligations of Mr. and Ms. Davies.

(h) The Arizona Property

136. Mr. Davies, in his capacity as sole trustee of the Davies Arizona Trust, owns, among other things, real property municipally described as 35411 N. 66th Place in Carefree, Arizona, United States (the "**Arizona Property**"), that was acquired with funds from Aeolian, which were initially sourced from SMI monies advanced to the Receivership Companies.

137. The Arizona Property was purchased by the Davies Arizona Trust for US\$1.2 million. The funds used to purchase the Arizona Property came from Aeolian, with the BofI Federal Bank having a US\$600,000 mortgage on the Arizona Property. Almost US\$2 million was spent to renovate the Arizona Property following its acquisition.

138. Aeolian funded a substantial portion of the costs to purchase and renovate the Arizona Property (at least in part through the Davies Family Trust and the Davies Arizona Trust), which funds came from the Receivership Companies.

139. Ms. Davies and Mr. Harris in their capacities as trustees and/or representatives of the Davies Family Trust had knowledge of, facilitated and/or allowed some of these payments.

(i) Aeolian and Ms. Davies

140. Aeolian's only source of income and/or receipts was from the Davies Developers. Aeolian transferred over \$2.5 million, which it received from the Receivership Companies, directly to Ms. Davies, purportedly in respect of management fees, although she performed no work for or on behalf of Aeolian or any of the Receivership Companies. Aeolian further used approximately \$1.3 million, which it received from the Receivership Companies, to service an American Express card used by Mr. and Ms. Davies to fund their personal day-to-day and other expenses. Additionally, as described above, the Receivership Companies' funds went from Aeolian toward the purchase and renovation of the Arizona Property. Mr. and Ms. Davies had no personal bank accounts and they used Aeolian's account for their own personal banking.

141. At all material times, Aeolian and Ms. Davies knowingly acted as a conduit for Mr. Davies to improperly divert and funnel millions of dollars from the Receivership Companies to himself and his family members for their own personal use and benefit.

(j) Repayment of Purported Loan to Mr. Singh

142. Mr. Singh received \$650,000 from Kitchener, which is characterized in Kitchener's books and records as a loan repayment. To the extent Singh did not advance funds to Kitchener, or to the

extent such funds were advanced but not in an amount commensurate to the repayment, Singh's receipt of such funds from Kitchener was improper.

(k) Improper Broker and Referral Fees Paid to Parties related to Mr. Singh

143. Each of the Loan Agreements includes a provision requiring the Development Companies to pay the following brokerage and referral fees (collectively, the "**Broker and Referral Fees**"):

- (a) 1% of the amounts raised by the relevant Trust Companies as a brokerage fee to the Brokers; and
- (b) 15% to 16% of the amounts raised by the Tier 1 Trust Companies as a referral fee to an entity directed by the Brokers;
- (c) Except for:
 - (i) the McMurray Loan Agreement, which provides fixed referral fees of \$445,000 (i.e., 12.7% of the funds raised);
 - (ii) the Silver Seven Loan Agreement, which provides for a 16.5% broker fee and no referral fee;
 - (iii) the Vaughan Crossings Loan Agreement, which provides for a 16% broker fee and a 2% referral fee; and
 - (iv) the Keele Medical Loan Agreement, which provides for a 1% broker fee and a 17% referral fee.

144. The Broker and Referral Fees paid to the Brokers and/or Tier 1 Advisory in respect of Kitchener, Burlington, Silver Seven and Vaughan Crossings are, cumulatively, approximately \$272,000 greater than permitted under the Loan Agreements.

145. In total, entities related to Mr. Singh received Broker and Referral Fees of approximately \$21.9 million from the Development Companies comprised of approximately \$11.9 million to Tier 1 Advisory, \$9.8 million to FCMC and \$200,000 to other referring brokers.

146. Mr. Singh, as a director, officer and/or shareholder of Tier 1 Advisory and FCMC, was also an officer, director and/or shareholder (directly or indirectly) and/or had other financial interests in many of the Development Companies that borrowed investor funds from the Tier 1 Trust Companies. As such, Mr. Singh not only benefitted from the Broker and Referral Fees, but he also benefitted from his financial interests in the Development Companies (which were not disclosed to the investors from whom the SMI funds were raised).

147. Mr. Singh also authorized approximately \$2 million of monies raised by Scollard/Vaughan Crossings/Silver Seven Trust Co. to be diverted to certain shareholders of Vaughan Crossings and a further amount of approximately \$5 million of monies raised by Scollard/Vaughan Crossings/Silver Seven Trust Co. to be diverted to pay another mortgagee, when, according to the applicable Loan Agreement, these monies should have been used for the sole purpose of developing and constructing a commercial/office development on the Vaughan Crossings property.

(l) Improper Consulting and Diligence Fees Paid to Parties related to Mr. Singh

148. Approximately \$1.485 million in purported consulting and diligence fees were paid by the Receivership Companies to Singh Co. and/or Tier 1 Advisory. These amounts were not referenced or disclosed in any of the Loan Agreements or the ancillary documents. As such, these payments constitute a breach of the applicable Loan Agreements.

(m) Improper Notary Fees Paid to Parties related to Mr. Singh

149. Approximately \$420,000 in purported notary fees were paid by the Development Companies and related entities to Tier 1 Advisory to have each investor's loan documents notarized, notwithstanding that these amounts are unreasonable.

Causes of Action

(a) Causes of Action Asserted by the Receiver Alone

Messrs. Davies', Thompson's and/or Stewart's Breach of Fiduciary Duty, Negligence, Breach of Contract and Knowing Assistance in Breach of Fiduciary Duty

150. By virtue of the positions Messrs. Davies, Thompson and Stewart respectively held, Mr. Davies was a fiduciary of each of the Receivership Companies, Mr. Thompson was a fiduciary of 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park and Mr. Stewart was a fiduciary of Legacy Lane, Kitchener, Burlington and Oakville, and they respectively owed the applicable Receivership Companies fiduciary duties, contractual duties, statutory duties (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended) and a duty of care to, among other things:

- (a) act honestly and in good faith with a view to their best interests;

- (b) avoid improper self-dealing;
- (c) avoid conflicts of interest; and
- (d) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

151. By reason of the facts described above, Messrs. Davies, Thompson and Stewart breached these duties and failed to act in a manner that was required of them as directors and officers of the applicable companies.

152. The applicable companies were vulnerable to the unilateral exercise of Messrs. Davies', Thompson's and Stewart's respective discretion and power, particularly given that they were the controlling minds and management of the applicable companies. By reason of the facts described above, Messrs. Davies, Thompson and Stewart breached their respective duties to the companies, including their fiduciary and other duties owed, including but not limited to their duties of good faith, honest performance and loyalty.

153. By reason of the facts described above, Messrs. Davies, Thompson and Stewart also breached express and/or implied terms of their employment agreements with the respective companies. Among other things, Messrs. Davies, Thompson and Stewart were, at a minimum, required to conduct themselves and the operations of the applicable companies in a competent and lawful manner, which they failed to do. Additionally, Messrs. Davies', Thompson's and Stewart's conduct breached the standard of care required of them and they were grossly negligent in the performance of their duties as officers and directors of the applicable companies.

154. Messrs. Davies, Thompson and/or Stewart effectively treated the respective companies as their own personal fiefdoms, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest, or corporate separateness, amongst other things. Messrs. Davies, Thompson and/or Stewart effectively operated the applicable companies as their own personal corporations and saw the respective corporations' assets as their own. This resulted in their failure to act in the best interests of the companies, including by Messrs. Thompson and Stewart allowing the Davies Defendants to defraud the Receivership Companies, all the while enriching themselves, parties related to them, and parties working with them, at the expense of the Receivership Companies and their creditors, including the Trust Companies.

155. Like Mr. Davies, Messrs. Thompson and Stewart were both compensated handsomely for facilitating the Davies Defendants' fraudulent scheme in breach of their respective fiduciary, contractual and other duties owed to the applicable Receivership Companies. Mr. Thompson and entities related to him (including Thompson Co., TSI and/or TSSI) received undue management fees (which exceeded \$900,000 from the Receivership Companies), dividends (\$1 million from the Receivership Companies) and/or other amounts to which they were not properly entitled. Mr. Stewart and entities related to him (including Stewart Co., Lafontaine and/or MC Victoria) received undue management fees (which exceeded \$1.48 million from the Receivership Companies) and/or other amounts to which they were not properly entitled.

156. Messrs. Davies, Thompson and Stewart each had knowledge of one another's fiduciary duties owed to the applicable Receivership Companies. By virtue of their acts and omissions as described above, each of Messrs. Davies, Thompson and Stewart assisted one another in breaching their respective fiduciary duties owed to the applicable Receivership Companies.

Mr. Arsenault's Breach of Fiduciary Duty, Negligence, Breach of Contract and Knowing Assistance in Breach of Fiduciary Duty

157. As an officer of McMurray, Mr. Arsenault was a fiduciary of McMurray and owed it fiduciary duties, contractual duties, statutory duties (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended) and a common law duty of care to, among other things, act competently, diligently and in its best interests. In particular, Mr. Arsenault was, at a minimum, required to have a rudimentary knowledge of McMurray's business and exercise a degree of monitoring in order to keep himself apprised of and familiar with the general affairs of the company, including the financial status of the company.

158. Mr. Arsenault failed to act in a competent or diligent manner, or in the company's best interests, as he preferred the interests of management, including Mr. Davies, over the interests of the company itself, in contravention of his duties owed to McMurray. Mr. Arsenault allowed Mr. Davies to engage in gross misconduct and treat McMurray as his own personal fiefdom, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest, or corporate separateness, amongst other things. Mr. Arsenault's conduct breached the standard of care required of him and he was negligent in the performance of his duties as an officer of McMurray. Mr. Arsenault also assisted Mr. Davies' breach of fiduciary and other legal duties owed to McMurray, and the wider group of Receivership Companies.

159. By reason of the facts described above, Mr. Arsenault also breached express and/or implied terms of his employment agreement with McMurray. Among other things, Mr. Arsenault was, at a minimum, required to ensure that McMurray conducted itself in a competent and lawful manner, which he failed to do.

160. Mr. Arsenault's failure to fulfill his fiduciary, contractual, statutory and other obligations as an officer of McMurray allowed Mr. Davies to perpetrate the fraudulent scheme described herein and caused damages to McMurray and the other Receivership Companies.

Mr. Grace's Breach of Fiduciary Duty, Negligence, Breach of Contract and Knowing Assistance in Breach of Fiduciary Duty

161. As an officer of 445 Princess, Mr. Grace was a fiduciary of 445 Princess and owed it fiduciary duties, contractual duties, statutory duties (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended) and a common law duty of care to, among other things, act competently, diligently and in its best interests. In particular, Mr. Grace was, at a minimum, required to have a rudimentary knowledge of 445 Princess' business and exercise a degree of monitoring in order to keep himself apprised of and familiar with the general affairs of the company, including the financial status of the company.

162. Mr. Grace failed to act in a competent or diligent manner, or in the company's best interests, as he preferred the interests of management, including Mr. Davies, over the interests of the company itself, in contravention of his duties owed to 445 Princess. Mr. Grace allowed Mr. Davies to engage in gross misconduct and treat 445 Princess as his own personal fiefdom, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest, or corporate separateness, amongst other things. Mr. Grace's conduct breached the standard of care required of him and he was negligent in the performance of his duties as an officer of 445 Princess. Mr. Grace also assisted Messrs. Davies' and Thompson's breach of their fiduciary and other legal duties owed to 445 Princess, and the wider group of Receivership Companies.

163. By reason of the facts described above, Mr. Grace also breached express and/or implied terms of his employment agreements with 445 Princess. Among other things, Mr. Grace was, at a minimum, required to ensure that 445 Princess conducted itself in a competent and lawful manner, which he failed to do.

164. Mr. Grace's failure to fulfill his fiduciary, contractual, statutory and other obligations as an officer of 445 Princess allowed Mr. Davies to perpetrate the fraudulent scheme described herein and caused damages to 445 Princess and the other Receivership Companies.

(b) Causes of Action Jointly and Severally Asserted by the Receiver on behalf of the Receivership Companies and the Trustee exclusively on behalf of the Trust Companies

Fraud and Deceit

165. The Davies Defendants and Singh Former Defendants perpetrated the fraudulent scheme described herein. Although the precise particulars of the fraudulent scheme are only fully known to some or all of the Davies Defendants and Singh Former Defendants at this time, they include, without limitation:

- (a) intentionally and knowingly/recklessly creating, facilitating and/or allowing the creation of Project pro formas containing false information that in no way reflected commercial reality to obtain artificially inflated appraisals that were used in connection with the SMI offerings and the raising of funds from investors;
- (b) intentionally and knowingly/recklessly creating, using and/or allowing inaccurate and/or misleading appraisals containing false information to be created and/or used to raise funds from investors;

- (c) knowingly or recklessly and falsely misrepresenting the nature of the Projects and the potential for the Projects to be successfully executed in a timely manner, or at all, including the likelihood of obtaining the necessary zoning and planning approvals;
- (d) knowingly or recklessly and falsely misrepresenting other facts and omitting material risks in order to raise and/or facilitate the raising of funds from investors;
- (e) knowingly and falsely representing, and making material omissions regarding, the capital structure of the Receivership Companies, including the purported equity injections that would be made by their shareholders;
- (f) intentionally, deceitfully and knowingly/recklessly making false representations to raise and/or facilitate the raising of funds from investors, and diverting those funds from the Receivership Companies to which they were advanced (and, in at least two cases, from the Non- Receivership Development Companies to which they were advanced), for purposes inconsistent with their intended use;
- (g) knowingly and falsely representing, and/or knowingly/recklessly making material omissions regarding, the relationships between themselves and other related, non-arm's length parties;
- (h) knowingly/recklessly and falsely directing, causing, facilitating and/or allowing prohibited payments and transfers to be made by certain of the Development Companies to such related, non-arm's length parties, including payments and

transfers for which no goods or services, or no goods or services of any material value, were provided;

- (i) knowingly, falsely and dishonestly diverting funds from certain of the Development Companies to shell corporations and a network of non-arm's length parties and others to obtain secret profits for their own benefits;
- (j) intentionally, deceitfully and knowingly/recklessly making false representations to direct and/or facilitate payments to shell corporations and a network of non-arm's length parties to covertly divert funds from the Receivership Companies, shelter the funds, avoid detection and thwart recovery attempts;
- (k) knowingly receiving, retaining and/or using funds, which rightfully belonged to the Development Companies;
- (l) intentionally and knowingly/recklessly making the false representations and undertaking the acts and omissions with respect to prohibited management fees as set out above;
- (m) intentionally and knowingly/recklessly making the false representations and undertaking the acts and omissions with respect to improper dividends as set out above;
- (n) intentionally and knowingly/recklessly making the false representations and undertaking the acts and omissions with respect to the misappropriation of funds as set out above; and/or

- (o) making material omissions, failing to take any steps, or any reasonable or sufficient steps, to stop the improper conduct or mitigate the harm being caused by it.

166. All of the above acts, false representations and material omissions were intended to and did cause the Trust Companies and the Receivership Companies to act.

167. All of the above acts, false representations and material omissions caused detriment and deprivation to each of the Trust Companies and the Receivership Companies, as further set out below.

168. The Davies Defendants and Singh Former Defendants perpetrated and/or facilitated the fraudulent scheme described herein in order to profit, and continue to profit, through the receipt of millions in undue fees, dividends, and/or other amounts to which they were not properly entitled.

Conspiracy

169. The Davies Defendants and Singh Former Defendants acted in combination or in concert, by agreement or with a common design, to perpetrate the scheme described herein. The full particulars of the agreement or common design are only fully known to these Defendants at this time, but further particulars will be provided in advance of trial.

170. The conduct of these Defendants in perpetrating the scheme was unlawful (including the torts and other wrongful acts and omissions described herein) and directed towards the Trust Companies, the Receivership Companies and the innocent investors whose funds they misappropriated. As described herein, for which further particulars will be provided in advance of trial as such particulars are currently only known to these Defendants at this time, these Defendants each committed overt acts in furtherance of the agreement. These Defendants knew that injury to

the Trust Companies, the Receivership Companies and the innocent investors whose funds they misappropriated was likely to result in the circumstances, and such injury did result.

171. The predominant purpose of these Defendants' conduct was to intentionally harm the Trust Companies, the Receivership Companies and/or the innocent investors whose funds they misappropriated, and the conduct of these Defendants did harm them.

172. As further described below, as a result of the above, each of the Trust Companies and the Receivership Companies suffered injury and damage.

173. These Defendants are liable to the Trust Companies and the Receivership Companies for predominant purpose conspiracy and unlawful act conspiracy, amongst other things.

Conversion

174. The Receivership Companies were in possession of, or entitled to immediate possession of, the specific and identifiable funds described above. The Davies Defendants and Singh Former Defendants intentionally and wrongfully converted and/or facilitated the conversion of the Receivership Companies' funds inconsistent with the Receivership Companies' right of possession and other rights, and thereby deprived the Receivership Companies and their creditors, including the Trust Companies, of the benefit of the funds, exposing them to significant liabilities. The Receivership Companies, for the benefit of their creditors, including the Trust Companies, are entitled to recover the amounts that these Defendants have converted.

(c) **Causes of Action Jointly and Severally Asserted by the Receiver on behalf of the Receivership Companies and the Trustee on behalf of all Tier 1 Trust Companies**

Unjust Enrichment

175. As particularized above, some or all of the Defendants received by improper means or purposes monies from the Tier 1 Trust Companies and the Receivership Companies, enriching these Defendants.

176. The Tier 1 Trust Companies and the Receivership Companies have suffered a corresponding deprivation.

177. There is no juristic reason for these Defendants' enrichment or for the Tier 1 Trust Companies' and the Receivership Companies' corresponding deprivation.

178. These Defendants should be held to account for their enrichment and for the corresponding deprivation they have caused.

Constructive Trust(s)

179. Some or all of the Defendants received and retained the Tier 1 Trust Companies' and/or the Development Companies' funds with full knowledge of some or all of the unlawful acts pleaded herein, including Messrs. Davies', Thompson's, Stewart's, Arsenault's, Grace's, Singh's and/or Cassimy's breach of their respective fiduciary and other legal duties owed to the Tier 1 Trust Companies and the Development Companies, as applicable.

180. By virtue of the facts described herein, these Defendants hold all assets, properties, and funds that they diverted, misappropriated and improperly received from the Tier 1 Trust

Companies and the Development Companies, and all traceable products thereof, as trustees of a constructive trust (or trusts) for the benefit of the plaintiffs.

Mr. Cane's Professional Negligence and Breach of Contract

181. As the appraiser for certain of the Development Companies' respective real properties (including, without limitation, all the Receivership Companies' respective real properties), Mr. Cane owed these Development Companies contractual, common law, regulatory, professional and other duties, which required him to bring reasonable care, skill and knowledge to the performance of his professional services in order to meet the standards of a reasonable, competent appraiser.

182. The legal standards of conduct that applied to Mr. Cane are informed by, among other things, the Canadian Uniform Standards of Professional Appraisal Practice, which provide, among other things, that:

- (a) members shall carry out work with integrity, due skill, care and diligence and with proper regard for the technical standards expected of them;
- (b) members shall carry out work in a timely manner and avoid conflicts of interests and situations inconsistent with their professional obligations;
- (c) members shall have the competence for any professional services assignment undertaken; and
- (d) members shall comply with the applicable legislative and/or licensing requirements for all types of professional services assignments undertaken.

183. Mr. Cane knew that his appraisal reports would be used by most of the Development Companies and relied on by the Tier 1 Trust Companies in raising funds from investors and advancing those funds to these Development Companies. Given Mr. Cane's knowledge and all of the other circumstances, he was, and is, subject to a higher standard in performing professional services for these Development Companies.

184. The engagement agreements between Mr. Cane and these Development Companies also contained express and/or implied terms that required Mr. Cane to, among other things, perform his services in a competent, skilled, diligent and workmanlike manner.

185. Mr. Cane breached his contractual, common law, regulatory, professional and other duties owed to each of these Development Companies. Mr. Cane is liable for his acts and omissions as the appraiser for these Development Companies' Projects.

186. The particulars of Mr. Cane's breach of contract, breach of duty and professional negligence include but are not limited to the following errors and omissions made in the course of preparing his appraisal reports and rendering professional services to these Development Companies, many of which are unrelated and gave rise to discrete losses specific to each of these Development Companies and the Tier 1 Trust Companies (other than in respect to the Hazelton Project, for which no losses have been suffered, or the Guildwood Project, the settlement agreement for which treats the Guildwood SMI's indebtedness as having been repaid in full):

- (a) failing to adequately identify the scope of work employed in the appraisal reports;

- (b) failing to make thorough inquiries of the actions of marketplace participants to obtain market derived data that might be relevant to answering the appraisal questions in issue;
- (c) failing to provide market support for supply analysis;
- (d) failing to provide market support for absorption of the proposed units over the development timelines;
- (e) failing to obtain adequate support for the costs of development;
- (f) failing to obtain comparative support for revenues and operating expenses in the development pro formas relied on;
- (g) failing to adequately vet the purported construction costs and other relevant financial information;
- (h) failing to adequately disclose any vetting and/or investigations of factual and/or unaudited information upon which the appraisal reports were based;
- (i) failing to describe and analyze all data relevant to the assignments;
- (j) failing to use comparables and failing to make such inquiries and investigations as were necessary with respect to the use of such comparables;
- (k) failing to take sufficient steps to inform himself about the values of relevant properties and the relevant circumstances which affect the properties;
- (l) basing his appraisal reports on unreasonable, irrational and unrealistic assumptions;

- (m) failing to adequately disclose extraordinary assumptions and hypothetical conditions;
- (n) failing to explore different appraisal techniques that were available in the toolbox of appraisal theory and practice that would have assisted in answering the ultimate questions of value;
- (o) failing to use as many appraisal methodologies as possible to arrive at answers to the inquiries from different approaches so that the most accurate market derived determinations of the ultimate issues were obtained and provided;
- (p) failing to describe and apply the appraisal procedures relevant to the assignments and support the reasons for the exclusion of any of the usual valuation procedures;
- (q) failing to adequately disclose extraordinary limiting conditions necessary for the exclusion of certain valuation approaches in valuing the properties through comparative analyses;
- (r) employing a hybrid valuation methodology and/or other valuation approaches that were not common, proper or appropriate for the given assignments;
- (s) using questionable inputs in the Argus Developer software modelling used in connection with the appraisals;
- (t) relying on unsupported results from the Argus Developer software;
- (u) failing to properly detail the reasoning supporting the analyses, opinions and conclusions of the employed valuation approaches;

- (v) failing to make reasoned reconciliations of the indicators to obtain the best estimates of the answers to the ultimate issues of value;
- (w) failing to provide proper opinions as to whether the analyses and conclusions in the reports were appropriate, reasonable and suitable for reliance by the intended user for the intended use;
- (x) preparing reports that were flawed by inconsistencies, typos, incongruent procedures and incorrect arithmetical results;
- (y) grossly overstating the values of the applicable properties; and/or
- (z) ignoring or, alternatively, failing to identify major red flags which ought to have caused heightened caution relating to the Development Companies' Projects.

187. Further particulars may be provided prior to trial.

188. By virtue of his acts and omissions as described above, Mr. Cane failed to meet the standards of a reasonable, competent appraiser and he was professionally negligent. Mr. Cane also breached express and/or implied terms of his agreements with the applicable Development Companies to provide appraisals with integrity, due skill, care and diligence and with proper regard for the technical standards expected of him. Mr. Cane's failure to appropriately discharge his contractual, common law, regulatory, professional and other duties and obligations owed to these Development Companies allowed a multi-million dollar fraud to be perpetrated by the Davies Defendants and Singh Former Defendants and caused significant damage to these Development Companies and their creditors, including the Tier 1 Trust Companies.

189. Had Mr. Cane fulfilled his duties and professional obligations, the fraud and other misconduct would not have occurred, or it would not have occurred to the same degree or extent.

Harris LLP's and its Lawyers' Breach of Duties, Professional Negligence, Breach of Contract and Knowing Assistance in Breach of Fiduciary Duty

190. Mr. Harris introduced Mr. Davies to Tier 1, which helped set in motion the wheels of the SMI scheme.

191. Harris LLP and its lawyers then provided professional legal services and acted as the solicitors for each of the non-Vaughan Crossings and non-Silver Seven Development Companies in connection with the loan transactions pursuant to which approximately \$131 million in SMI monies were loaned by the Tier 1 Trust Companies to the Development Companies for purposes of purchasing real estate and developing projects thereon.

192. Pursuant to the Loan Agreements, Harris was to charge fees ranging from \$25,000 to \$35,000 on the first advance under a Loan Agreement and \$15,000 to \$20,000 on subsequent advances.

193. Section 2.01 of the Loan Agreements provide that:

- (a) "Borrower's Solicitors" shall mean Harris + Harris LLP, or such other solicitors that the Borrower may in writing designate (except in the case of the Loan Agreements for Vaughan Crossings and Silver Seven, where a third-party law firm is listed as "Borrower's Solicitors"); and
- (b) "Lender's Solicitors" shall mean Nancy Elliot, Barrister & Solicitor, or such other solicitors that the Lender may in writing designate (except in the case of the Loan

Agreements for McMurray, where Harris LLP is listed as both “Lender’s Solicitors” and “Borrower’s Solicitors”, and Vaughan Crossings and Silver Seven, where Harris LLP is listed as “Lender’s Solicitors”).

194. Pursuant to delegation agreements between Harris LLP and Ms. Elliot, certain mortgage administration and facilitation responsibilities were delegated by Ms. Elliot to Harris LLP in connection with the loan transactions. Under these delegation agreements, Harris LLP was delegated the responsibilities of, among other things, holding the Interest Reserve (as defined in the Loan Agreements) in trust for the benefit of the SMI lenders (the Tier 1 Trust Companies) and disbursing the Interest Reserve proceeds to the SMI lenders from its trust account.

195. Harris LLP and, in particular, Mr. Harris, also performed further functions on behalf of the Tier 1 Trust Companies and/or Mr. Singh, including providing ongoing advice and representation to the Tier 1 Trust Companies and/or Mr. Singh with respect to the Loan Agreements and the other affairs and operations of the Tier 1 Trust Companies, including their ongoing relations with the Development Companies and their rights under the Loan Agreements. For these services, Harris LLP was paid by the Development Corporations.

196. Harris LLP and its lawyers, including but not limited to Mr. Harris, also provided ongoing advice and representation to each of the Development Companies (except for Vaughan Crossings and Silver Seven) in respect of other matters unrelated to the loan transactions both before and after funds were advanced to the Development Companies, including advice and representation with respect to incorporation, property acquisitions, property development, zoning, planning and other discrete matters. Essentially, Harris LLP and its lawyers provided ongoing advice and

representation to each of the Development Companies (except for Vaughan Crossings and Silver Seven) in respect of substantially all legal matters relating to the companies and their business.

197. Throughout the retainers, several lawyers at Harris LLP provided legal advice and performed legal services for the various applicable Development Companies, including not only Mr. Harris but also Peter Matukas, Amy Lok and Mark McMackin. Other staff of Harris LLP, including articling students and law clerks, also performed services for the various applicable Development Companies.

198. Each of the Tier 1 Trust Companies and the Development Companies (except in the latter case for Vaughan Crossings and Silver Seven) as well as their respective management were highly reliant upon the legal advice and professional services provided by Harris LLP. At all material times, the Tier 1 Trust Companies and these Development Companies effectively had no other legal counsel advising them other than lawyers of Harris LLP. This fact was well known to Harris LLP and Mr. Harris.

199. Harris LLP and its lawyers owed these Development Companies contractual, professional and other duties, which required them to bring reasonable care, skill and knowledge to the performance of their professional services.

200. Harris LLP held itself out as having “significant experience in commercial real estate transactions, including real estate financing using syndicated mortgages”. It further held itself out as having “extensive experience in buying, selling and financing all types of commercial real estate and all its concomitant perils and nuances.” As the Harris Defendants were hired to provide legal services in the areas of, among other things, real estate law, corporate law and corporate finance requiring expertise, which it and its lawyers claimed to possess, and given all the other

circumstances, the Harris Defendants were, and are, subject to a higher standard in performing legal services for these Development Companies.

201. The legal standards of conduct that applied to Harris LLP and its lawyers are informed by, among other things, the Rules of Professional Conduct of the Law Society of Upper Canada (the “**Rules**”). The Rules state, among other things, that:

- (a) a lawyer is required to perform any legal services undertaken on behalf of a client to the standard of a competent lawyer (Rule 3.1(2));
- (b) when retained by a corporation, a lawyer must recognize that the client is the corporation itself, not the individual members of management or the board of directors (Rule 3.2(3));
- (c) a lawyer shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct, or do or omit to do anything that the lawyer ought to know assists in, encourages or facilitates any dishonesty, fraud, crime, or illegal conduct by a client or any other person (Rule 3.2(7));
- (d) a lawyer has a duty to avoid conflicts of interest (Rule 3.4); and
- (e) a lawyer, or two or more lawyers practising in partnership or association, must not act for or otherwise represent both lender and borrower in a mortgage or loan transaction (Rule 3.4(11)).

202. In performing its duties, Harris LLP and its lawyers were also required to:

- (a) make reasonable efforts to ascertain the purpose and objectives of the retainer and to obtain information about the client necessary to fulfill this obligation (Rule 3.2(7.2));
- (b) be on guard against being used as the tool or dupe of an unscrupulous client or persons associated with such a client or any other person (Commentary to Rule 3.2(7)); and
- (c) be vigilant in identifying the presence of 'red flags' in their areas of practice and make inquiries to determine whether a proposed retainer relates to a bona fide transaction (Commentary to Rule 3.2(7)).

203. The retainer agreements between Harris LLP and the respective Tier 1 Trust Companies and Development Companies contained express and/or implied terms that required Harris LLP and its lawyers to, among other things, perform services in a competent manner, act in the best interests of each of the companies and avoid conflicts of interest.

204. Similarly, as fiduciaries, Harris LLP and its lawyers were required to protect and act in the best interests of each of the Tier 1 Trust Companies and the applicable Development Companies while avoiding conflicts of interest.

205. Harris LLP and its lawyers breached their contractual, common law and other duties owed to each of the respective Tier 1 Trust Companies and non-Vaughan Crossings and non-Silver Seven Development Companies. Harris LLP and its lawyers are liable for their acts and/or omissions as the lawyers for the respective Tier 1 Trust Companies and these Development

Companies, which have caused damages to the Tier 1 Trust Companies and the Receivership Companies.

206. The particulars of the Harris Defendants' breach of contract, breach of duty and professional negligence include but are not limited to the following errors and omissions, many of which are unrelated and gave rise to discrete losses specific to each of the Receivership Companies and the Tier 1 Trust Companies (other than in respect to the Hazelton Project, for which no losses have been suffered, or the Guildwood Project, the settlement agreement for which treats the Guildwood SMI's indebtedness as having been repaid in full):

- (a) entering into delegation agreements and/or other formal arrangements pursuant to which Harris LLP and its lawyers acted for both the borrowers and the lenders in connection with certain or all aspects of the various loan transactions;
- (b) acting in the cases set out above for both the Development Companies as borrowers and the Tier 1 Trust Companies as lenders, in a conflict of interest, in connection with certain aspects of the various loan transactions and the ongoing relations between these Development Companies and the Tier 1 Trust Companies;
- (c) providing ongoing advice and representation to the Tier 1 Trust Companies and Tier 1 and/or its representatives, including Mr. Singh, while simultaneously providing ongoing advice and representation to the applicable Development Companies, despite conflicts of interest at the outset and/or the emergence of diverging and conflicting interests;

- (d) failing to recognize when potential conflicts of interest, referred to above, ripened into actual conflicts or, in the alternative, failing to take steps to appropriately avoid or resolve those conflicts;
- (e) failing to recognize inaccuracies and materially misleading information in marketing material being used in connection with the SMI offerings and/or having recognized such inaccuracies and/or materially misleading information and failing to take any adequate steps to correct the information and/or ensure that representations regarding the Tier 1 Trust Companies, the applicable Development Companies and their affairs were true and accurate;
- (f) failing to properly consider and/or advise the Tier 1 Trust Companies of the statutory requirements under relevant legislation, including, for instance, the *Loan and Trust Corporations Act*, R.S.O. 1990, c. L.25, as amended;
- (g) failing to take steps at the outset to properly structure the SMIs and the subsequent loans by the Tier 1 Trust Companies to the Development Companies with appropriate controls to safeguard funds;
- (h) failing to properly consider and/or advise the applicable Development Companies of the regulatory, planning, zoning and other perils and nuances associated with their acquisitions of various real properties;
- (i) failing to recognize and/or to take appropriate steps to ensure that the security of certain of the SMIs was secured on a first-ranked basis against the real property for which the investments were made and the funds were advanced;

- (j) failing to recognize that some of the borrowing of funds by the Development Companies on a first-ranking secured basis was contrary to the representations made to investors in the respective SMIs and/or failing to take appropriate and/or any steps to ensure that such borrowing was appropriately secured;
- (k) failing to advise of and recommend to the applicable Development Companies and Tier 1 Trust Companies appropriate, or any, corporate governance safeguards;
- (l) failing to prevent, facilitating, suggesting and/or directing that intercompany loans be made by certain Receivership Companies to other Receivership Companies in order to fund ongoing interest payment obligations and/or other costs and liabilities;
- (m) failing to prevent, facilitating, suggesting and/or directing that intercompany loans be made by certain Development Companies to non-Development Companies;
- (n) acting for both borrowers and lenders in connection with such intercompany loan transactions (including (1) between and among the Receivership Companies, and (2) between and among the Development Companies and non-Development Companies);
- (o) failing to properly document such intercompany loans;
- (p) failing to ensure such intercompany loans were made on reasonable terms;
- (q) failing to ensure that reasonable or sufficient security was obtained by the lending Development Companies in respect of such intercompany loans;

- (r) disbursing and/or facilitating the disbursement of interest payments to the SMI lenders in respect of one Receivership Company with funds obtained from another Receivership Company, while failing to recognize that this was inappropriate and/or contrary to representations made to investors and the covenants given to the Trust Companies;
- (s) failing to prevent and/or facilitating the funding of liabilities of one Receivership Company with funds obtained from another Receivership Company, while failing to recognize that this was inappropriate and/or contrary to representations made to investors and the covenants given to the Trust Companies;
- (t) acting, and continuing to act, for all of the Development Companies (other than Vaughan Crossings and Silver Seven) notwithstanding the emergence of diverging and conflicting interests between and among them;
- (u) failing to terminate the retainers with the applicable Development Companies when conflicts arose and circumstances rendered the continued representation of some or all of the applicable Development Companies inappropriate;
- (v) ignoring or, alternatively, failing to identify major red flags which ought to have caused heightened caution relating to the Development Companies and their affairs;
- (w) failing to make the requisite inquiries regarding the highly unusual business practices of the Development Companies, the Tier 1 Trust Companies and others;

- (x) failing to insist on the verification of the legitimacy of the Development Companies' business, development Projects, representations and financial condition in light of all the red flags;
- (y) failing to provide appropriate advice regarding the raising of SMI monies in circumstances where it was known that such monies could be applied and used in a manner inconsistent with representations made to investors, brokers and others;
- (z) failing to provide appropriate advice and/or take reasonable, appropriate or adequate steps to address the highly unusual business practices of the Development Companies, the Tier 1 Trust Companies and others; and/or
- (aa) failing to guide the Development Companies and the Tier 1 Trust Companies to act in ways that were ethical and consistent with their responsibilities to their stakeholders and to the public.

207. The Harris Defendants' failure to appropriately discharge the duties owed to the Development Companies (except for Vaughan Crossings and Silver Seven) and the Tier 1 Trust Companies constituted a breach of their duties as these Development Companies' counsel and the Tier 1 Trust Companies' counsel and allowed a multi-million dollar fraud to be perpetrated by the Davies Defendants and Singh Former Defendants on the Receivership Companies and the Tier 1 Trust Companies.

208. By virtue of their positions as lawyers for these Development Companies and the Tier 1 Trust Companies, the Harris Defendants had knowledge of Messrs. Davies', Thompson's, Stewart's, Arsenault's, Grace's, Singh's and Cassimy's fiduciary duties respectively owed to the

Tier 1 Trust Companies and/or the Receivership Companies, as applicable. By virtue of the Harris Defendants' acts and omissions as described above, they knowingly assisted Messrs. Davies, Thompson, Stewart, Aresenault, Grace, Singh and/or Cassimy in breaching their respective fiduciary duties owed to the Tier 1 Trust Companies and Receivership Companies, as applicable.

209. Had the Harris Defendants fulfilled their duties and professional obligations as the lawyers for the Tier 1 Trust Companies and the Receivership Companies, provided proper advice and taken steps to address the misconduct by management of the Tier 1 Trust Companies and the Receivership Companies, the fraud and other misconduct would not have occurred, or it would not have occurred to the same degree or extent.

210. Through their negligent acts and omissions, the Harris Defendants breached their duties and obligations owed to the Development Companies (except for Vaughan Crossings and Silver Seven) and the Tier 1 Trust Companies. As a result, the Receivership Companies and the Tier 1 Trust Companies (and thereby their respective creditors, including public investors), suffered significant damages for which the Harris Defendants are jointly and severally responsible.

Improper Legal Fees Paid to the Harris Defendants

211. The Development Companies improperly paid over \$3.1 million in fees to the Harris Defendants for legal services purportedly rendered by them in connection with the Projects, of which approximately \$2.4 million was paid by the Receivership Companies for which the plaintiffs are seeking recovery, notwithstanding that the Loan Agreements provide a combined estimate for Harris LLP's fees in an amount well-below that.

(d) **Additional Causes of Action Asserted by the Trustee Alone**

Breach of Fiduciary Duty and Duty of Care Owed by Directors & Officers of the Tier 1 Trust Companies

212. The Tier 1 Trust Companies were special purpose entities required to hold the mortgages in trust for the investors and to act in a fiduciary capacity to administer and enforce the mortgages.

213. At all material times, Mr. Singh was the sole director and officer of each of the Tier 1 Trust Companies (other than 445 Trust Co. and Hazelton Trust Co.).

214. At all material times, Mr. Cassimy was a director and officer of 445 Trust Co. and Hazelton Trust Co. However, Mr. Singh also served as a de facto director and officer of 445 Trust Co. and Hazelton Trust Co.

215. By virtue of the positions held by Mr. Singh and Mr. Cassimy, they respectively owed fiduciary duties and duties of care both at common law and pursuant to statute (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended, and sections 120 and 122 of the *Canada Business Corporations Act*, RSC, 1985, c C-44, as amended) to the applicable Tier 1 Trust Companies.

216. These duties also formed part of the terms of their employment with the Tier 1 Trust Companies.

217. Their duties required that they, among other things, act diligently and in the Tier 1 Trust Companies' best interests while avoiding conflicts of interest and improper self-dealing.

218. By reason of the facts described above and further summarized below, Mr. Singh and Mr. Cassimy each breached these duties and failed to act in a manner that was required of them.

219. Mr. Singh's and Mr. Cassimy's duties required that they each administer and enforce the applicable SMIs on behalf of the applicable Tier 1 Trust Companies against the applicable Development Companies in the best interests of the Tier 1 Trust Companies' investors.

220. Instead of fulfilling their duties, Mr. Singh and Mr. Cassimy, solicited and/or knowingly obtained appraisal reports that did not reflect the as-is value of the applicable real properties at the time of the SMIs but, rather, reflected the hypothetical value of the fully developed Projects (premised on the successful completion of the proposed developments), such that the Tier 1 Trust Companies and their investors were presented a false and/or misleading appraisal value that failed to disclose to the Tier 1 Trust Companies and their investors that the true values of the properties and corresponding security were inadequate to cover the respective SMIs.

221. They each also failed to notify the investors of numerous Events of Default as defined in the applicable Loan Agreements (for instance, under section 6.01 the Loan Agreements, in which the applicable Development Companies represented that they had obtained all material licences, permits and approvals, which were required and which would allow for the development of the applicable property, which they had not, in fact, obtained). By virtue of their respective failures to properly administer and enforce some or all of the SMIs as required, they caused the Tier 1 Trust Companies to suffer significant losses and harm.

222. Furthermore, they each knowingly and/or recklessly permitted the funds advanced by the Tier 1 Trust Companies to the Development Companies to be used for purposes other than for which they were intended pursuant to the applicable Loan Agreements.

223. As described above, among the improper uses of such funds, were payments and transfers directly or indirectly to Mr. Singh or entities in which he had a financial interest, including but not

limited to certain Receivership Companies. Specifically, Mr. Singh and entities related to him (including Singh Co., Tier 1 Advisory and the Brokers) received undue Broker and Referral fees (approximately \$15.848 million), undue consulting and diligence fees (approximately \$1.45 million), dividends (\$1 million) and/or other amounts to which they were not properly entitled.

224. Mr. Singh and Mr. Cassimy also facilitated and/or furthered Mr. Davies' gross mismanagement and other misconduct vis-à-vis the Receivership Companies, including with respect to the making of improper inter-company transfers as between the Receivership Companies and to affiliates and other related entities.

225. Mr. Singh, who simultaneously to his positions with the Tier 1 Trust Companies, was (i) the President, the CEO and a shareholder of Tier 1 Advisory, (ii) a mortgage agent of FCMC, and (iii) a director, officer, shareholder (either directly or indirectly) and/or a financial interest holder in some or all of the Development Companies. As such, he was in a clear conflict of interest position, which was not properly disclosed to the investors. Among other non-disclosures, Mr. Singh did not disclose that he would benefit from the loans to the entities in which he had a financial interest.

226. Mr. Cassimy, who simultaneously to his positions with 445 Trust Co. and Hazelton Trust Co., was (i) the sole director and officer of FCMC and (ii) the principal mortgage agent of FCMC, was also in a clear conflict of interest position, which was not properly disclosed to the investors.

227. Rather than properly administering and enforcing the SMIs as required, Mr. Singh and/or Mr. Cassimy were instead driven to further market SMIs and raise as much money as possible from further investors in order to obtain further Broker and Referral Fees, consulting and diligence

fees and other compensation while simultaneously feeding more funds to the Development Companies in which Mr. Singh had a financial interest.

228. Mr. Cassimy and entities related to him (including FCMC) received undue Broker and Referral fees totaling \$9.8 million and/or other amounts to which they were not properly entitled.

229. The Tier 1 Trust Companies were vulnerable to the unilateral exercise of Mr. Singh's and Mr. Cassimy's discretion and power, particularly given that they were the controlling mind of the applicable Tier 1 Trust Companies.

230. They effectively treated the applicable Tier 1 Trust Companies as their own personal fiefdom, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest.

231. By reason of the facts described above, Mr. Singh and Mr. Cassimy breached their respective statutory, common law and employment duties to the applicable Tier 1 Trust Companies including, but not limited to, their fiduciary duties of good faith, honest performance and loyalty and their duties of care.

232. Mr. Singh, and the companies which he owned, directed and/or managed (including the Brokers), failed to comply with minimum standards of practice, including failing to provide investors with proper disclosure of material risks, and failing to conduct proper suitability analyses to ensure that the SMIs were suitable for the investors to whom they were presented, marketed and sold.

233. Mr. Singh also conducted the business of the Trust Companies in a manner that contravened applicable statutes and regulations. Among other things, the Trust Companies were

required to be licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the “**MBLAA**”) because they performed mortgage administration functions; however, contrary to the MBLAA, the Trust Companies were never licensed as required. Likewise, Mr. Singh himself was never licensed as a mortgage administrator under the MBLAA, yet this is the very function he was required to perform.

234. The Trust Companies were also not licensed to carry on business as trust corporations in Ontario. Consequently, Mr. Singh conducted their business in a manner that contravened the *Loan and Trust Corporations Act*, R.S.O. 1990, c. L.25, as amended.

235. Mr. Singh also caused and/or allowed the Trust Companies and the Development Companies to engage in business with companies that he owned, directed and/or managed (including Tier 1 Advisory and the Brokers), which had widespread, systematic and recurrent failures to abide by the basic consumer protection measures put in place by the MBLAA, which resulted in, among other things, the Superintendent of Financial Services revoking the licenses of the Brokers and Mr. Singh (amongst others), preventing them from dealing or trading in mortgages in Ontario. Likewise, Tier 1 Advisory was ordered by the regulator to cease and desist its operations for improperly soliciting persons or entities to borrow or lend money on the security of real property; providing information about a prospective borrower to a prospective lender; assessing prospective borrowers on behalf of prospective lenders; negotiating or arranging SMIs on behalf of another person and entity; and/or providing fees and remuneration to licensed and unlicensed individuals.

Knowing Assistance in Breach of Fiduciary Duty

236. FCMC knew of Messrs. Singh's and Cassimy's fiduciary duties owed to the applicable Tier 1 Trust Companies.

237. Notwithstanding its knowledge, FCMC willfully induced and/or assisted these Defendants to breach their respective fiduciary duties owed to the applicable Tier 1 Trust Companies, including by, among other things, encouraging and/or causing them to raise funds from investors and not enforce or properly administer the SMIs such that certain Tier 1 Trust Companies and Development Companies could solicit and obtain further funds from investors and FCMC could continue to earn further Broker and Referral fees. FCMC knowingly participated in, and assisted, Messrs. Singh's and Cassimy's conduct in this respect.

238. The Trustee has suffered damages as a direct result of FCMC's inducement and assistance, and Messrs. Singh's and Cassimy's corresponding breach of their fiduciary duties owed to the applicable Tier 1 Trust Companies.

239. As such, FCMC holds any proceeds of the scheme, including all Broker and Referral fees, as a constructive trustee for the Trustee.

240. The Trustee claims the return of those proceeds in whatever form to which they can be traced and claim damages against FCMC to the extent that such proceeds have been dissipated.

241. Besides FCMC, the defendants Messrs. Singh and Cassimy were aware of each other's fiduciary duties owed to the applicable Tier 1 Trust Companies, yet willfully induced and/or assisted one another in breaching their respective fiduciary duties.

242. These defendants are jointly and several liable to the applicable Tier 1 Trust Companies for all losses resulting from such breaches of fiduciary duties and other misconduct.

The Elliot Former Defendants' Negligence, Breach of Contract, Breach of Fiduciary Duty and Knowing Assistance in Breach of Fiduciary Duty

243. The Elliot Former Defendants purported to render professional legal services and act as the solicitors for all the Tier 1 Trust Companies except for McMurray Trust Co. (and Scollard/Vaughan Crossings/Silver Seven Trust Co. to the extent of its advancement of monies to Vaughan Crossings and Silver Seven) in connection with the loan transactions pursuant to which approximately \$107 million in SMI monies were loaned by these Tier 1 Trust Companies to these Development Companies for purposes of purchasing real estate and developing the Projects thereon.

244. Although under the applicable Loan Agreements, the "Lender's Solicitors" are defined to mean Ms. Elliot, at or around the time that funds were advanced by the applicable Tier 1 Trust Companies to the applicable Development Companies, Ms. Elliot delegated substantially all of her duties to Harris LLP, the borrower's solicitors. In doing so, she created, facilitated the creation of and/or furthered a conflict of interest situation in which Harris LLP and its lawyers acted for both borrowers and lenders under the applicable Loan Agreements.

245. Ms. Elliot effectively acted as a "straw man" under the applicable Loan Agreements in order to lend these Loan Agreements an air of legitimacy and create the false impression of an arm's length relationship between the borrowers and lenders when, in fact, the applicable Tier 1 Trust Companies and Development Companies were not at arm's length and were being directed by persons with conflicts of interest.

246. The Elliot Former Defendants owed the applicable Tier 1 Trust Companies duties in contract and at common law, which required them to, among other things, bring reasonable care, skill and knowledge to the performance of their professional services.

247. As immigration law practitioners, the Elliot Former Defendants were not qualified to act as corporate counsel to the applicable Tier 1 Trust Companies under the Loan Agreements and they failed to meet the requisite degree of care, skill and knowledge required of them in the performance, if any, of their professional services.

248. The Elliot Former Defendants failed to provide appropriate advice to the applicable Tier 1 Trust Companies and/or take reasonable, appropriate or adequate steps to protect their interests, including by, among other things, making the following errors and omissions, many of which are unrelated and gave rise to discrete losses specific to each of the applicable Tier 1 Trust Companies (other than in respect to the Hazelton Project, for which no losses have been suffered, or the Guildwood Project, the settlement agreement for which treats the Guildwood SMI's indebtedness as having been repaid in full):

- (a) failing to advise the applicable Tier 1 Trust Companies of the perils of having the Harris Defendants act for both them as lenders and the Development Companies as borrowers in connection with the Loan Agreements and the related matters thereunder;
- (b) failing to ensure the applicable Tier 1 Trust Companies received appropriate, independent advice and representation in connection with the Loan Agreements and the related matters thereunder; and

- (c) failing to appropriate diligence the applicable loan transactions to adequately protect the interests of the Tier 1 Trust Companies, including against, among other things, (i) transactions proceeding with what was clearly inadequate security to satisfy the amount of the mortgage loans and (ii) inter-company transfers and other payments being made by the Development Companies in the face of contractual provisions in the Loan Agreements prohibiting such transfers.

249. By virtue of their acts and omissions, the Elliot Former Defendants breached their duties and obligations owed to the applicable Tier 1 Trust Companies. Had the Elliot Former Defendants fulfilled their duties and professional obligations as the lawyers for the applicable Tier 1 Trust Companies, provided proper advice and taken steps to address the misconduct by management of the Tier 1 Trust Companies and the Harris Defendants, the damages claimed would not have been suffered, or they would not have suffered to the same degree or extent.

250. The Elliot Former Defendants also knowingly assisted the Harris Defendants' breach of their fiduciary and other legal duties owed to the Development Companies by delegating certain responsibilities to Harris LLP and allowing the Harris Defendants to act for both the Development Companies, as borrowers, and the Tier 1 Trust Companies, as lenders, on virtually all aspects of the loan transactions and the ongoing relations as between these companies. As a result, the Tier 1 Trust Companies, the Development Companies and their creditors, including public investors, suffered significant damages for which the Elliot Former Defendants are jointly and severally responsible.

Improper Legal Fees Paid to the Elliot Former Defendants

251. The Development Companies paid approximately \$410,000 in fees to the Elliot Former Defendants for legal services purportedly rendered by them to the applicable Tier 1 Trust Companies in connection with the Loan Agreements, of which approximately \$354,000 was paid by the Receivership Companies to the Elliot Former Defendants. However, the Elliot Former Defendants delegated all, or substantially all, of their responsibilities to Harris LLP and performed virtually no services, or no services of value, for the Tier 1 Trust Companies and the Development Companies. These are fees to which the Elliot Former Defendants are not properly entitled.

Losses and Harm

252. The conduct of the Defendants as described above has caused, and is continuing to cause, reasonably foreseeable and proximate damage to the Tier 1 Trust Companies, the Receivership Companies and their respective creditors, including financial losses and loss of profitable business opportunities, the full extent of which has not yet fully materialized and is not yet fully known to the plaintiffs at this time.

253. Specifically:

(a) Scollard/Vaughan Crossings/Silver Seven Trust Co.:

- (i) held an SMI in the principal amount of \$13.6 million over Scollard's real property, which was registered on title behind encumbrances of approximately \$2.5 million. The Receiver conducted a thorough marketing and sale process for Scollard's real property, resulting in a Court-approved sale for approximately \$11.1 million;

- (ii) held an SMI in the principal amount of approximately \$14.8 million over Vaughan Crossings' real property, which was registered on title behind encumbrances in excess of \$11.5 million. Vaughan Crossings' real property was worth no more than \$15 million. To preserve the SMI investors' interest in Vaughan Crossings' real property in some capacity, the Court approved a \$15 million sale transaction pursuant to which, in substance, the SMI was partially converted into an equity position in the purchaser (which purchaser had to borrow \$15 million against the real property to fund the transaction), with the balance of the SMI retained by Scollard/Vaughan Crossings/Silver Seven Trust Co. on an entirely unsecured basis (for which balance of the SMI Vaughan Crossings has no assets to satisfy). The Court ordered that the Trustee has no further interests, duties or obligations in respect of the purchaser of Vaughan Crossings' real property; and
 - (iii) held an SMI in the principal amount of approximately \$6 million over Silver Seven's real property, which was registered on title behind encumbrances in excess of \$15 million. The Court approved a settlement transaction pursuant to which Silver Seven paid approximately \$2.9 million to the Trustee in exchange for certain conditional releases and an assignment.
- (b) Kitchener Trust Co. holds an SMI in the principal amount of approximately \$10.6 million over Kitchener's real property, which is registered on title behind encumbrances of approximately \$1.5 million. No transaction has resulted to date from the Receiver's thorough marketing and sale process for Kitchener's real

property, which real property was purchased by Kitchener in 2014 for \$3.95 million.

- (c) Oakville/Burlington/Guildwood/Legacy Lane Trust Co.:
- (i) held an SMI in the principal amount of approximately \$9 million over Oakville's real property, which was registered on title behind encumbrances in excess of \$1 million. The Receiver conducted a thorough marketing and sale process for Oakville's real property, resulting in a Court-approved sale for approximately \$4.2 million;
 - (ii) held an SMI in the principal amount of approximately \$8.3 million over Burlington's real property, which is registered on title behind encumbrances of approximately \$2 million. The Receiver conducted a thorough marketing and sale process for Burlington's real property, resulting in a Court-approved sale for approximately \$3.4 million;
 - (iii) held an SMI in the principal amount of approximately \$6 million over Guildwood's real property, which was registered on title behind encumbrances in excess of \$1 million. The Court approved a settlement transaction pursuant to which Guildwood paid approximately \$4.1 million to the Trustee in exchange for certain releases; and
 - (iv) held an SMI in the principal amount of approximately \$3.5 million over Legacy Lane's real property. The Receiver conducted a thorough

marketing and sale process for Legacy Lane's real property, resulting in a Court-approved sale for approximately \$650,000.

- (d) 525 Trust Co. held an SMI in the principal amount of approximately \$6.4 million over 525 Princess' real property. The Receiver conducted a thorough marketing and sale process for 525 Princess' real property, resulting in a Court-approved sale for approximately \$2.1 million.
- (e) 555 Trust Co. held an SMI in the principal amount of approximately \$8 million over 555 Princess' real property. The Receiver conducted a thorough marketing and sale process for 555 Princess' real property, resulting in a Court-approved sale for approximately \$2.1 million.
- (f) 445 Trust Co. held an SMI in the principal amount of approximately \$8.5 million over certain of 445 Princess' real property, which was registered on title behind encumbrances of approximately \$7 million. The Receiver conducted a thorough marketing and sale process for 445 Princess' applicable real property, resulting in a Court-approved sale for approximately \$7.55 million.
- (g) McMurray Trust Co. held an SMI in the principal amount of approximately \$3.5 million over McMurray's real property, which was registered on title behind encumbrances in excess of \$2 million. McMurray's real property was sold by private sale by a prior-ranking mortgagee for approximately \$2.8 million.
- (h) Bronson Trust Co. held an SMI in the principal amount of approximately \$10.9 million over Bronson's real property, which was registered on title behind

encumbrances in excess of \$5.5 million. Bronson's real property was sold by private sale by a prior-ranking mortgagee for approximately \$7.2 million.

- (i) Ross Park Trust Co. holds an SMI in the principal amount of approximately \$11.6 million over Ross Park's real property, which is registered on title behind a conditional \$4 million mortgage and certain other encumbrances. The Court has approved a sale transaction for \$7.25 million (of which only approximately \$2.25 million in cash is to be paid on closing, with the balance satisfied by a new mortgage) that is to be shared between the two mortgages, which sale transaction has closed.
- (j) Keele Medical Trust Co. holds an SMI in the principal amount of approximately \$4.0 million over Keele Medical's real property, which is registered on title behind encumbrances of approximately \$6 million and certain additional liens. Keele Medical purchased its real property in 2012 and 2014 for the aggregate of approximately \$10.2 million.
- (k) Hazelton Trust Co. held an SMI in the principal amount of approximately \$6.3 million over Hazelton's real property, which was registered on title behind encumbrances in excess of \$2 million. The Court approved a settlement transaction pursuant to which Hazelton paid approximately \$6.6 million to the Trustee in exchange for certain releases.

254. The Defendants' conduct has exposed most of the Development Companies, including all of the Receivership Companies, to significant liabilities in the form of claims for damages and

losses from their creditors, including, most notably, the applicable Tier 1 Trust Companies on behalf of the innocent investors whose funds were misappropriated.

255. At the commencement of the initial receivership proceeding for Scollard in February 2017, the secured debt obligations of the Receivership Companies alone totalled approximately \$120 million, including approximately \$94 million owing to the Trust Companies prior to interest and costs (being monies raised by the Trust Companies from investors), and the balance owing to other lenders, primarily mortgagees.

256. Payments to date to secured lenders of the Receivership Companies total approximately \$33 million, including approximately \$11 million to the Trust Companies (being only approximately 12% of the total funds advanced by the Trust Companies to the Receivership Companies).

257. The payments to the Trust Companies have been used to cover the professional costs in those proceedings and to repay a small portion of the investor debt on certain projects, which amounts will be determined through the Receivership proceedings.

258. As at September 26, 2018, the only realizable assets of the Receivership Companies to satisfy the remaining secured debt obligations (and all the other debt obligations and liabilities of the Receivership Companies) are the unsold real properties for which the Receivership Companies collectively paid approximately \$3.95 million, or the undistributed proceeds from the sales of the real properties.

259. Some or all of the Defendants not only stripped the Receivership Companies of millions of dollars and preferred their own interests over those of the Receivership Companies and their

creditors (including the investing public), but they also deprived the Receivership Companies of the opportunity to pursue legitimate and profitable real estate development and other revenue-generating business opportunities, causing considerable additional losses and damages to the Receivership Companies.

260. The plaintiffs have incurred, and are continuing to incur, costs and out-of-pocket expenses relating to investigations into the Defendants' acts and omissions, which special damages shall be particularized prior to trial.

261. Full particulars of the Tier 1 Trust Companies' and the Receivership Companies' damages will be provided prior to trial.

262. As a result of a court-approved settlements reached: (a) between the Trustee, and the Receiver, on the one hand, and the Singh Former Defendants, on the other hand; (b) as well as a court-approved settlement between the Trustee, and the Receiver, on the one hand, and Mr. Grace; and; (c) on the other hand, and a court-approved settlement between the Trustee, and the Receiver, on the one hand, and the Elliott Former Defendants, on the other hand, the Trustee and the Receiver seek no damages or other relief attributable to the Singh Former Defendants, or Mr. Grace or the Elliott Former Defendants. The Trustee and the Receiver seek damages and other relief solely as against the remaining Defendants on a several basis from the Singh Former Defendants, and Mr. Grace and the Elliott Former Defendants (though on a joint and several basis as between all remaining Defendants, excluding the Singh Former Defendants, and Mr. Grace, and the Elliott Former Defendants).

Punitive Damages

~~262.~~ 263. The Davies Defendants' and Singh Former Defendants' actions constitute a wanton, callous, high-handed and outrageous disregard for the Tier 1 Trust Companies' and the Development Companies' rights and interests, and for the rights and interests of their creditors, particularly the investing public whose funds were misappropriated. These Defendants deliberately and willfully undertook the fraudulent and unlawful activities described herein in an underhanded manner, knowing that their conduct was wrong and would cause harm to the Tier 1 Trust Companies, the Development Companies and their creditors. The Thompson, Stewart, Harris, Elliot and Cane Defendants, as well as MCIL, TSI and TSSI were financially incentivized to allow this fraud to proceed in breach of the fiduciary, contractual, common law, professional, equitable and/or other duties they respectively owed. The conduct of these Defendants ought to therefore attract the disapproval of this Honourable Court and result in a material award of punitive and/or exemplary damages as well as costs on an elevated scale.

Mareva Injunction

~~263.~~—Following their improper conduct as described above, and after the commencement of the initial receivership proceeding for Scollard in February 2017, Mr. and Ms. Davies embarked on a course of conduct designed to liquidate their assets and put them beyond the reach of the Receivership Companies and their creditors. Among other things, on April 25, 2017, Mr. Davies sold his family cottage located in Gravenhurst, Ontario for approximately \$3 million.

~~264.~~—Mr. and Ms. Davies also attempted, and continue to attempt, to sell their personal residence located in King City, Ontario, which they jointly own in their capacities as trustees of the Davies Family Trust, as well as their personal belongings, such as art, jewelry and other assets.

~~265. — Given the duplicitous and deceitful manner in which Mr. Davies, Ms. Davies and Aeolian have acted, together with all the surrounding circumstances, including Mr. Davies’ sale of the family cottage and Mr. and Ms. Davies’ attempted sale of their personal residence as well as their sale and transferring of other personal assets, there is a real and demonstrated risk that Mr. and Ms. Davies as well as Aeolian, the Davies Family Trust and the Davies Arizona Trust (all three of which are controlled by Mr. Davies and/or Ms. Davies) will dissipate assets and/or permanently abscond with the Receivership Companies’ funds to avoid enforcement of any judgment the plaintiffs may ultimately obtain. In all the circumstances, interim, interlocutory and permanent injunctive relief, *inter alia*, enjoining these Defendants from accessing, liquidating, dissipating, alienating or otherwise dealing with their assets is necessary, just and appropriate.~~

~~266. — The conduct of the Davies Defendants as described above has also caused, and is continuing to cause, irreparable harm to the Receivership Companies and their creditors. In the absence of relief from this Honourable Court, the Davies Defendants will be able to liquidate and alienate assets, and/or continue to liquidate and alienate assets, thereby causing the Receivership Companies and their creditors further harm which would not be compensable in damages alone.~~

Legislation

~~267. 263. 264.~~ The plaintiffs plead and rely on all of the provisions of the following statutes, among others, all as amended:

- (a) *Assignments and Preferences Act*, RSO 1990, c A 33;
- (b) *Bankruptcy and Insolvency Act*, RSC 1985, c B-3;
- (c) *Business Corporations Act*, RSO 1990, c B 16;

- (d) *Canada Business Corporations Act*, RSC 1985, c C-44;
- (e) *Fraudulent Conveyances Act*, RSO 1990, Chapter F 29;
- (f) *Loan and Trust Corporations Act*, RSO 1990, c L 25; and
- (g) *Mortgage Brokerages, Lenders and Administrators Act, 2006*, SO 2006, c 29.

Place of Trial

~~268.~~ ~~264.~~ 265. The plaintiffs propose that the trial of this action take place in the City of Toronto in the Province of Ontario.

October 3, 2018
May 29, 2019
December 17, 2019

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC# 31871V)
Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Ian Aversa (LSUC# 55449N)
Phone: (416) 865-3082
Email: iaversa@airdberlis.com

Steve Tenai (LSUC# 33726R)
Phone: (416) 865-4620
Email: stenai@airdberlis.com

Facsimile: (416) 863-1515

Lawyers for the Plaintiff, Grant Thornton Limited, in
its capacity as court-appointed Trustee

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

Sean Zweig (LSUC# 57307I)
Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSUC# 55457P)
Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSUC# 64325B)
Email: blinickj@bennettjones.com

Facsimile: (416) 863-1716

Lawyers for the Plaintiff, KSV Restructuring Inc.
(formerly KSV Kofman Inc.), in its capacity as
court-appointed Receiver

**GRANT THORNTON LIMITED, in its capacity as Trustee of
Textbook Student Suites (525 Princess Street) Trustee
Corporation et al.**

v.

JOHN DAVIES et al.

Plaintiffs

Defendants

Court File No: CV-18-606314-00CL

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

PROCEEDING COMMENCED AT TORONTO

FOURTH AMENDED STATEMENT OF CLAIM

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Sean Zweig (LSUC# 57307I)

Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSUC# 55457P)

Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSUC# 64325B)

Phone: (416) 777-4828
Email: blinickj@bennettjones.com

Fax: (416) 863-1716

Lawyers for the Plaintiff, KSV
Restructuring Inc. (formerly KSV
Kofman Inc.), in its capacity as
court-appointed Receiver

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC# 31871V)

Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Ian Aversa (LSUC# 55449N)

Phone: (416) 865-3082
Email: iaversa@airdberlis.com

Steve Tenai (LSUC# 33726R)

Phone: (416) 865-4620
Email: stenai@airdberlis.com

Fax: (416) 863-1515

Lawyers for the Plaintiff, Grant Thornton
Limited, in its capacity as court-
appointed Trustee

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and - **TEXTBOOK STUDENTS SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION ET AL.**

Respondents

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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, ET AL.

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

KINGSETT MORTGAGE CORPORATION

Applicant

- and - **TEXTBOOK (445 PRINCESS STREET) INC.**

Respondent

Court File No. CV-17-589078-00CL

GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, ET AL.

Applicant

- and - **TEXTBOOK (774 BRONSON AVENUE) INC., ET AL.**

Respondents

Court File No. CV-18-598788-00CL

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, ET AL, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, ET AL.

Plaintiffs

- and - **AEOLIAN INVESTMENTS LTD., ET AL.**

Defendants

Court File No. CV-18-606314-00CL

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

**PROCEEDING COMMENCED AT
TORONTO**

SETTLEMENT APPROVAL ORDER

BENNETT JONES LLP

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

Sean Zweig (LSO# 57307I)

Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSO# 55457P)

Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSO# 64325B)

Phone: (416) 777-4828
Email: blinickj@bennettjones.com

Fax: (416) 863-1716

Lawyers for KSV Restructuring Inc. (formerly KSV Kofman Inc.), solely in its capacity as the Court-Appointed Receiver 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., Textbook (555 Princess Street) Inc., and Textbook (445 Princess Street) Inc. and in its capacity as Proposed Court-Appointed Receiver of Textbook (Ross Park) Inc., Textbook (774 Bronson Avenue) Inc. and McMurray Street Investments Inc.

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSO# 31871V)

Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Ian Aversa (LSO# 55449N)

Phone: (416) 865-3082
Email: iaversa@airdberlis.com

Miranda Spence (LSO# 60621M)

Phone: (416) 865-3414
Email: mspence@airdberlis.com

Fax: (416) 863-1515

Lawyers for Grant Thornton Limited, solely in its capacity as Court-Appointed Trustee of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation

SCHEDULE "A"

[Include Form of Fourth Amended Statement of Claim]

TAB D

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

THE HONOURABLE) THURSDAY, THE 13TH
)
JUSTICE HAINEY) DAY OF MAY, 2021

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

ANCILLARY ORDER

THIS MOTION, made by Grant Thornton Limited (“GTL”), in its capacity as the Court-appointed trustee (in such capacity, the “Trustee”) of each of the Respondents in this proceeding, for an Order, *inter alia*: (i) approving the Fourteenth Report of the Trustee dated May 3, 2021 (the “**Fourteenth Report**”) and the activities of the Trustee set out in the Fourteenth Report; and (ii) approving the fees and disbursements of the Trustee and its counsel, was heard this day via videoconference.

ON READING the Fourteenth Report, including the fee affidavits appended thereto (the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Trustee and such other

counsel as were present, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of <*> sworn <*>, 2021,

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

2. **THIS COURT ORDERS** that the Fourteenth Report and the activities of the Trustee described therein be and are hereby approved.

3. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel, as described in the Fourteenth Report and as set out in the Fee Affidavits appended to the Fourteenth Report, be and are hereby approved.

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

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

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

Applicant

Respondents

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

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

Proceedings commenced at Toronto

ANCILLARY ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSO # 31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa (LSO # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Miranda Spence (LSO # 60621M)

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: mspence@airdberlis.com

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

T A B E

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

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

FOURTEENTH REPORT OF THE TRUSTEE

May 3, 2021



Grant Thornton Limited
200 King Street W., 11th Floor
Toronto, ON M5H 3T4

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

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

FOURTEENTH REPORT OF THE TRUSTEE

May 3, 2021

INTRODUCTION AND BACKGROUND

1. This report (this “**Fourteenth Report**”) is filed by Grant Thornton Limited (“**GTL**”) in its capacity as the court-appointed trustee (in such capacity, the “**Trustee**”) of each of the 11 above-named Respondents (collectively, the “**Tier 1 Trustee Corporations**”, and individually, a “**Tier 1 Trustee Corporation**”). GTL was appointed as the Trustee pursuant to the Order of the Honourable Mr. Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made October 27, 2016 (the “**Appointment Order**”), a copy of which is attached as **Appendix “1”** (together with His Honour’s endorsement).

2. The purpose of the Trustee's appointment (the "**Appointment**") is to protect the interests of the investing public, who, through the Trustee, were or are (as applicable) mortgagees with secured lending positions registered on title to real property owned by 16 borrowers/developers (the "**Developers**"). The Developers are distinct entities from the Tier 1 Trustee Corporations.
3. The circumstances leading to the Trustee's Appointment are contained in the affidavit of Mohammed Ali Marfatia sworn October 20, 2016 (the "**Marfatia Affidavit**"), which was filed by the Superintendent of Financial Services (the "**Superintendent**") in support of the Appointment. Copies of the Marfatia Affidavit and the other materials filed in these proceedings are available on the Trustee's website at www.grantthornton.ca/tier1 (the "**Trustee's Website**").
4. The Marfatia Affidavit describes 16 syndicated mortgage investments ("**SMIs**") sold to the investing public (the "**Investors**"), in respect of which, amongst other things:
 - (i) the 16 Developers were the owners of the real property, borrowers in the mortgage transactions and developers of the underlying real estate projects;
 - (ii) the 11 Tier 1 Trustee Corporations were special purpose entities required under their relevant constating agreements to hold the mortgages in trust for the Investors and to act in a fiduciary capacity to administer and enforce the mortgages (some of the Tier 1 Trustee Corporations held more than one mortgage); and
 - (iii) other entities, being First Commonwealth Mortgage Corporation ("**First Commonwealth**") and Tier 1 Mortgage Corporation ("**Tier 1 Mortgage Corp**"), were amongst those licensed mortgage brokers that promoted and sold the SMIs, and a third entity, being Tier 1 Transaction Advisory Services Inc. ("**Tier 1 Transaction**"), was also heavily involved in the SMIs and had applied for a mortgage brokerage licence.
5. The Marfatia Affidavit further describes how Mr. Raj Singh, who was simultaneously the President, the CEO and a shareholder of Tier 1 Transaction, a mortgage agent of First Commonwealth, a director, officer, shareholder (either

directly or indirectly) and/or profit participation interest holder in at least 11 of the Developers and the sole director, officer and shareholder of all but two of the Tier 1 Trustee Corporations, was in a conflict of interest position not properly disclosed to the Investors, in that, amongst other things, he was required to administer and enforce the SMIs on behalf of the Investors as against borrowers in which he had a financial interest in the majority of cases.

6. As discussed in the Marfatia Affidavit, the Superintendent also discovered systematic and recurrent failures by First Commonwealth and Tier 1 Mortgage Corp to abide by the basic consumer protection measures put in place by the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), which resulted in the Superintendent issuing: (i) a Notice of Proposal to revoke the licenses of First Commonwealth, Tier 1 Mortgage Corp and Mr. Singh (amongst others) and to refuse the licence surrender application of First Commonwealth; (ii) an Interim Suspension Order against these same entities/persons, preventing them from dealing or trading in mortgages in Ontario; and (iii) an Interim Compliance Order against Tier 1 Transaction, requiring that it cease and desist unlicensed activity. The Trustee understands that a final Compliance Order and a final Order to Revoke Licence and Order to Refuse Licence in respect of these entities/persons were issued by the Superintendent on January 23, 2018.
7. Finally (without being exhaustive), the Marfatia Affidavit also expressed concern that the appraisal values provided to Investors reflected projected values of the developed projects instead of the actual values of the real property, such that the true values may be inadequate to cover the respective SMIs.
8. Apart from the Marfatia Affidavit, responding affidavits to the Superintendent's application were sworn by John Davies (a principal for 11 of the Developers (the "**Davies Developers**"),¹ who opposed the Appointment) and Gregory Harris (a lawyer at Harris + Harris LLP ("**H+H**"), who was involved in the SMI transactions).

¹ Being Textbook (525 Princess Street) Inc. (the "**Davies 525 Princess Developer**"), Textbook (555 Princess Street) Inc., (the "**Davies 555 Princess Developer**"), Textbook (Ross Park) Inc. (the "**Davies Ross Park Developer**"), 1703858 Ontario Inc. (the "**Davies MC Burlington Developer**"), Memory Care Investments (Oakville) Ltd. (the "**Davies MC Oakville Developer**"), Memory Care Investments (Kitchener) Ltd. (the "**Davies MC Kitchener Developer**"), Textbook (774 Bronson Avenue) Inc. (the "**Davies Bronson Developer**"), Legacy Lane Investments Ltd. (the "**Davies Legacy Lane Developer**"), Scollard Development Corporation (the "**Davies Boathaus Developer**"), McMurray Street Investments Inc. (the "**Davies McMurray Developer**") and Textbook (445 Princess Street) Inc. (the "**Davies 445 Princess Developer**").

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

Representative Counsel

9. On January 24, 2017, pursuant to the Order of the Honourable Mr. Justice Hainey, Chaitons LLP was appointed as counsel for all the Investors across all 16 SMIs (in such capacity, “**Representative Counsel**”), subject to certain opt-out rights (the “**Representative Counsel Order**”). A copy of the Representative Counsel Order is attached as **Appendix “2”**.

Claims Procedure, Litigation and Related Matters

10. On September 5, 2017 and November 29, 2017, pursuant to the respective Orders of the Honourable Madam Justice Conway and Mr. Justice Hainey, the Court approved a claims procedure proposed by the Trustee (the “**Claims Procedure Order**”), which the Trustee then implemented, and authorized the Trustee to make distributions to the Investors (upon receipt of funds by the Trustee) without further Order of the Court (the “**Distribution Order**”). A small number of Investors and one additional party disputed the Trustee’s quantification of their claims. The Trustee’s determinations were upheld pursuant to the Order of the Honourable Mr. Justice Myers made November 7, 2018 (the “**Disputed Claims Adjudication Order**”). Copies of the Claims Procedure Order, the Distribution Order and the Disputed Claims Adjudication Order are attached collectively as **Appendix “3”**.
11. On October 3, 2018, the Trustee and the Receiver (as defined below) commenced litigation² (the “**Litigation**”) against (amongst others) each of:
 - (i) Mr. Davies, his wife and certain related family trusts and corporations;

² Prior to which, on May 30, 2018, a settlement agreement was approved by this Court with certain additional intended defendants (the “**Pre-Litigation Settlement**”), being R. Alan Harris, Erika Harris and Dachstein Holdings Inc. (the “**Pre-Litigation Settlement Defendants**”). In substance, pursuant to the Pre-Litigation Settlement, the Pre-Litigation Settlement Defendants repaid the totality of all dividends they received from the Davies Developers (being \$1,000,000) in exchange for a full and final release from the Trustee and the Receiver (as defined herein). The \$1,000,000 of dividends received (and repaid) by the Pre-Litigation Settlement Defendants was confirmed by an independent investigation conducted by the Receiver and further confirmed in a series of sworn declarations provided by the Pre-Litigation Settlement Defendants.

- (ii) Mr. Davies' business partner, Mr. Walter Thompson, and a related corporation;
- (iii) Mr. Singh and certain related corporations, including Tier 1 Transaction (the "**Singh Defendants**");
- (iv) certain current and former directors and officers of the Tier 1 Trustee Corporations, the Davies Developers and Tier 1 Transaction, including (in addition to Messrs. Davies, Thompson and Singh), Messrs. Bruce Stewart, Jude Cassimy, David Arsenault, James Grace ("**Mr. Grace**") and certain related corporations;
- (v) certain law firms and lawyers that acted in connection with certain of the SMIs, the Tier 1 Trustee Corporations and/or the Developers, namely:
 - (1) Gregory Harris and H+H (together, the "**Harris Defendants**"), which are alleged in the Litigation to have acted as the solicitors for all the Tier 1 Trustee Corporations and 14 of the 16 Developers; and
 - (2) Nancy Elliott and Elliott Law Professional Corporation (together, the "**Elliott Defendants**"), which are alleged in the Litigation to have acted as solicitors for the Tier 1 Trustee Corporations in respect of their loans to 13 of the 16 Developers, and which are further alleged in the Litigation to have delegated substantially all duties to H+H, thereby creating, facilitating and/or furthering conflicts of interest in which H+H and its lawyers acted for both borrowers and lenders in respect of the applicable SMIs; and
- (vi) Michael Cane, who is alleged in the Litigation to have, amongst other things, acted as the appraiser for 14 of the 16 Developers, been aware that his appraisals were being used and relied upon to

promote and solicit the SMIs, and prepared faulty and/or misleading appraisals.

12. A total of \$106 million is sought in the Litigation (amongst other relief), representing the anticipated Investor losses from their aggregate investment of approximately \$131.3 million. A copy of the third statement of claim is attached as **Appendix “4”**.
13. The parties to the Litigation have executed a discovery plan and exchanged affidavits of documents and Schedule “A” productions. Examinations for discovery are scheduled to take place between June and September 2021, pursuant to a Court-endorsed timetable. A copy of the Discovery Plan is attached as **Appendix “5”**. A copy of the Endorsement of the Honourable Mr. Justice McEwen dated March 8, 2021, is attached as **Appendix “6”**.
14. The Trustee has also been in contact with the Royal Canadian Mounted Police (the “**RCMP**”) and the Ontario Provincial Police (the “**OPP**”), which are aware of the Investors’ concerns regarding certain conduct of the principals of the Tier 1 Trustee Corporations and the Developers, as well as certain mortgage brokers and investment advisors that promoted and sold the SMIs.
15. The Trustee understands that the OPP’s Anti-Rackets Branch and Serious Fraud Office have opened and are pursuing an investigation in respect of at least one of the Davies Developers. To assist with its investigation, the OPP asked the Trustee for a list of impacted Investors. With a view to protecting Investor privacy, the Trustee sought and obtained this Court’s authorization in November 2017 before providing Investor information to law enforcement.
16. The Trustee and Representative Counsel were also approached in October 2018 by a group led by certain mortgage agents and investment advisors who were involved in the sale of the failed SMIs to Investors. The group sought to have the Trustee or Representative Counsel either disclose confidential Investor information to the group or disseminate a solicitation message to the Investors on the group’s behalf. The group brought a motion in this regard, which was opposed by both the Trustee and Representative Counsel. The Court dismissed the group’s motion in January 2019.

The Developers

The Davies Developers, associated receiverships and the *Mareva* Settlement

17. As described above, the 11 Tier 1 Trustee Corporations (over which the Trustee is appointed) are distinct from the 16 Developers (over which the Trustee is not appointed). Eleven of the 16 Developers are the Davies Developers.
18. Shortly after the Trustee's Appointment, the 11 Davies Developers brought a motion before the Ontario Superior Court of Justice (Divisional Court) (the "**Divisional Court**") to stay certain paragraphs of the Appointment Order (the "**Stay Motion**") pending the hearing of the Davies Developers' further motion for leave to appeal the Appointment Order. The Divisional Court dismissed the Stay Motion and ordered the Davies Developers to pay to the Trustee \$5,000 for its costs within 30 days (the "**Cost Award**"). The Davies Developers ultimately abandoned their appeal of the Appointment Order. As of the date of this Fourteenth Report, the Davies Developers have not satisfied the Cost Award.
19. Nine of the Davies Developers (and one of Mr. Davies' related companies) then brought an application for protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA Application**"). The CCAA Application was dismissed by the Honourable Mr. Justice Penny on December 15, 2016.
20. In parallel with these developments, certain prior-ranking mortgagees to the Trustee were exploring (and, in some cases, taking) enforcement steps against the Davies Developers' real properties. As detailed in the Trustee's previous reports to Court (all of which are available on the Trustee's Website), the following enforcement activity ensued with respect to the 11 Davies Developers and their property:
 - (i) in order to prevent the immediate forced sale of the property then owned by the Davies Boathaus Developer, the Trustee moved to Court for the appointment of KSV Kofman Inc. ("**KSV**") as receiver and manager (in such capacity, the "**Receiver**") to, amongst other things, market and solicit offers for the investment in, development of and/or sale of such property, which relief was granted by the

Honourable Mr. Justice Wilton-Siegel on February 2, 2017 (the “**Original Receivership**”);

- (ii) the Trustee later moved to Court to expand the Original Receivership to include the property then owned by six additional Davies Developers,³ which relief was granted by the Honourable Mr. Justice Myers on April 28, 2017 (together with the Original Receivership, the “**Expanded Receivership**”);⁴
- (iii) KingSett Mortgage Corporation (“**KingSett**”), a prior-registered mortgagee, applied to Court for the appointment of KSV as receiver and manager (in such capacity, the “**445 Princess Receiver**”) over certain property then owned by an eighth Davies Developer (the “**445 Princess Davies Developer**”), which relief was granted by the Honourable Mr. Justice Myers on January 9, 2018 (the “**445 Princess Receivership**”);⁵
- (iv) the Trustee moved to Court for the appointment of MNP Ltd. (“**MNP**”) as receiver (in such capacity, the “**Ross Park Receiver**”) of the known real property and certain other assets then owned by a ninth Davies Developer (the Davies Ross Park Developer), the approval of a sale transaction in respect of such property, the approval of a settlement agreement with the mortgagees on title, the approval of an associated scheme of distribution and the discharge of the Ross Park Receiver upon the filing of a discharge certificate, which relief was granted by the Honourable Mr. Justice McEwen on March 1, 2018 (the “**Ross Park Receivership**”);⁶ and

³ Being the Davies Legacy Lane Developer, the Davies 525 Princess Developer, the Davies 555 Princess Developer, the Davies MC Burlington Developer, the Davies MC Oakville Developer and the Davies MC Kitchener Developer.

⁴ Copies of the materials filed in the Expanded Receivership are available on the Receiver’s website at <https://www.ksvadvisory.com/insolvency-cases/case/scollard-development-corporation>.

⁵ Copies of the materials filed in the 445 Princess Receivership are available on the 445 Princess Receiver’s website at <https://www.ksvadvisory.com/insolvency-cases/case/textbook-445-princess-street-inc>.

⁶ Copies of the materials filed in the Ross Park Receivership are available on the Ross Park Receiver’s website at <https://mnpdebt.ca/en/corporate/engagements/textbook-ross-park-inc>.

- (v) private sales were concluded by prior-registered mortgagees in respect of the known real property then owned by the two remaining Davies Developers (the Davies Bronson Developer and the Davies McMurray Developer) (the “**Private Sales**”).
21. Following the completion of the Private Sales, the Trustee also moved to Court for the appointment of KSV as receiver (in such capacity, the “**Residual Receiver**”) of: (i) certain residual assets of the Davies Bronson Developer and the Davies McMurray Developer; and (ii) the residual assets that are not subject to the Ross Park Receivership, which relief was granted by the Honourable Mr. Justice Myers on May 30, 2018 (the “**Residual Receivership**”).⁷ In substance, the purpose of KSV’s appointment as the Residual Receiver is to facilitate the Litigation and related endeavours on behalf of these three Davies Developers, similar to the powers that KSV has in this regard as the Receiver and the 445 Princess Receiver on behalf of the other Davies Developers.
22. Under the various receiverships (including the Original Receivership, the Expanded Receivership, the 445 Princess Receivership and the Residual Receivership), the Receiver is expressly empowered and authorized to initiate, prosecute and continue the prosecution of any and all proceedings on behalf of all of the companies subject to the receiverships (i.e., the Davies Developers). The Receiver is also empowered and authorized to settle or compromise any such proceedings, and the Receiver is further authorized and empowered to apply to any court for assistance in carrying out the terms of the applicable receivership orders.
23. As a result of the Expanded Receivership, the 445 Princess Receivership, the Ross Park Receivership, the Private Sales and the Residual Receivership, neither John Davies nor his colleague Walter Thompson remains in control of any of the 11 Davies Developers to which the SMIs loaned money. A table reflecting the current status of each SMI that loaned money to the Davies Developers, including

⁷ Copies of the materials filed in the Residual Receivership are available on the Residual Receiver’s website at <https://www.ksvadvisory.com/insolvency-cases/case/mcmurray-street-investments-inc>.

any applicable enforcement realizations and distributions to the applicable Investors (subject to holdbacks), is attached as **Appendix “7”**.

24. Following its appointment, the Receiver, through its review and analysis of bank statements and other financial records, identified extensive transfers of money, from and to certain of the Davies Developers, and to and from various related entities, including other Davies Developers, entities and trusts controlled by Mr. Davies and entities controlled by Mr. Singh. This led to:
- (i) KSV, on KingSett’s application, being appointed as receiver (in such capacity, the “**Rideau Receiver**”) over one of these related entities,⁸ the principals of which were Mr. Davies and Mr. Thompson (collectively, the “**Rideau Receivership**”);⁹ and
 - (ii) the Receiver obtaining a *Mareva* injunction against each of Mr. Davies and his wife (personally and in their capacities as trustee and/or representative of the Davies Arizona Trust and the Davies Family Trust), Gregory Harris (solely in his capacity as trustee and/or representative of the Davies Family Trust) and Aeolian Investments Ltd. (collectively, the “**Mareva Defendants**”).¹⁰
25. A copy of the reasons of the Honourable Mr. Justice Myers for having granted the *Mareva* injunction is attached as **Appendix “8”**. These reasons identify, *inter alia*, Mr. Davies as having engaged in a “Ponzi Scheme.”
26. On May 2, 2019, the Honourable Mr. Justice Hainey approved a settlement agreement (the “**Mareva Settlement**”) amongst the Receiver, the Trustee and the Mareva Defendants. In substance, the Mareva Settlement provides for:

⁸ Being Generx (Byward Hall) Inc. a.k.a. Textbook (256 Rideau Street) Inc. (“**Rideau**”). Rideau was not a developer that was directly loaned money by the SMLs; however, the Trustee understands from the Receiver that certain funds lent by the SMLs to certain of the Davies Developers were transferred, either directly or indirectly, to Rideau.

⁹ Copies of the materials filed in the Rideau Receivership are available on the Rideau Receiver’s website at <https://www.ksvadvisory.com/insolvency-cases/case/generx-byward-hall-inc>.

¹⁰ The Trustee understands from the Receiver that each of the Davies Arizona Trust, the Davies Family Trust and Aeolian Investments Ltd. (an entity controlled, directly or indirectly, by Mr. Davies and/or related parties) was a recipient of funds, either directly or indirectly, from one or more of the Davies Developers.

- (i) payment (which has now been made) by the Mareva Defendants to the Receiver of approximately USD\$600,000.00 (or 72.5% of the sale proceeds of the Davies Arizona Trust's former assets, being most of the Mareva Defendants' assets per disclosures made to and reviewed by the Receiver and the Trustee) (the "**Mareva Settlement Proceeds**");
 - (ii) the lifting of the *Mareva* injunction (and a dismissal of an appeal of the *Mareva* injunction) on consent;
 - (iii) go-forward reporting on a quarterly basis by the Mareva Defendants to the Receiver and the Trustee with respect to all their direct and indirect earnings; and
 - (iv) the consent by the Mareva Defendants to the *Mareva* injunction's immediate reinstatement in the event of a disclosure misrepresentation.
27. The Mareva Settlement did not and does not release any of the Mareva Defendants from the Litigation or any other matters ancillary thereto, and the Trustee and the Receiver have preserved all of their rights to continue their claims and pursue recovery against the Mareva Defendants for any and all matters in any and all other proceedings, including the Litigation. The Receiver has distributed \$560,000 of the Mareva Settlement Proceeds to the Trustee for further distribution to the Investors. A copy of the Mareva Settlement and His Honour's Orders approving and implementing same are attached collectively as **Appendix "9"**.

The Non-Davies Developers

28. In addition to the 11 Davies Developers, SMI proceeds were also advanced to the five Developers that are not Davies Developers (the "**Non-Davies Developers**").¹¹ Four of those five loans have now been settled, as previously reported to and

¹¹ Being Hazelton Development Corporation (the "**Hazelton Developer**"), 1416958 Ontario Inc. (the "**Guildwood Developer**"), Silver Seven Corporate Centre Inc. (the "**Silver Seven Developer**"), Vaughan Crossings Inc. (the "**Vaughan Crossings Developer**") and Keele Medical Properties Ltd. (the "**Keele Medical Developer**").

approved by the Court, including two SMIs where Mr. Singh controlled the applicable Developer.

29. The final Non-Davies Developer is the Keele Medical Developer, which is also controlled by Mr. Singh. VersaBank, a prior-registered mortgagee on the Keele Medical Developer's real property, applied to the Court (with the Trustee's support) for the appointment of MNP as receiver (in such capacity, the "**Keele Medical Receiver**") over the Keele Medical Developer's known real property and associated assets, which relief was granted by the Honourable Mr. Justice Hainey on March 19, 2019 (the "**Keele Medical Receivership**").¹²
30. A table reflecting the current status of each SMI that loaned money to the Non-Davies Developers, including any applicable realizations and distributions to the applicable Investors (subject to holdbacks), is attached as **Appendix "10"**.
31. On November 18, 2019, the Honourable Mr. Justice Hainey approved a settlement agreement (the "**Singh Settlement**") amongst the Receiver, the Trustee and the Singh Defendants. In substance, the Singh Settlement provides for, amongst other things:
 - (i) the payment by the Singh Defendants of \$2.1 million to the Trustee and the Receiver (the "**Singh Settlement Proceeds**");
 - (ii) the release by the Trustee and the Receiver of the Singh Defendants from the Litigation, the facts and issues in dispute therein and the facts and issues arising from or relating to the SMIs with the Tier 1 Trustee Corporations and the real estate development projects of the Developers (the "**Singh Release**");
 - (iii) if it is determined that there is any material misrepresentation in any of the financial disclosures by any of the Singh Defendants, the Trustee and the Receiver may seek a determination from the Court regarding whether there is such material misrepresentation, which,

¹² Copies of the materials filed in the Keele Medical Receivership are available on the Keele Medical Receiver's website at <https://mnpdebt.ca/en/corporate/Engagements/keele-medical-properties-ltd>.

if found by the Court, would permit the Trustee and the Receiver to revoke the Singh Release; and

- (iv) the Singh Defendants must fully and reasonably cooperate with the Trustee and the Receiver in relation to their claims and proceedings against the Non-Settling Defendants (as defined in the Singh Settlement), including, but no limited to, the Litigation.

32. Of the Singh Settlement Proceeds, \$525,000 was advanced to the Receiver and \$1,575,000 to the Trustee. A copy of the Singh Settlement and His Honour's Orders approving and implementing same are attached collectively as **Appendix "11"**.

33. On July 14, 2020, the Honourable Mr. Justice Hailey approved a settlement agreement (the "**Grace Settlement**") among the Receiver, the Trustee, and Mr. Grace. In substance, the Grace Settlement provides for, amongst other things:

- (i) the payment by Mr. Grace of \$450,000 to the Trustee and the Receiver (the "**Grace Settlement Proceeds**");
- (ii) the release by the Trustee and the Receiver of Mr. Grace from the Litigation, the facts and issues in dispute therein and the facts and issues arising from or relating to the SMIs with the Tier 1 Trustee Corporations and the real estate development projects of the Developers (the "**Grace Release**"); and
- (iii) Mr. Grace must fully and reasonably cooperate with the Trustee and the Receiver in relation to their claims and proceedings against the Non-Settling Defendants (as defined in the Grace Settlement), including, but not limited to, the Litigation.

34. Of the Grace Settlement Proceeds, \$135,000 was held by the Receiver and \$315,000 was advanced the Trustee. A copy of the Grace Settlement and His Honour's Orders approving and implementing same are attached collectively as **Appendix "12"**.

PURPOSE OF THE FOURTEENTH REPORT

35. The Trustee has issued 13 previous reports to Court and certain supplements thereto (collectively, the “**Previous Reports**”) prior to the issuance of this Fourteenth Report. A table summarizing the purpose of each of the Previous Reports is attached as **Appendix “13”**.
36. The purpose of this Fourteenth Report is to provide information regarding the Trustee’s request and/or support, as applicable, for Orders:
- (i) approving the Proposed Elliott Settlement (as defined below);
 - (ii) approving this Fourteenth Report and the conduct and activities of the Trustee as described herein; and
 - (iii) approving the fees and disbursements of the Trustee and its counsel from June 1, 2020 to March 31, 2021.

DISCLAIMER

37. This Fourteenth Report has been prepared for the use of the Court and the Tier 1 Trustee Corporations’ stakeholders as general information relating to the Tier 1 Trustee Corporations. Accordingly, the reader is cautioned that this Fourteenth Report may not be appropriate for any other purpose. The Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Fourteenth Report for any other purpose.
38. In preparing this Fourteenth Report, the Trustee has relied upon certain unaudited financial information provided by parties who had knowledge of the affairs of the Tier 1 Trustee Corporations, including Gregory Harris of H+H, Raj Singh, John Davies and Walter Thompson. The Trustee has also relied on information provided to it by KSV in its capacities as the Receiver, the 445 Princess Receiver, the Rideau Receiver and the Residual Receiver, and by MNP in its capacities as the Ross Park Receiver and the Keele Medical Receiver. The Trustee has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International

Financial Reporting Standards. Accordingly, the Trustee expresses no opinion or other form of assurance with respect to such information.

39. All references to dollars in this Fourteenth Report are in Canadian currency unless otherwise noted.

MS. ELLIOTT AND THE PROPOSED ELLIOTT SETTLEMENT

40. As set out above, the Elliott Defendants are defendants in the Litigation. Specifically, the Litigation alleges that the Elliott Defendants acted as the solicitors for the Tier 1 Trustee Corporations except for McMurray Trust Co., and Scollard/Vaughan Crossings/Silver Seven Trust Co. to the extent of its advancement of monies to Vaughan Crossings and Silver Seven. The Litigation further alleges that, in this capacity, the Elliott Defendants improperly delegated substantially all of their duties to H+H, the borrower's solicitors, failed to fulfil their duties to perform the professional services at issue with the requisite degree of care, skill and knowledge, breached their duties and professional obligations owed to the applicable Tier 1 Trustee Corporations, and knowingly assisted the Harris Defendants' breach of their fiduciary and other legal duties owed to the Developers.
41. On April 19, 2021, after negotiations, investigations and due diligence, the Trustee and the Receiver entered into a settlement agreement with the Elliott Defendants, a copy of which is attached as **Appendix "14"** (the "**Proposed Elliott Settlement**").
42. A description of the Proposed Elliott Settlement is provided below; however, the below is a high-level summary only, and readers should review the Proposed Elliott Settlement attached as Appendix "14" in its entirety.
43. Subject to the approval of this Court, the purpose of the Proposed Elliott Settlement is to resolve – as against the Elliott Defendants – the Litigation and any other potential claims and proceedings that the Trustee and/or the Receiver may have against the Elliott Defendants with regard to the Litigation, the facts and issues in dispute therein and the facts and issues arising from or relating to the SMIs with

the Tier 1 Trustee Corporations and the real estate development projects of the Developers (collectively, the “**Proposed Released Matters**”).

44. As part of the Proposed Elliott Settlement, the Elliott Defendants must pay \$680,000 (the “**Elliott Settlement Funds**”) to the Trustee’s counsel or the Receiver’s counsel within 30 days of the Court’s approval of the Proposed Elliott Settlement, together with a further sum, the quantum and timing of which is contingent upon the outcome of certain other litigation to which Ms. Elliott is a defendant.

45. The Proposed Elliott Settlement expressly provides that the Trustee and the Receiver intend to preserve all their rights and remedies, and all claims that they have in the Litigation or otherwise, as against the remaining defendants in the Litigation and any other parties with potential liability who are not the Elliott Defendants (collectively, the “**Remaining Non-Settling Defendants**”), subject to the terms and conditions of the Proposed Elliott Settlement, including the Trustee and the Receiver agreeing to forego recovery of any damages, restitution, an accounting disgorgement, interest, costs or any other monetary relief from the Remaining Non-Settling Defendants (“**Monetary Relief**”) that corresponds to the proportion of any judgment that, had the Elliott Defendants not settled, the Court would have apportioned to the Elliott Defendants. In other words, the Trustee and the Receiver shall be entitled to recover from the Remaining Non-Settling Defendants only such claims for Monetary Relief attributable to the aggregate of the several liability of the Remaining Non-Settling Defendants. As described above in this Fourteenth Report, the Remaining Non-Settling Defendants include, without limitation:
 - (i) the Mareva Defendants;
 - (ii) Mr. Davies’ business partner, Mr. Walter Thompson, and a related corporation;
 - (iii) certain other current and former directors and officers of the Tier 1 Trustee Corporations, Davies Developers and Tier 1 Transaction, including Messrs. Bruce Stewart, Jude Cassimy, David Arsenault and certain related corporations;

- (iv) a law firm and lawyer that acted in connection with certain of the SMIs, the Tier 1 Trustee Corporations and/or the Developers, namely the Harris Defendants; and
- (v) the appraiser, Michael Cane.

46. The Proposed Elliott Settlement further provides that:

- (i) the Elliott Defendants and their insurer, on one hand, and the Trustee and Receiver, on the other hand, exchange full and final mutual releases in respect of the Proposed Release Matters;
- (ii) as soon as reasonably possible following both the issuance of the proposed Order approving the Proposed Elliott Settlement and the payment of the Elliott Settlement Funds, the Trustee and the Receiver shall discontinue the Litigation as against the Elliott Defendants on a strictly with prejudice and without costs basis, and shall amend their statement of claim in the Litigation so as to continue the Litigation against the Remaining Non-Settling Defendants only; and
- (iii) Ms. Elliott shall cooperate with the Trustee and the Receiver in relation to their claims and proceedings against the Remaining Non-Settling Defendants, including, but not limited to, the Litigation. Such cooperation shall include two two-hour meetings with the Receiver and the Trustee to provide an account of the facts known to him that are relevant to the Litigation. The Elliott Defendants have already made production in the Litigation, such that the Trustee and the Receiver have already received the relevant non-privileged documents, records and information over which the Elliott Defendants have possession, power or control.

47. The Trustee is of the view that the Proposed Elliott Settlement represents the reasonable and practical way forward because:

- (i) it generates immediate proceeds of \$680,000 from the Elliott Defendants' insurer, plus a potential additional, unknown amount,

which would likely be eroded by virtue of the Elliott Defendants' defence costs and, therefore, largely inaccessible, if the Litigation were to continue as against the Elliott Defendants;

- (ii) it resolves the Proposed Released Matters as against the Elliott Defendants and avoids protracted and complex proceedings as against him, thereby reducing expense and risk, resulting in legal and professional costs savings that would be incurred in seeking and enforcing judgment as against the Elliott Defendants;
- (iii) it requires the Elliott Defendants to cooperate with the Trustee and the Receiver in respect of the Litigation and any other related proceedings, thereby strengthening the case against the Remaining Non-Settling Defendants, improving the chance of increased monetary recovery from those parties and streamlining and reducing costs of the Litigation and any other related proceedings as against the Remaining Non-Settling Defendants;
- (iv) it provides that the Remaining Non-Settling Defendants will only be liable for their proportionate share of the losses and it contemplates a bar order with respect to their potential exposure to claims of joint responsibility with the Elliott Defendants, thereby leaving the Remaining Non-Settling Defendants responsible only for the losses they can be proven to have caused;
- (v) it provides a degree of certainty regarding costs and benefits relating to both the Elliott Defendants and the Remaining Non-Settling Defendants, which cannot be expeditiously or effectively achieved otherwise;
- (vi) it reduces financial and opportunity costs related to protracted, complicated litigation, and conserves valuable court resources; and
- (vii) the Trustee and the Receiver have not identified any evidence of payments to either of the Elliott Defendants from the Davies Developers. Further, the Trustee is not aware of, and understands

that the Receiver has not uncovered, anything suggesting that Ms. Elliott intentionally took active steps to participate in the wrongful conduct that is alleged in the Litigation.

48. Accordingly, the Trustee, with the support of the Receiver, is of the view that:
- (i) the Proposed Elliott Settlement is fair and commercially reasonable in all of the circumstances and for purposes of these proceedings;
 - (ii) the pro-settlement purpose of the Proposed Elliott Settlement fairly offsets any potential prejudice caused by the settlement to the Remaining Non-Settling Defendants' ability to know and present their case; and
 - (iii) it is in the best interests of the Tier 1 Trustee Corporations, the Davies Developers, their respective stakeholders (including the Investors), as well the Court and the administration of justice generally, that the terms contemplated under the Proposed Elliott Settlement be approved and implemented.
49. The Trustee, with the support of the Receiver, therefore recommends that this Court approve the Proposed Elliott Settlement. The Trustee understands that the Receiver will also be filing a report recommending that the Court approve the Proposed Elliott Settlement.

APPROVAL OF THE TRUSTEE'S ACTIVITIES AND PROFESSIONAL FEES

50. All the Previous Reports, together with the activities described therein, have already been approved by this Court.
51. The Trustee's activities since the Thirteenth Report dated June 25, 2020 include, without limitation:
- administering the SMI portfolio;
 - corresponding with Representative Counsel;
 - corresponding with brokers and other stakeholders;

- corresponding with Olympia Trust Company (with which all SMIs were held jointly for the benefit of RRSP Investors);
- corresponding with and fielding written and telephone enquiries from Investors, the Investors Committee and Representative Counsel, including disseminating formal updates to Investors on matters related to these proceedings, the Expanded Receivership, the 445 Princess Receivership, the Ross Park Receivership, the Rideau Receivership, the Keele Medical Receivership, the Residual Receivership and the Private Sales;
- engaging in written and telephone communications with the Receiver, the 445 Receiver, the Ross Park Receiver, the Rideau Receiver, the Keele Medical Receiver, the Residual Receiver and their respective counsel;
- engaging in extensive communications with the Trustee's counsel, the Receiver, the Receiver's counsel and other parties in respect of the Litigation;
- maintaining and updating the Trustee's website;
- completing and submitting statutory reports required by the Office of the Superintendent of Bankruptcy;
- corresponding and otherwise communicating and liaising with the OPP;
- implementing the Grace Settlement; and
- negotiating and executing the Proposed Elliott Settlement.

Professional Fees and Disbursements

52. Pursuant to the terms of the Appointment Order, the Trustee and its counsel shall be paid their reasonable fees and disbursements and shall pass their accounts before the Court.

53. The Trustee and its independent legal counsel, Aird & Berlis LLP, have maintained detailed records of their professional time and costs since the Appointment Order was granted.
54. The fees and disbursements of the Trustee and its legal counsel up to and including May 31, 2020, were previously approved by this Court.
55. The total fees of the Trustee from June 1, 2020 to and including March 31, 2021 amount to \$85,653.75, plus HST in the amount of \$11,134.99, totalling \$96,788.74. The details of the time spent and services provided by the Trustee are more particularly described in the Affidavit of Jonathan Krieger, a Senior Vice-President at GTL, sworn May 3, 2021 in support hereof, a copy of which is attached as **Appendix “15”**.
56. The total legal fees incurred by the Trustee for services provided to it by its independent legal counsel, Aird & Berlis LLP, from June 1, 2020, to and including March 31, 2021 amount to \$291,165.50, plus expenses and disbursements in the amount of \$2,878.06 and HST in the amount of \$38,214.97, totalling \$332,258.53. The details of the time spent and services provided by Aird & Berlis LLP are more particularly described in the Affidavit of Steven L. Graff, a lawyer and partner at Aird & Berlis LLP, sworn April 29, 2021 in support hereof, a copy of which is attached as **Appendix “16”**.
57. The Trustee is of the view that these accounts are reasonable in the challenging circumstances of these proceedings. To date, the Trustee has dealt with almost a thousand stakeholders, including investors and their advisors, developers, other mortgagees, lien claimants, creditors, contractors, financiers, and investor committee representatives. The Trustee respectfully requests that the Court approve its fees and disbursements and those of its legal counsel.
58. At the time of the Appointment Order, and as set out in certain of the Previous Reports, the Trustee and its counsel set up various groupings of dockets specific to certain Developers/properties in order to account for their work in respect of the administration of these proceedings. As all the development projects are now either monetized or subject to realization efforts by third parties (i.e., the Keele Medical Receiver), the recent work of the Trustee and its counsel has largely been

devoted to general matters such as, amongst other things, Investor communications, meeting and communicating with the Developers, consulting with the Superintendent, attending in Court, drafting related Court materials, preparing and administering general Investor correspondence, maintaining the designated website for Investor communications, maintaining the toll free telephone line, maintaining the designated email account, answering and responding to thousands of Investor emails and/or telephone calls, liaising with the OPP and, significantly, furthering the Litigation and the Proposed Elliott Settlement.

59. Accordingly, the Trustee's and its counsel's fees and disbursements have been recorded in the general docket and will be funded from the Litigation recoveries in the Trustee's possession. At such time as the Litigation is completed, the Trustee will make a recommendation on an allocation of the net Litigation proceeds amongst the applicable SMIs.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

60. A copy of the Trustee's interim statement of receipts and disbursements as at March 31, 2021 is attached hereto as **Appendix "17"** (the "**Interim R&D**").
61. The Trustee's and its counsel's accrued fees and disbursements from June 1, 2020 to March 31, 2021 are reflected in the Interim R&D as at March 31, 2021.

CONCLUSION AND RECOMMENDED RELIEF

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

All of which is respectfully submitted,

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

Per:

A handwritten signature in black ink, appearing to read 'Jonathan Krieger', written over a horizontal line.

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

APPENDIX 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE NEWBOULD

) THURSDAY, THE 27TH DAY
)
) OF OCTOBER, 2016

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

**TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947
ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE
CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE
CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and
HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION**

Respondents

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

APPOINTMENT ORDER

THIS APPLICATION, made by The Superintendent of Financial Services (the "**Superintendent**"), for an Order, *inter alia*, pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the "**MBLAA**"), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, appointing Grant Thornton Limited ("**GTL**") as trustee (in such capacity, the "**Trustee**"), without security, of all of the assets, undertakings and properties of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC

Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trust Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation (collectively, the "**Respondents**"), was heard this day at 330 University Avenue, Toronto, Ontario;

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

SERVICE

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

APPOINTMENT

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

TRUSTEE'S POWERS

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

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE

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

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

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

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Trustee of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of any of the Respondents, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Trustee or permit the Trustee to make, retain and take away copies thereof and grant to the Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Trustee due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

8. **THIS COURT ORDERS** that the Trustee shall provide each of the relevant landlords with notice of the Trustee's intention to remove any fixtures from any leased premises at least

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

NO PROCEEDINGS AGAINST THE TRUSTEE

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

NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that, with the exception of each of the NOP, the Suspension Order and the Compliance Order, all rights and remedies against each of the Respondents, the Trustee, or affecting the Property, are hereby stayed and suspended except with the written consent of the Trustee or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), and further provided that nothing in this paragraph shall: (i) empower the Trustee or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on; (ii) exempt the Trustee or the Respondents from compliance with statutory or regulatory provisions relating to health, safety or

the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE TRUSTEE

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

CONTINUATION OF SERVICES

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

TRUSTEE TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario*

Water Resources Act, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Trustee shall not, as a result of this Order or anything done in pursuance of the Trustee's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE TRUSTEE'S LIABILITY

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

TRUSTEE'S ACCOUNTS

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

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

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Trustee shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its

fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Trustee or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE APPOINTMENT

22. **THIS COURT ORDERS** that the Trustee be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$300,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Trustee by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Trustee's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Trustee's Charge and the charges as set out in subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in these proceedings, the service

of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/sci/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.grantthornton.ca/tier1>.

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

GENERAL

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

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

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

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

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

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

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



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

OCT 27 2016

PER / PAR: 

SCHEDULE "A"

TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that Grant Thornton Limited., the Trustee (in such capacities, the "Trustee") of all of the assets, undertakings and properties of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trust Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation (collectively, the "**Respondents**"), including all of the assets held in trust by the Respondents on behalf of syndicated mortgage investors (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 27th day of October, 2016 (the "**Order**") made in an action having Court file number CV-16-11567-00CL, has received as such Trustee from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Trustee is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

DATED the _____ day of _____, 2016.

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

Per: _____

Name: Jonathan Krieger

Title: Senior Vice President

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

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

Applicant

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPOINTMENT ORDER

THE SUPERINTENDENT OF FINANCIAL SERVICES

5160 Yonge Street
P.O. Box 85
Toronto, ON M2N 6L9

Tel: (416) 590-7143

Fax: (416) 590-7556

Mark Bailey

Email: mark.bailey@fsco.gov.on.ca

Daniel Di Fonzo

Email: daniel.difonzo@fsco.gov.on.ca

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

Applicant

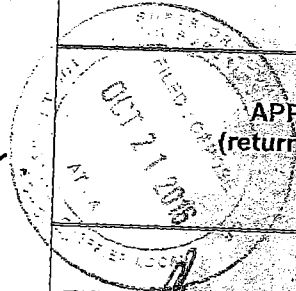
Respondents

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

October 27, 2016

In my view, the appropriate relief is the
Provisional Trustee is the
appropriate relief to protect the
interests of the investors. Order to do.
Ex A to B defendant of applicant to be sealed
D. S. S.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto



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

THE SUPERINTENDENT OF FINANCIAL SERVICES
5160 Yonge Street
P.O. Box 85
Toronto, ON M2N 6L9

Mark Bailey
Tel: (416) 590-7555
Fax: (416) 590-7556
Email: mark.bailey@fscs.gov.on.ca

Daniel Di Fonzo
Tel: (416) 590-7143
Fax: (416) 590-7556
Email: daniel.difonzo@fscs.gov.on.ca

Lawyers for the Applicant, The Superintendent of
Financial Services

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

**TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947
ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE
CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE
CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and
HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION**

Respondents

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

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

October 27, 2016

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

Newbould, J.

APPENDIX 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE JUSTICE

HAINES

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TUESDAY, THE 24TH

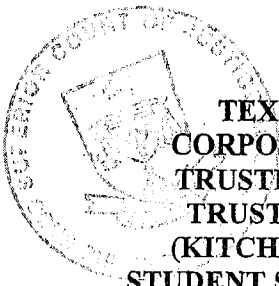
DAY OF JANUARY, 2017

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -



TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

ORDER

(Appointing Representative Counsel)

THIS MOTION, made by the Investors Committee (as defined in the Affidavit of Peter Pontsa sworn January 18, 2017) for an Order appointing Chaitons LLP ("Chaitons") as representative counsel in this proceeding to represent the interests of investors (the "Tier 1 Investors") in syndicated mortgage investments in the 16 projects listed in Schedule "A" hereto (the "Tier 1 Projects") and certain ancillary relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Peter Pontsa sworn January 18, 2017 and the exhibits thereto, and on hearing the submissions of counsel for the Investors Committee, for Spring Hill Investments Inc. and for Grant Thornton Limited, in its capacity as Trustee (in such capacity, the

“Trustee”) appointed by Order of this Court dated October 27, 2016 (the “**Trustee Appointment Order**”),

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record of the Investors Committee is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that, subject to Paragraph 8 hereof, Chaitons LLP is hereby appointed as counsel (“**Representative Counsel**”) for all Tier 1 Investors in respect of this proceeding (including, without limitation, all those who are Tier 1 Investors as a result of having RRSP or other registered funds administered by Olympia Trust Company) regarding their common interests within or among the Tier 1 Projects, unless and until written notice is provided by a particular Tier 1 Investor to Representative Counsel that such Tier 1 Investor does not wish to be represented by Representative Counsel.

3. **THIS COURT ORDERS** that Representative Counsel is hereby empowered and authorized to accept instructions with respect to this proceeding from the Investors Committee which shall be binding on the Tier 1 Investors who have not opted out pursuant to the procedure set out in paragraph 8 below.

4. **THIS COURT ORDERS** that the Trustee shall provide to Representative Counsel, without charge to the Tier 1 Investors, the following information, documents and data as may be in the Trustee’s possession or control (the “**Information**”):

- (a) the names, last known addresses and last known email addresses (if any) of the Tier 1 Investors (the “**Tier 1 Investor Information**”); and
- (b) such additional documents and information as may be specifically requested in writing by Representative Counsel and which is relevant to the Tier 1 Investors’ participation in this proceeding, or as ordered by the Court,

provided that the Trustee and its counsel may recover their time and expenses for so doing at their standard rates, and the Trustee is not required to obtain express consent from any Tier 1 Investor or other person authorizing disclosure of the Information to Representative Counsel, and

this Order shall be sufficient to authorize the disclosure of the Information without knowledge or consent of the individual Tier 1 Investors or any other person.

5. **THIS COURT ORDERS** that all reasonable professional fees and disbursements that may be incurred by Representative Counsel, whether incurred prior to or after the date of this Order, will form part of the indebtedness owing to the Tier 1 Investors, and in the event of any disagreement regarding such fees and disbursements, such disagreement may be remitted to this Court for determination.

6. **THIS COURT ORDERS** that Representative Counsel is hereby authorized to take all steps and do all acts necessary or desirable to carry out the terms of this Order.

7. **THIS COURT ORDERS** that notice of the granting of this Order, substantially in the form attached hereto as **Schedule "B"**, shall be sent by Representative Counsel to each Tier 1 Investor by electronic or regular mail, to addresses provided pursuant to Paragraph 3(a), within seven business days of the date of receipt by Representative Counsel of the Tier 1 Investor Information, which notice shall also be posted on the Trustee's website.

8. **THIS COURT ORDERS** that any Tier 1 Investor who does not wish to be represented by Representative Counsel in these proceedings shall notify the Trustee and Representative Counsel, in writing, that he, she or it is opting out of representation by delivering a notice by electronic or regular mail substantially in the form attached as **Schedule "C"** hereto, and shall thereafter not be bound by the actions of Representative Counsel and shall represent himself, herself or itself or be represented by any counsel that he, she or it may retain exclusively at his, her or its own expense.

9. **THIS COURT ORDERS** that Representative Counsel may communicate with any Tier 1 Investor who has not opted out pursuant to Paragraph 8 hereof by electronic mail to the addresses provided pursuant to Paragraph 3(a) or such other addresses provided by the Tier 1 Investors to Representative Counsel.

10. **THIS COURT ORDERS** that the interests of all Tier 1 Investors who have not opted out pursuant to Paragraph 8 hereof shall be represented by the Investors Committee. Representative Counsel shall be entitled to consult with and seek advice from the Investors

Committee in connection with the fulfillment of its duties in carrying out the provisions of this Order.

11. **THIS COURT ORDERS** that the Investors Committee may engage such advisors, consultants and experts as they may require to assist with the exercise of their responsibilities, including without limitation those conferred by this Order, and that any expenses incurred in engaging such parties shall form part of the indebtedness owing to the Tier 1 Investors.

12. **THIS COURT ORDERS** that any member of the Investors Committee may resign as a member thereof at any time, and that, in the event of resignation, the remaining members of the Investors Committee may appoint another Tier 1 Investor to the Investors Committee in his or her place.

13. **THIS COURT ORDERS** that neither Representative Counsel nor any member of the Investors Committee shall have any liability as a result of their appointment or the performance of their duties or in carrying out the provisions of this Order and any subsequent Orders in these proceedings, save and except for any gross negligence or willful misconduct on their part.

14. **THIS COURT ORDERS** that Representative Counsel shall be entitled to and is hereby granted a charge (the "**Representative Counsel Charge**") on the Property (as that term is defined in the Trustee Appointment Order) as security for its fees and disbursements in respect of this proceeding, both before and after the making of this Order, and that the Representative Counsel Charge shall form a charge on the Property ranking immediately subordinate in priority to the Trustee's Charge (as that term is defined in the Trustee Appointment Order).

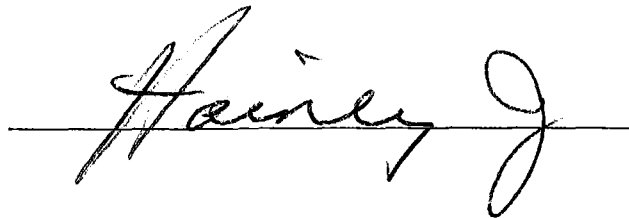
15. **THIS COURT ORDERS** that Representative Counsel is entitled to be paid its fees and disbursements from any distributions to be made to the Tier 1 Investors in these proceedings.

16. **THIS COURT ORDERS** that Representative Counsel shall be given notice of all motions in these proceedings, and that the giving of notice to Representative Counsel shall constitute service on all of the Tier 1 Investors who have not opted out pursuant to Paragraph 8 hereof.

17. **THIS COURT ORDERS** that Representative Counsel shall be at liberty and is authorized at any time to apply to this Court for advice and directions in the performance or variation of its powers and duties.

18. **THIS COURT ORDERS** that Representative Counsel may seek its discharge if satisfactory arrangements are not made for payment of its fees and expenses.

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist Representative Counsel 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 Representative Counsel, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist Representative Counsel and its agents in carrying out the terms of this Order.

A handwritten signature in cursive script, reading "Hainey J.", is written over a horizontal line.

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

JAN 24 2017

PER / PAR:

A small handwritten signature or mark, possibly initials, is written next to the "PER / PAR:" label.

SCHEDULE "A"

Tier 1 Projects

1. 525, 527 and 531 Princess Street, and 349 and 351 Alfred Street, Kingston, Ontario
2. 555 Princess Street, Kingston, Ontario
3. 1234, 1236, 1238, 1240, 1244 and 1246 Richmond Street, London, Ontario
4. 2168 and 2174 Ghent Avenue, Burlington, Ontario (MC Burlington)
5. 103 and 109 Garden Drive, Oakville, Ontario (MC Oakville)
6. 169 Borden Avenue North, Kitchener, Ontario (MC Kitchener)
7. 737 and 777 Silver Seven Road and 15 Frank Nighbor Place, Kanata, Ontario (Silver Seven)
8. 774 Bronson Avenue and 557 Cambridge Street South, Ottawa, Ontario
9. 16 Legacy Lane, Huntsville, Ontario
10. 3655 Kingston Road, Scarborough, Ontario (Guildwood)
11. Vaughan Crossings
12. 1606-1614 Charles Street, Whitby, Ontario (Boathaus)
13. 28 McMurray Street, Bracebridge, Ontario
14. 2701 and 2737 Keele Street, Toronto, Ontario (Keele Medical)
15. 429 and 445 Princess Street, and 208 and 210 Division Street, Kingston, Ontario
16. Highlights Mississauga Condominium and Towns

SCHEDULE "B"

By Order dated January 9, 2017 (the "**Order**") granted by the Ontario Superior Court of Justice in the proceeding (the "**Trusteeship Proceeding**") commenced under Court File No. CV-16-11567-00CL by The Superintendent Of Financial Services against 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 (collectively, the "**Respondents**"), Chaitons LLP was appointed as representative counsel ("**Representative Counsel**") for all Tier 1 Investors in respect of the Trusteeship Proceeding regarding their common interests within or among the Tier 1 Projects, unless and until written notice is provided by a particular Tier 1 Investor to Representative Counsel that such Tier 1 Investor does not wish to be represented by Representative Counsel. A copy of the Order is attached hereto. All capitalized terms not defined above are used as defined in the Order.

If you do not wish to be bound by the Order, you may opt-out of the group in accordance with paragraph 8 of the Order.

- 8 -
SCHEDULE "C"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

OPT-OUT FORM

TO: Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9
Email: tier1@chaitons.com

I, _____, am a Tier 1 Investor as defined in the Order dated January ●, 2017 (the "Order") granted by the Ontario Superior Court of Justice (Commercial List) in the proceeding commenced under Court File No. CV-16-11567-00CL (the "Trusteeship Proceeding"), in that I invested the sum of \$ _____ with respect to the project known as _____.

Under Paragraph 8 of the Order, Tier 1 Investors who do not wish Chaitons LLP to act as their representative counsel may opt out.

I hereby notify you that I do not wish to be bound by the Order and will be represented as an independent individual party at my own expense to the extent I wish to appear or participate in the Trusteeship Proceeding.

Date

Print Name:

THE SUPERINTENDENT OF FINANCIAL SERVICES

v.

**TEXTBOOK STUDENT SUITES (525 PRINCESS STREET)
TRUSTEE CORPORATION et al**

Applicant

Respondents

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

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

Proceedings commenced at Toronto

ORDER

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton (LSUC #21592F)

Tel: 416-218-1129

Fax: 416-218-1849

E-mail: harvey@chaitons.com

George Benchetrit (LSUC #34163H)

Tel: (416) 218-1141

Fax: (416) 218-1841

E-mail: george@chaitons.com

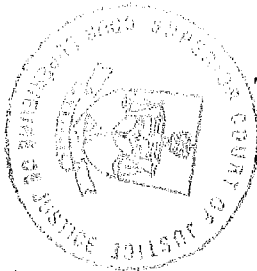
Lawyers for the Investors Committee

APPENDIX 3

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM)
JUSTICE CONWAY)

TUESDAY, THE 5TH
DAY OF SEPTEMBER, 2017



THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

CLAIMS PROCEDURE ORDER

THIS MOTION, made by Grant Thornton Limited ("GTL"), in its capacity as the Court-appointed trustee (in such capacity, the "Trustee") of each of the Respondents, for an

order approving a procedure for the determination and resolution of claims filed against the Respondents and authorizing the Trustee to administer the claims process in accordance with its terms, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Seventh Report, and on hearing the submissions of counsel for the Trustee and such other counsel as were present, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of Diana Saturno sworn August 24, 2017,

SERVICE

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

DEFINITIONS

2. **THIS COURT ORDERS** that for the purposes of this Order, the following terms shall have the following meanings:

- (a) **“Acknowledgement of Claim”** means an Acknowledgement of Claim in substantially the same form attached as **Schedule “C”** hereto;
- (b) **“Appointment Date”** means October 27, 2016;
- (c) **“Appointment Order”** means the Order of the Honourable Mr. Justice Newbould of the Court made October 27, 2016 in this proceeding;
- (d) **“Books and Records”** means, collectively:
 - (i) the books and records provided to the Trustee by the Respondents, any of their associated corporations or any of their respective principals, agents or counsel; and

- (ii) any and all instruments registered on title to or in respect of the Property (as defined in the Appointment Order) on or prior to the Appointment Date;
- (e) “**Business Day**” means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (f) “**Claim**” means:
 - (i) any right of any Person against any of the Respondents in connection with any indebtedness, liability or obligation of any kind of any of the Respondents, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise and whether or not such right is executory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future that could be asserted by way of set-off, counterclaim or otherwise, which indebtedness, liability or obligation is based in whole or in part on facts existing on or prior to the date of the Claims Procedure Order or which would have been claims provable in bankruptcy had the applicable Respondent, as the case may be, become bankrupt on the Appointment Date (each, a “**Creditor Claim**” and, collectively, the “**Creditor Claims**”); and
 - (ii) any claims of any Person against any of the Respondents derived from such Person’s participation in a syndicated mortgage investment involving any of the Respondents (each such Person being an “**Investor**”), which right is based in whole or in part on facts existing on or prior to the Appointment Date or which would have been claims provable in bankruptcy on the Appointment Date (each, an “**Investor Claim**” and, together with the Creditor Claims, “**Claims**”),

provided, however, that no **"Claim"** shall include an Excluded Claim and no **"Investor"** shall include an Excluded Investor;

- (g) **"Claims Bar Date"** means 5:00 p.m. (Toronto time) on **October 31, 2017**, or any later date ordered by the Court;
- (h) **"Claims Package"** means a package of information to be provided by the Trustee, which package shall include a copy of the Claims Procedure Order, an Instruction Letter, a Proof of Claim (or, where applicable, an Acknowledgement of Claim) and such other materials as the Trustee may consider appropriate or desirable;
- (i) **"Claims Procedure"** means the procedures outlined in this Order, including the Schedules;
- (j) **"Claims Procedure Order"** means this Order;
- (k) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- (l) **"Creditor"** means any Person having a Claim and, for the avoidance of doubt, includes any Investor with an Investor Claim;
- (m) **"Excluded Claim"** means any claim secured by the Trustee's Charge (as defined in the Appointment Order), any claim secured by the Trustee's Borrowings Charge (as defined in the Appointment Order), any claim secured by the Representative Counsel Charge (as defined in the Representative Counsel Order) and any claim in respect of Vaughan Crossings;
- (n) **"Excluded Investor"** means any Investor other than in respect of Vaughan Crossings;
- (o) **"Instruction Letter"** means a letter to Creditors regarding the Claims Procedure containing instructions regarding the completion and return of a Proof of Claim or a Request for Amendment of an Acknowledgement of Claim, substantially in the form attached as **Schedule "B"** hereto;

- (p) “**Investor**” has the meaning ascribed to that term in paragraph 2(f) of the Claims Procedure Order;
- (q) “**Investor Claim**” has the meaning ascribed to that term in paragraph 2(f) of the Claims Procedure Order;
- (r) “**Investor Information**” means the information contained in the “Particulars of Claim” section of the Acknowledgement of Claim, as such information may be amended by (i) a Request for Amendment that is accepted by the Trustee in accordance with paragraph 8 of the Claims Procedure Order or (ii) a resolution or determination in accordance with paragraphs 13-15 of the Claims Procedure Order;
- (s) “**Known Creditors**” means:
 - (i) those Creditors which the Books and Records disclose were owed monies as Creditors by one or more of the Respondents as of the Appointment Date and which monies remain unpaid in whole or in part, including Investors; and
 - (ii) any Person which commenced a legal proceeding against any of the Respondents which legal proceeding was commenced and served upon such Respondent(s) prior to the Appointment Date and is known to the Trustee as of the date of the Claims Procedure Order;
- (t) “**Notice of Dispute**” means a notice delivered to the Trustee by a Creditor disputing a Notice of Revision or Disallowance, which notice shall be substantially in the form attached hereto as **Schedule “F”** and shall set out the reasons for the dispute;
- (u) “**Notice of Revision or Disallowance**” means a notice informing a Creditor that the Trustee has revised or disallowed all or any part of such Creditor’s Claim, which notice shall be substantially in the form attached hereto as **Schedule “E”** and shall set out the reasons for such revision and/or disallowance;

- (v) “**Notice to Creditors**” means the notice publicizing this Claims Procedure to be published in accordance with the Claims Procedure Order, substantially in the form of the notice attached as **Schedule “A”**;
- (w) “**Person**” means any individual, general or limited partnership, firm, association, joint venture, trust, entity, corporation, limited or unlimited liability company, unincorporated organization, trade union, pension plan administrator, pension plan regulator, governmental authority or agency, employee or other association, or any other juridical entity howsoever designated or constituted;
- (x) “**Proof of Claim**” means the form of Proof of Claim to be completed and filed by a Creditor setting forth its purported Claim, substantially in the form attached as **Schedule “D”**;
- (y) “**Proven Claim**” means the amount and classification of any Creditor’s Claim as finally determined in accordance with this Claims Procedure;
- (z) “**Representative Counsel Order**” means the Order of the Honourable Mr. Justice Hainey of the Court made January 24, 2017 in this proceeding;
- (aa) “**Request for Amendment**” means an Investor’s request for the amendment of the Investor Information included in an Acknowledgement of Claim, by completing and returning the “Request for Amendment” section in the Acknowledgement of Claim provided by the Trustee to that Investor;
- (bb) “**Respondents**” means 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;
- (cc) “**Trustee’s Website**” means <https://www.grantthornton.ca/tier1>; and

- (dd) “**Vaughan Crossings**” means any right, title or interest, as applicable, that Scollard Trustee Corporation or any beneficiary or investor thereof currently has or ever had, whether directly or indirectly, in any of the assets, property or undertaking, as applicable, of Vaughan Crossings Inc., including, without limitation, in connection with any syndicated mortgage investment made between Scollard Trustee Corporation and Vaughan Crossings Inc.

NOTICE TO CREDITORS AND OTHERS

3. **THIS COURT ORDERS** that:

- (a) the Trustee shall, no later than five Business Days following the making of the Claims Procedure Order, post a copy of the Claims Procedure Order (together with all Schedules) on the Trustee’s Website;
- (b) the Trustee shall send to each of the Known Creditors (in each case, for which it has an address) a copy of the Claims Package by September 26, 2017;
- (c) the Trustee shall, no later than September 26, 2017, cause to be published the Notice to Creditors in The Globe and Mail, National Edition; and
- (d) the Trustee shall, provided such request is received prior to the Claims Bar Date, deliver as soon as reasonably possible following receipt of a request therefor a copy of the Claims Package to any Person claiming to be a Creditor and requesting such material.

INVESTOR CLAIMS

4. **THIS COURT ORDERS** that the Trustee may, where it considers it appropriate to do so, send to any Investor of any of the Respondents an Acknowledgement of Claim, wherein the Trustee acknowledges an Investor Claim based on the Books and Records and sets out the information in such Books and Records relating to that Investor Claim. The Investor Information therein with respect to such Investor’s Claim **shall be deemed confirmed in all respects by the Investor unless the Investor elects to complete and file a Request for Amendment, together with supporting documentation,** in which case (a) the Trustee shall

review and consider the Request for Amendment and (b) the Trustee may accept the amendments requested, or revise or disallow them by way of Notice of Revision or Disallowance. Unless a Request for Amendment is received by the Trustee on or before the Claims Bar Date:

- (a) the Acknowledgement of Claim and the Investor Information therein shall be final and binding on the Investor, and may be relied upon by the Trustee in valuing the Investor Claim for all purposes; and
- (b) the Investor shall be barred from making any Claim inconsistent with the information contained in the Acknowledgement of Claim.

PROOFS OF CLAIM

5. **THIS COURT ORDERS** that all Creditors, other than those who have received an Acknowledgement of Claim, shall file with the Trustee a Proof of Claim by the Claims Bar Date. For greater certainty, any Investor wishing to assert a Claim on the basis of facts and circumstances other than those set out in an Acknowledgement of Claim or a Request for Amendment shall file a Proof of Claim.

DEADLINE FOR FILING REQUEST FOR AMENDMENT OR PROOF OF CLAIM

6. **THIS COURT ORDERS** that all Requests for Amendment and all Proofs of Claim, together with supporting documentation in respect of such Claim, must be filed with the Trustee by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission, so that such Request for Amendment or Proof of Claim is received by the Trustee by no later than the Claims Bar Date.

7. **THIS COURT ORDERS** that any Creditor that does not file a Request for Amendment or a Proof of Claim, together with supporting documentation in respect of such Claim,

- (a) shall be and is hereby forever barred from asserting or enforcing any such Claim, except to the extent that such Claim is based exclusively on Investor Information;
- (b) shall not be entitled to receive any distributions from any of the Respondents' estates in respect of such Claim, except to the extent that such Claim is based exclusively on Investor Information; and

- (c) shall not be entitled to any further notice in, and shall not be entitled to participate in this proceeding commenced by the Appointment Order, except to the extent that such notice or participation is based exclusively on Investor Information or an Excluded Claim.

DETERMINATION OF CLAIMS

8. **THIS COURT ORDERS** that the Trustee shall review all Requests for Amendment and all Proofs of Claim filed on or before the Claims Bar Date and may accept, revise or disallow (in whole or in part) the Investor Information set out in any Request for Amendment, and the amount and/or status of a Claim set out in any Proof of Claim. If the Trustee determines to revise or disallow a Request for Amendment or Claim, the Trustee shall send a Notice of Revision or Disallowance to the Creditor. At any time, the Trustee may request additional information with respect to any Claim (including in respect of any Acknowledgement of Claim), and may request that the Creditor file a revised Request for Amendment or a revised Proof of Claim, as the case may be.

9. **THIS COURT ORDERS** that the Trustee may attempt to resolve the classification and amount of any Claim with the Creditor on a consensual basis prior to accepting, revising or disallowing such Claim.

10. **THIS COURT ORDERS** that where an Acknowledgement of Claim or a Proof of Claim has been revised or disallowed (in whole or in part) by a Notice of Revision or Disallowance, the revised or disallowed portion of that Claim shall not establish a Proven Claim unless the Creditor has disputed the revision or disallowance and proven the revised or disallowed Claim (or portion thereof) in accordance with paragraphs 13-15 of the Claims Procedure Order.

NOTICES OF DISPUTE

11. **THIS COURT ORDERS** that if a Creditor disputes the Notice of Revision or Disallowance and intends to contest the Notice of Revision or Disallowance then such Creditor shall deliver a Notice of Dispute by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission so that such Notice of Dispute is received by the Trustee by no later than 5:00 p.m. (Toronto time) on the Business Day which is fourteen (14) days after

delivery of the Notice of Revision or Disallowance or such later date as the Trustee may agree in writing or the Court may order. The filing of a Notice of Dispute with the Trustee within the time limited therefore shall constitute an application to have the amount or status of such Claim determined as set out in paragraphs 13-15 hereof.

12. **THIS COURT ORDERS** that where a Creditor that receives a Notice of Revision or Disallowance fails to file a Notice of Dispute with the Trustee within the time limited therefore, the amount and status of such Creditor's Claim shall be deemed to be as set out in the Notice of Revision or Disallowance and such amount and status, if any, shall constitute such Creditor's Proven Claim.

RESOLUTION OF CLAIMS

13. **THIS COURT ORDERS** that as soon as practicable after the delivery of the Notice of Dispute to the Trustee, the Trustee may:

- (a) attempt to resolve the classification and amount of the Claim with the Creditor on a consensual basis; and/or
- (b) schedule an appointment with the Court for the purpose of scheduling a motion to have the classification and/or amount of the Claim determined by the Court, and at such motion the Creditor shall be deemed to be the applicant and the Trustee shall be deemed to be the respondent.

14. **THIS COURT ORDERS** that notwithstanding the other provisions of this Order, the Trustee may make a motion to the Court for a final determination of a Claim at any time, whether or not a Notice of Revision or Disallowance has been sent by the Trustee.

15. **THIS COURT ORDERS** that in the event that the dispute between the Creditor and the Trustee is not settled within a time period or in a manner satisfactory to the Trustee or the Creditor, the Trustee or the Creditor may make a motion to the Court for the final determination of the Creditor's Claim.

ADEQUACY OF INFORMATION/CURRENCY

16. **THIS COURT ORDERS** that:

- (a) the Trustee may, where it is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of the Claims Procedure Order as to completion and execution of Requests for Amendment or Proofs of Claim; and
- (b) any Claims denominated in a currency other than Canadian dollars shall, for the purposes of the Claims Procedure Order, be converted to, and constitute obligations in, Canadian dollars, such calculation to be effected by the Trustee using the Bank of Canada noon spot rate on the Appointment Date.

NOTICE OF TRANSFEREES

17. **THIS COURT ORDERS** that the Trustee shall not be obligated to give notice to or otherwise deal with a transferee or assignee of a Claim as the Creditor in respect thereof unless:

- (a) actual written notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the Trustee; and
- (b) the Trustee or any of the Respondents shall have acknowledged in writing such transfer or assignment,

and thereafter such transferee or assignee shall for the purposes hereof constitute the "Creditor" in respect of such Claim. Any such transferee or assignee of a Claim, and such Claim, shall be bound by any notices given or steps taken in respect of such Claim in accordance with the Claims Procedure Order prior to the written acknowledgement by the Trustee or any of the Respondents of such transfer or assignment.

18. **THIS COURT ORDERS** that if the holder of a Claim has transferred or assigned the whole of such Claim to more than one Person or part of such Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim or Claims and such Claim shall continue to constitute and be dealt with as a single Claim notwithstanding such transfer or assignment, and the Trustee shall in each such case not be bound to acknowledge or recognize any such transfer or assignment and shall be entitled to give notices to and to otherwise deal with

such Claim only as a whole and then only to and with the Person last holding such Claim in whole as the Creditor in respect of such Claim. Provided that a transfer or assignment of the Claim has taken place in accordance with paragraph 17 of the Claims Procedure Order and the Trustee has acknowledged in writing such transfer or assignment, the person last holding such Claim in whole as the Creditor in respect of such Claim may by notice in writing to the Trustee direct that subsequent dealings in respect of such Claim, but only as a whole, shall be with a specified Person and, in such event, such Creditor, such transferee or assignee of the Claim and the whole of such Claim shall be bound by any notices given or steps taken in respect of such Claim by or with respect to such Person in accordance with the Claims Procedure Order.

19. **THIS COURT ORDERS** that the Trustee is under no obligation to give notice to any Person other than the Creditor holding the Claim and shall, without limitation, have no obligation to give notice to any Person holding a security interest, lien, or charge in, or a pledge or assignment by way of security in, a Claim.

20. **THIS COURT ORDERS** that the transferee or assignee of any Claim:

- (a) shall take the Claim subject to the rights and obligations of the transferor/assignor of the Claim, and subject to the rights of any of the Respondents against any such transferor or assignor, including any rights of set-off which any of the Respondents had against such transferor or assignor, and
- (b) cannot use any transferred or assigned claim to reduce any amount owing by the transferee or assignee to any of the Respondents, whether by way of set-off, application, merger, consolidation or otherwise.

PROTECTIONS FOR THE TRUSTEE

21. **THIS COURT ORDERS** that in carrying out the terms of the Claims Procedure Order:

- (a) the Trustee shall have all the protections given to it by each of the Appointment Order and as an officer of this Court, as applicable, including the stay of proceedings in its favour;

- (b) the Trustee shall incur no liability or obligation as a result of the carrying out of the provisions of the Claims Procedure Order;
- (c) the Trustee shall be entitled to rely on the Books and Records, and any information provided by the Respondents, all without independent investigation; and
- (d) the Trustee shall not be liable for any claims or damages resulting from any errors or omissions in such Books and Records.

DIRECTIONS

22. **THIS COURT ORDERS** that the Trustee may, at any time, and with such notice as this Court may require, seek directions from this Court with respect to the Claims Procedure Order, the Claims Procedure set out herein and the forms attached as Schedules hereto.

SERVICE AND NOTICE

23. **THIS COURT ORDERS** that the Trustee be at liberty to deliver the Claims Package, and any letters, notices or other documents to Creditors or other interested Persons, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to such Persons at the address as last shown on the records of the Respondents and that any such service or notice by courier, personal delivery or electronic or digital transmission shall be deemed to be received on the next Business Day following the date of forwarding thereof, or if sent by prepaid ordinary mail, on the fourth (4th) Business Day after mailing.

24. **THIS COURT ORDERS** that any notice or other communication (including, without limitation, Requests for Amendment, Proofs of Claim and Notices of Dispute) to be given under the Claims Procedure Order by a Creditor to the Trustee shall be in writing substantially in the form, if any, provided for in the Claims Procedure Order and will be sufficiently given only if given by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission addressed to:

Grant Thornton Limited
in its capacity as the Court-appointed trustee of the Tier 1 Corporations
200 King Street West, 11th Floor
Box 11
Toronto, Ontario
Canada M5H 3T4

Attention: Arsheel Muhit
E-mail: tier1@grantthornton.ca

Any such notice or other communication by a Creditor shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day.

MISCELLANEOUS

25. **THIS COURT ORDERS** that this Claims Procedure Order does not and is not intended to provide for the calculation or methodology of determining distributions but solely for providing a process for submitting and adjudicating Claims. The Trustee will request additional relief from this Court with respect to determining a final basis for calculating and determining ultimate distributions to Creditors.

26. **THIS COURT ORDERS** that Claims on behalf of any of the Respondents against any other of the Respondents shall be deemed filed by the Trustee in amounts determined by the Trustee on the basis of the Books and Records, without the need for the Trustee to file Proofs of Claim with respect to such Claims.

27. **THIS COURT ORDERS** that any determinations or findings made pursuant to this Claims Procedure Order shall not constitute a finding of fact or proof of any allegation or claim relating to the actions or omissions of Mr. Raj Singh or Tier 1 Transaction Advisory Services Inc. This paragraph shall not apply to any Claims made by Mr. Raj Singh or Tier 1 Transaction Advisory Services Inc. through a Proof of Claim filed in accordance with this Claims Procedure Order.

28. **THIS COURT ORDERS** that the Trustee may set off (whether by way of legal, equitable or contractual set-off) against the Claims of any Creditor, any claims of any nature whatsoever that any of the Respondents may have against such Creditor arising prior to the entry of this Claims Procedure Order, provided that such set-off satisfies the requirements for legal,

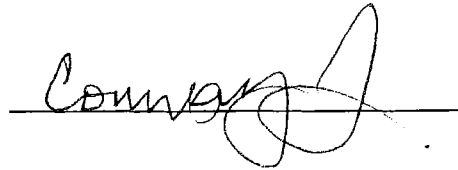
equitable or contractual set-off to the extent permitted by applicable law as may be determined by the Court. If there is any dispute between the Trustee and the applicable Creditor, however, neither the failure to assert set-off nor the allowance of any Claim hereunder shall constitute a waiver or release by the Trustee of any such claim that the Trustee may have against such Creditor.

29. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court of any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada) and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States of America, and of any other nation or state, to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

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

SEP 05 2017

PER / PAR:



SCHEDULE "A"

NOTICE TO CREDITORS

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

RE: NOTICE OF CLAIMS PROCEDURE

PLEASE TAKE NOTICE that this notice is being published pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) made September 5, 2017 (the "**Claims Procedure Order**"). Subject to certain exceptions (as set out in the Claims Procedure Order), all the creditors of the Respondents should have received a claims package by mail from Grant Thornton Limited, Court-appointed trustee (in such capacity, the "**Trustee**") of the Respondents. Creditors may also obtain the Claims Procedure Order and a claims package from the Trustee's website at www.grantthornton.ca/tier1 or by contacting the Trustee by telephone at (866) 481-9216 or by email at tier1@grantthornton.ca.

Completed documents must be received by the Trustee by 5:00 p.m. (Toronto time) on October 31, 2017 (the "Claims Bar Date"). It is your responsibility to complete the appropriate documents and ensure that the Trustee receives your completed documents by the Claims Bar Date.

Amongst those creditors who do not need to file a Proof of Claim are creditors that receive an Acknowledgement of Claim from the Trustee and that do not disagree with the amount of their claim as stated therein. Please consult the Claims Procedure Order made on September 5, 2017 for details with respect to this and other exemptions.

CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

DATED at Toronto this ____ day of _____, 2017.

SCHEDULE "B"

INSTRUCTION LETTER FOR THE CLAIMS PROCEDURE

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

A. CLAIMS PROCEDURE

By Order of the Ontario Superior Court of Justice (Commercial List) made September 5, 2017 (the "**Claims Procedure Order**"), Grant Thornton Limited, the Court-appointed trustee (in such capacity, the "**Trustee**") of the Respondents, has been authorized to conduct a claims procedure (the "**Claims Procedure**") for the determination of certain claims against the Respondents.

This letter provides instructions for understanding the Acknowledgement of Claim and completing a Request for Amendment or Proof of Claim, as applicable. Please note that capitalized terms which are not defined in this Instruction Letter shall have the meanings ascribed to them in the Claims Procedure Order.

The Claims Procedure is intended for any Person with any Claim of any kind or nature whatsoever, other than an Excluded Claim, whether unliquidated, contingent or otherwise against

one or more of the Respondents that arose on or prior to October 27, 2016. **Please note that the Trustee is not appointed over, and the Claims Procedure therefore does not apply to, any of the underlying real estate developers.** Please review the Claims Procedure Order on the Trustee's Website (www.grantthornton.ca/tier1) for the complete definition of Claim and Excluded Claim.

If you have any questions regarding the Claims Procedure, please consult the Trustee's Website or contact the Trustee at the address provided below.

All notice and enquiries with respect to the Claims Procedure should be addressed to:

Grant Thornton Limited
 in its capacity as the Court-appointed trustee of the Tier 1 Corporations
 200 King Street West, 11th Floor
 Box 11
 Toronto, Ontario
 Canada M5H 3T4

Attention: Arsheel Muhit
 E-mail: tier1@grantthornton.ca

B. ACKNOWLEDGEMENT OF CLAIMS

The Trustee may have obtained information from existing books and records with respect to certain Claims. In those cases, the Trustee may send to the Creditor an Acknowledgement of Claim, wherein the Trustee acknowledges the amount of such Creditor's Claim and sets out the other information related to that Claim. **If the Creditor agrees with the information described in such Acknowledgement of Claim, the Creditor does not have to take any further steps.** However, if the Creditor disagrees with any information as described in the Acknowledgement of Claim, then the Creditor must file a Request for Amendment, which must be received by 5:00 p.m. (Toronto time) on October 31, 2017, the Claims Bar Date. **Pursuant to the Claims Procedure Order, failure to submit a Request for Amendment by the Claims Bar Date will result in such Claim being a Proven Claim in the amount determined by the Trustee on the Acknowledgement of Claim, although having a Proven Claim will not necessarily result in a distribution from the Trustee.** If you believe that you have a Claim but have not received an Acknowledgement of Claim, you must complete and submit a Proof of Claim.

C. FOR CREDITORS SUBMITTING A PROOF OF CLAIM

If you believe that you have a Claim against the Respondents and have not received an Acknowledgement of Claim, you will have to file a Proof of Claim with the Trustee. If you have received an Acknowledgement of Claim, and believe that you have a Claim in addition to the Claim(s) set out in the Acknowledgement of Claim, then you must also file a Proof of Claim for that additional Claim. **Your Proof(s) of Claim must be received by 5:00 p.m. (Toronto time) on October 31, 2017, the Claims Bar Date. Pursuant to the Claims Procedure Order,**

failure to submit a Proof of Claim by the Claims Bar Date will result in such Claim being barred and extinguished, released and discharged forever.

Additional Proof of Claim forms and other information, including the Claims Procedure Order, can be obtained from the Trustee's Website at www.grantthornton.ca/tier1, or by contacting the Trustee at the telephone number or email address indicated above and providing particulars as to your name, address and contact information.

It is your responsibility to ensure that the Trustee receives your Request for Amendment or your Proof of Claim, as the case may be, by the Claims Bar Date.

SCHEDULE "C"

**ACKNOWLEDGEMENT OF CLAIM PURSUANT TO
CLAIMS PROCEDURE ORDER, DATED SEPTEMBER 5, 2017**

Please read the enclosed Instruction Letter carefully prior to responding to this Acknowledgement of Claim.

ACKNOWLEDGEMENT OF CLAIM AGAINST ONE OR MORE OF:

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION
("525 PRINCESS TRUSTEE CORP.");

TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION
("555 PRINCESS TRUSTEE CORP.");

TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION
("ROSS PARK TRUSTEE CORP.");

2223947 ONTARIO LIMITED
("MC BURLINGTON – MC OAKVILLE – LEGACY – GUILDWOOD TRUSTEE CORP.");

MC TRUSTEE (KITCHENER) LTD.
("MC KITCHENER TRUSTEE CORP.");

SCOLLARD TRUSTEE CORPORATION
("SILVER SEVEN – BOATHAUS TRUSTEE CORP.")

TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION
("BRONSON TRUSTEE CORP");

7743718 CANADA INC.
("MCMURRAY TRUSTEE CORP.");

KEELE MEDICAL TRUSTEE CORPORATION
("KEELE MEDICAL TRUSTEE CORP.")

TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION
("445 PRINCESS TRUSTEE CORP."); and

HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION
("HAZELTON TRUSTEE CORP.", and collectively, the "Respondents")

TO: [FULL NAME AND ADDRESS OF INVESTOR]

PARTICULARS OF CLAIM:

The books and records provided to the Trustee indicate that you had a Claim as a result of your participation in a syndicated mortgage investment that you made in or through one of the Respondents or an agent, the details of which are as follows:

Acknowledgement Number: _____

Full Legal Name of Investor: _____

Full Mailing Address: _____

Dollar Amount of Outstanding Principal of Investment: _____
(the Trustee will calculate any interest owing)

Claim against Respondent Entity: _____

Claim in respect of Syndicated Mortgage Investment: _____

ACTION REQUIRED:

If you agree with all of the information set out above, you do not have to take any further steps. If, however, you disagree with this information in any respect, then you must submit a Request for Amendment by the time and date set out below.

FILING OF REQUEST FOR AMENDMENT

If you disagree with the information set out above in any respect, then you must complete the section below entitled "Request for Amendment" and return a copy of this document, together with supporting documentation, by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission so as to be received by the Trustee by 5:00 p.m. (Toronto time) on October 31, 2017 (the "Claims Bar Date") at the following address:

Grant Thornton Limited
in its capacity as the Court-appointed trustee of the Tier 1 Corporations
200 King Street West, 11th Floor
Box 11
Toronto, Ontario
Canada M5H 3T4

Attention: Arsheel Muhit
E-mail: tier1@grantthornton.ca

If you do not timely submit a Request for Amendment to the Trustee, (i) this Acknowledgement of Claim and the information herein shall become final and binding on you, and may be relied upon in valuing your Claim for all purposes, and (ii) you shall

be barred from making any Claim inconsistent with the information contained in this Acknowledgement of Claim.

It is your responsibility to ensure that the Trustee receives your Request for Amendment by the Claims Bar Date.

REQUEST FOR AMENDMENT:

I, _____

[name of Creditor or Representative of the Creditor] of _____

do hereby request that the information provided in this Acknowledgement of Claim be amended as follows:

[PLEASE INDICATE THE SPECIFIC AMENDMENTS REQUESTED, AND PROVIDE SUPPORTING DOCUMENTATION].

Please note that the Trustee is not appointed over, and the Claims Procedure therefore does not apply to, any of the underlying real estate developers.

SCHEDULE "D"

**PROOF OF CLAIM, PURSUANT TO THE CLAIMS PROCEDURE ORDER MADE
SEPTEMBER 5, 2017, AGAINST:**

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION
(**"525 PRINCESS TRUSTEE CORP."**);

TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION
(**"555 PRINCESS TRUSTEE CORP."**);

TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION
(**"ROSS PARK TRUSTEE CORP."**);

2223947 ONTARIO LIMITED
(**"MC BURLINGTON – MC OAKVILLE – LEGACY – GUILDWOOD TRUSTEE CORP."**);

MC TRUSTEE (KITCHENER) LTD.
(**"MC KITCHENER TRUSTEE CORP."**);

SCOLLARD TRUSTEE CORPORATION
(**"SILVER SEVEN – BOATHAUS TRUSTEE CORP."**)

TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION
(**"BRONSON TRUSTEE CORP"**);

7743718 CANADA INC.
(**"MCMURRAY TRUSTEE CORP."**);

KEELE MEDICAL TRUSTEE CORPORATION
(**"KEELE MEDICAL TRUSTEE CORP."**)

TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION
(**"445 PRINCESS TRUSTEE CORP."**); and

HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION
(**"HAZELTON TRUSTEE CORP."**, and collectively, the **"Respondents"**)

A. PARTICULARS OF CREDITOR:

1. Full Legal Name of Creditor: _____

2. Full Mailing Address of the Creditor (the original Creditor and not the Assignee):

3. Telephone number: _____

4. E-mail address: _____

5. Facsimile number: _____

6. Attention (Contact Person): _____

7. Has the Claim been sold or assigned by the Creditor to another party [check (✓) one]?

Yes: _____ No: _____

B. PARTICULARS OF ASSIGNEE(S) (IF ANSWER TO QUESTION 7 IS YES):

8. Full Legal Name of Assignee(s): _____

(If Claim has been assigned, insert full legal name of assignee(s) of Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach a separate sheet with the require information)

9. Full Mailing Address of Assignee(s):

10. Telephone number of Assignee(s): _____

11. E-mail address: _____

12. Facsimile number: _____

13. Attention (Contact Person): _____

C. PROOF OF CLAIM:

I, _____
[name of Creditor or Representative of the Creditor],

of _____ do hereby certify that:
[City and Province]

(a) I [check (✓) one]

am the Creditor of the Respondents; OR

am _____ (state position or title) of the Creditor;

(b) I have knowledge of all the circumstances connected with the Claim referred to below;

(c) one of the Respondents was and still is indebted to the Creditor as follows (**please note that the Trustee is not appointed over, and the Claims Procedure therefore does not apply to, any of the underlying real estate developers**):

(i) TOTAL CLAIM: CDN\$ _____

(Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada noon spot rate as at October 27, 2016. The Canadian Dollar/U.S. Dollar rate of exchange on that date was CDN\$1.3386 /US\$1.00).

(ii) CLAIM IS AGAINST THE FOLLOWING ENTITY [check (✓) one]

525 Princess Trustee Corp.;

555 Princess Trustee Corp.;

Ross Park Trustee Corp.;

MC Kitchener Trustee Corp.;

MC Burlington – MC Oakville – Legacy – Guildwood Trustee Corp.;

Silver Seven – Boathaus Trustee Corp.;

Bronson Trustee Corp.;

McMurray Trustee Corp.;

Keele Medical Trustee Corp.;

445 Princess Trustee Corp.; OR

Hazelton Trustee Corp.;

(iii) IF CLAIM IS AGAINST MC BURLINGTON – MC OAKVILLE – LEGACY – GUILDWOOD TRUSTEE CORP., CLAIM IS IN REGARDS TO THE FOLLOWING PROJECT [check (✓) one]:

- Memory Care Burlington;
- Memory Care Oakville;
- Legacy Lane; OR
- Guildwood;

(iv) IF CLAIM IS AGAINST SILVER SEVEN – BOATHAUS TRUSTEE CORP., CLAIM IS IN REGARDS TO THE FOLLOWING PROJECT [check (✓) one]:

- Silver Seven; OR
- Boathaus.

D. NATURE OF CLAIM:

(check (✓) one and complete appropriate category)

A. SECURED CLAIM OF \$ _____ (please state principal amount only – the Trustee will calculate any interest owing)

That in respect of this debt, I hold security valued at \$ _____ particulars of which are as follows:

(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

B. UNSECURED CLAIM OF \$ _____ (please state principal amount only)

That in respect of this debt, I do not hold any security and

(check (✓) appropriate description)

- Regarding the amount of \$ _____, I do not claim a right to a priority.
- Regarding the amount of \$ _____, I claim a right to a priority under section 136 of the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”) or would claim such a priority if this Proof of Claim were being filed in accordance with the BIA.

(Set out on an attached sheet details to support priority claim.)

E. PARTICULARS OF CLAIM:

Other than as already set out herein the particulars of the undersigned's total Claim are attached.

(Provide all particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor which has guaranteed the Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the Respondents to the Creditor and estimated value of such security, and particulars of any interim period claim.)

This Proof of Claim must be received by the Trustee by no later than 5:00 p.m. (Toronto time) on October 31, 2017 ("Claims Bar Date"), by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission at the following address:

Grant Thornton Limited
in its capacity as the Court-appointed trustee of the Tier 1 Corporations
200 King Street West, 11th Floor
Box 11
Toronto, Ontario
Canada M5H 3T4

Attention: Arsheel Muhit
E-mail: tier1@grantthornton.ca

F. FILING OF CLAIM:

Failure to file your Proof of Claim as directed by the Claims Bar Date will result in your Claim being barred and in you being prevented from making or enforcing such Claim against the Respondents. In addition, you shall not be entitled to any further notice in, and shall not be entitled to participate in these proceedings, except to the extent that such notice or participation is based exclusively on Investor Information or an Excluded Claim (as both terms are defined in the Claims Procedure Order).

G. ACKNOWLEDGED CLAIM:

If your Claim has already been acknowledged by an Acknowledgement of Claim delivered to you by the Trustee, you do not need to file a Proof of Claim. If you disagree with any information in that Acknowledgement of Claim, then you should file a Request for Amendment.

H. EXCLUDED CLAIMS

Claims secured by the Trustee's Charge (as defined in the Appointment Order made in these proceedings on October 27, 2016 (the "**Appointment Order**")), claims secured by the Trustee's Borrowings Charge (as defined in the Appointment Order), claims secured

by the Representative Counsel Charge (as defined in the Representative Counsel Order made in these proceedings on January 24, 2017) and claims in respect of the project known as Vaughan Crossings are all Excluded Claims and no person needs to file any claim in respect thereof at this time. **Please note that the Trustee is not appointed over, and the Claims Procedure therefore does not apply to, any of the underlying real estate developers.**

Dated at _____ this _____ day of _____, 2017.

Signature of Creditor

SCHEDULE "E"**NOTICE OF REVISION OR DISALLOWANCE OF CLAIM
REFERENCE NUMBER _____**

Please read carefully the Instruction Letter accompanying this Notice.

TO: [insert name of creditor]

Grant Thornton Limited, in its capacity as the court-appointed trustee (in such capacity, the "Trustee") of the Respondents named in the Appointment Order of the Honourable Mr. Justice Newbould of the Ontario Superior Court of Justice (Commercial List) made October 27, 2016, hereby gives you notice that the Trustee has reviewed your Request for Amendment or your Proof of Claim, as the case may be, and has revised or rejected your Claim or any part thereof or any information relating thereto, as follows:

Request for Amendment as Submitted (if applicable)	The Proof of Claim as Submitted (if applicable)	The Claim/Information as Accepted

Reasons for Revision or Disallowance:

[insert explanation]

If you do not agree with this Notice of Revision or Disallowance, please take notice of the following:

1. If you dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (Toronto time) on [_____], being the Business Day which is fourteen days after the Notice of Revision or Disallowance is sent by the Trustee (see paragraph 11 of the Claims Procedure Order), notify the Trustee by delivery of a Notice of Dispute in accordance with the accompanying Instruction Letter. The form of Notice of Dispute is enclosed.
2. IF YOU DO NOT DELIVER A NOTICE OF DISPUTE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU AND YOUR CLAIM SHALL BE DEEMED TO BE AS SET OUT IN THIS NOTICE OF REVISION OR DISALLOWANCE.

DATED at Toronto, this ____, day of _____, 2017.

**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF THE RESPONDENTS**

SCHEDULE "F"

NOTICE OF DISPUTE

Please read carefully the Instruction Letter accompanying the Notice of Revision or Disallowance.

We hereby give you notice of our intention to dispute the Notice of Revision or Disallowance bearing Reference Number _____ and dated _____ issued in respect of our claim.

Reasons for Dispute (attach extra sheets and copies of all supporting documentation if necessary):

Name of Creditor: _____

(Signature of individual completing this Dispute)

Date

(Please print name)

Telephone Number: _____

Email address: _____

Facsimile Number: _____

Full Mailing Address: _____

THIS FORM IS TO BE RETURNED BY PREPAID ORDINARY MAIL, COURIER, PERSONAL DELIVERY OR ELECTRONIC OR DIGITAL TRANSMISSION AND MUST BE RECEIVED NO LATER THAN 5:00 P.M. (TORONTO TIME) ON _____, BEING THE BUSINESS DAY WHICH IS FOURTEEN DAYS AFTER THE NOTICE OF REVISION OR DISALLOWANCE IS SENT BY THE TRUSTEE (PURSUANT TO PARAGRAPH 11 OF THE CLAIMS PROCEDURE ORDER) TO:

Grant Thornton Limited
in its capacity as the Court-appointed trustee of the Tier 1 Corporations
200 King Street West, 11th Floor, Box 11
Toronto, Ontario, Canada M5H 3T4

Attention: Arsheel Muhit
E-mail: tier1@grantthornton.ca

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

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

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

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

Proceedings commenced at Toronto

CLAIMS PROCEDURE ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, 181 Bay Street
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)
Tel: (416) 865-7726
Fax: (416) 863-1515
E-mail: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
E-mail: iaversa@airdberlis.com

Jeremy Nemers (LSUC # 66410Q)
Tel: (416) 865-7724
Fax: (416) 863-1515
E-mail: jnemers@airdberlis.com

Lawyers for Grant Thornton Limited, in its capacity as the Court-appointed Trustee of the Respondents



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

THE HONOURABLE MR.) WEDNESDAY, THE 29TH
JUSTICE HAINEY) DAY OF NOVEMBER, 2017

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

ORDER

THIS MOTION, made by Grant Thornton Limited (“GTL”), in its capacity as the Court-appointed trustee (in such capacity, the “Trustee”) of each of the Respondents, for an Order, *inter alia*: (i) approving the Agreement and Release between the Trustee and 1416958

Ontario Inc. dated October 6, 2017 (the “**Guildwood Agreement**”); (ii) approving the Assignment Agreement and Release entered into amongst the Trustee, Silver Seven Corporate Centre Inc., John Anava, David Yarmus and Silver Seven Holdings Inc. dated October 16, 2017 (the “**Silver Seven Agreement**”); (iii) authorizing the Trustee to provide certain information to the Royal Canadian Mounted Police (the “**RCMP**”) and the Ontario Provincial Police (the “**OPP**”); (iv) approving the Eighth Report of the Trustee dated November 3, 2017 (the “**Eighth Report**”) and the activities of the Trustee set out therein; (v) approving the fees and disbursements of the Trustee and its counsel and an allocation of such fees and disbursements; and (vi) authorizing the Trustee to make certain future distributions, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Eighth Report, including the fee affidavits therein (the “**Fee Affidavits**”), the Guildwood Agreement and the Silver Seven Agreement, and on hearing the submissions of counsel for the Trustee and such other counsel as were present, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of Susy Moniz sworn November 3, 2017,

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Guildwood Agreement be and is hereby approved.
3. **THIS COURT ORDERS** that Olympia Trust Company (“**OTC**”) shall consent to the discharge of the OTC Principal Amount (as defined in the Guildwood Agreement) of the Mortgage (as defined in the Guildwood Agreement) on the same terms and conditions as the Guildwood Agreement requires the Trustee to consent to the discharge of the Non-OTC Principal Amount (as defined in the Guildwood Agreement) of the Mortgage.
4. **THIS COURT ORDERS** that the Silver Seven Agreement be and is hereby approved.
5. **THIS COURT ORDERS** that OTC shall consent to and be bound by the assignment of the Credit Agreement and Security (as both terms are defined in the Silver Seven Agreement), in accordance with the terms of the Silver Seven Agreement.

6. **THIS COURT ORDERS** that the Trustee be and is hereby authorized to provide lists of the names and contact information of Investors (as defined in the Eighth Report) to the RCMP and the OPP on or after December 16, 2017 (the “**Disclosure**”), provided, however, that any Investors who do not want their names or contact information to appear in the Disclosure (the “**Redacted Investors**”) shall advise the Trustee in writing by no later than December 15, 2017 and the names and contact information of such Redacted Investors shall be redacted in the Disclosure by the Trustee.

7. **THIS COURT ORDERS** that the Eighth Report and the activities of the Trustee described therein be and are hereby approved.

8. **THIS COURT ORDERS** that this Court’s approval of the Eighth Report is not deemed to be a finding of fact or proof of any allegations or claims relating to the actions or omissions of Mr. Raj Singh or Tier 1 Transaction Advisory Services Inc.

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

10. **THIS COURT ORDERS** that the Trustee be and is hereby authorized to make distributions to the Investors, without further Order of this Court and net of the applicable Holdback (as defined in the Eighth Report), up to the amount of their Proven Claims (as defined in the Claims Procedure Order of the Honourable Madam Justice Conway made September 5, 2017) and from the realizations of the applicable SMI (as defined in the Eighth Report).

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

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

NOV 29 2017

NB

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

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

Applicant

Respondents

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

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

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Jeremy Nemers (LSUC # 66410Q)

Tel: (416) 865-7724

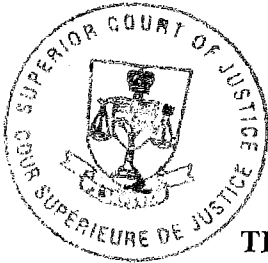
Fax: (416) 863-1515

Email: jnemers@airdberlis.com

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.) WEDNESDAY, THE 7TH
)
JUSTICE MYERS) DAY OF NOVEMBER, 2018
)



THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

ORDER

THIS MOTION, made by Grant Thornton Limited (“GTL”), in its capacity as the Court-appointed trustee (in such capacity, the “Trustee”) of the Respondents in this proceeding (the “Tier 1 Trustee Corporations”), for an Order, *inter alia*, adjudicating any and all Claims (as defined in the Claims Procedure Order of the Honourable Madam Justice Conway made September 5, 2017 (the “Claims Procedure Order”)) that are still in dispute, was heard on August 23, 2018 at 130 Queen Street West, Toronto, Ontario and November 2, 2018 at 330 University Avenue, Toronto, Ontario.

ON READING the Tenth Report of the Trustee dated August 13, 2018 (the “**Tenth Report**”), the Supplement to the Tenth Report of the Trustee dated August 20, 2018 (the “**Tenth Report Supplement**”), the Second Supplement to the Tenth Report of the Trustee dated October 19, 2018 (the “**Second Tenth Report Supplement**”), the Affidavit of Dennis Jewitt sworn September 17, 2018, the Affidavit of Peter Pontsa sworn October 5, 2018, the Affidavit of Andrew Sefton sworn October 5, 2018 and the Affidavit of Dennis Jewitt sworn October 31, 2018, and on hearing the submissions of counsel for the Trustee, Representative Counsel (as defined in the Order of the Honourable Mr. Justice Hainey made January 24, 2017), Breakwall Financial Corp. (“**Breakwall**”) and Mr. Dennis Jewitt, no one else appearing although duly served as appears from the affidavits of service of Susy Moniz sworn August 13, 2018, August 20, 2018 and August 21, 2018 and the affidavit of service of Eunice Baltkois sworn October 19, 2018,

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that: (i) any and all Creditor Notices of Dispute (as defined in the Tenth Report) that have not already been withdrawn; and (ii) any and all Late Disputes (as defined in the Second Tenth Report Supplement) that have not already been withdrawn, be and are hereby dismissed, and that the underlying Claims (as defined in the Claims Procedure Order) thereto be and are hereby forever barred from being asserted against any of the Trustee and any of the Tier 1 Trustee Corporations.
3. **THIS COURT ORDERS** that the Breakwall Notice of Dispute (as defined in the Tenth Report) and the Investors Committee Claim (as defined in the Second Tenth Report Supplement) be and are hereby dismissed, and that the underlying Claims thereto be and are hereby forever barred from being asserted, including, without limitation, against any of the Trustee, its counsel, the Investors Committee (as defined in the Order of the Honourable Mr. Justice Hainey made January 24, 2017), Representative Counsel and any of the Tier 1 Trustee Corporations.
4. **THIS COURT ORDERS** that the Second Tenth Report Supplement and the activities of the Trustee described therein be and are hereby approved.

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



A handwritten signature in black ink, appearing to be 'M. J. J.', is written over a horizontal line.

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

DEC 12 2018

PER / PAR:



Handwritten initials 'W' in black ink.

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

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

Applicant

Respondents

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

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

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Jeremy Nemers (LSUC # 66410Q)

Tel: (416) 865-7724

Fax: (416) 863-1515

Email: jnemers@airdberlis.com

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

APPENDIX 4

RULE/LA RÈGLE 26.02 (_____)

THE ORDER OF HAINES J
 L'ORDONNANCE DU
DATED/FAIT LE JULY 14, 2020 ONTARIO

Court File No. CV-18-606314-00CL

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

REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

B E T W E E N:

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND TEXTBOOK ROSS PARK INC.

Plaintiffs

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, ~~JAMES GRACE, BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC.,~~ JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE

Defendants

THIRD AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

DATE: October 3, 2018

Issued by:

"MAGGIE SAWKA"

Local Registrar

Address of Court Office:
330 University Avenue
9^h Floor
Toronto, Ontario
M5G 1R7

TO: JOHN DAVIES
24 Country Club Drive
King City, ON L7B 1M5

AND TO: AEOLIAN INVESTMENTS LTD.
2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

- and -

24 Country Club Drive
King City, ON L7B 1M5

AND TO: JUDITH DAVIES
24 Country Club Drive
King City, ON L7B 1M5

AND TO: GREGORY HARRIS
295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

- and -

95 Loch Erne Lane
Nobleton, ON L0G 1N0

AND TO: HARRIS + HARRIS LLP
295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

AND TO: NANCY ELLIOTT
5000 Yonge Street, Suite 1901
Toronto, ON M2N 7E9

AND TO: ELLIOT LAW PROFESSIONAL CORPORATION
5000 Yonge Street, Suite 1901
Toronto, ON M2N 7E9

AND TO: WALTER THOMPSON
18 Brookfield Road
Toronto, ON M2P 1A9

- and -

1248 Atkins Drive
Newmarket, ON L3X 0C3

AND TO: 1321805 ONTARIO INC.
9140 Leslie Street
Richmond Hill, ON L0H 1G0

AND TO: BRUCE STEWART
127 Teskey Drive, RR2
Clarksburg, ON N0H 1J0

AND TO: THE TRADITIONS DEVELOPMENT COMPANY LTD.
127 Teskey Drive, RR2
Clarksburg, ON N0H 1J0

AND TO: DAVID ARSENAULT
5186 Dundas Street West
Toronto, ON M9A 1C4

~~**AND TO: JAMES GRACE**~~
~~266 Oriole Parkway~~
~~Toronto, ON M5P 2H3~~

~~**AND TO: BHAKTRAJ SINGH A.K.A. RAJ SINGH**~~
~~7 Bowan Court~~
~~Toronto, ON M2K 3A8~~

~~—and—~~

~~20 Damian Drive~~
~~Richmond Hill, ON L4B 3Z9~~

~~**AND TO: RS CONSULTING GROUP INC.**~~
~~20 Damian Drive~~
~~Richmond Hill, ON L4B 3Z9~~

~~—and—~~

~~2355 Skymark Avenue, Suite 300~~
~~Mississauga, ON L4W 4Y6~~

~~—and—~~

~~295 The West Mall, 6th Floor~~
~~Etobicoke, ON M9C 4Z4~~

~~AND TO: TIER 1 TRANSACTION ADVISORY SERVICES INC.
7 Bowam Court
Toronto, ON M2K 3A8~~

~~- and -~~

~~2100 Steeles Avenue East, Suite 902
Markham, ON L3R 8T3~~

AND TO: JUDE CASSIMY
445 Snowball Crescent
Scarborough, ON M1B 1S5

- and -

337 Castlemore Ave.
Markham, ON L6C 2Y1

AND TO: FIRST COMMONWEALTH MORTGAGE CORPORATION
337 Castlemore Ave.
Markham, ON L6C 2Y1

AND TO: MEMORY CARE INVESTMENTS LTD.
51 Caldari Road, Suite #A1M
Concord, ON L4K 4G3

- and -

24 Country Club Drive
King City, ON L7B 1M5

AND TO: TEXTBOOK STUDENT SUITES INC.
2355 Skymark Avenue
Suite 300
Mississauga, ON L4W 4Y6

- and -

51 Caldari Road, Suite #A1M
Concord, ON L4K 4G3

- and -

295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

AND TO: **TEXTBOOK SUITES INC.**
2355 Skymark Avenue
Suite 300
Mississauga, ON L4W 4Y6

- and -

51 Caldari Road, Suite #A1M
Concord, ON L4K 4G3

- and -

295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

AND TO: **MICHAEL CANE**
320 Tweedsmuir Ave, Suite 902
York, ON M5P 2Y3

CLAIM

Definitions

1. The following definitions apply for the purpose of this pleading:
 - (a) “**445 Princess**” means Textbook (445 Princess Street) Inc.;
 - (b) “**445 Trust Co.**” means Textbook Student Suites (445 Princess Street) Trustee Corporation;
 - (c) “**525 Princess**” means Textbook (525 Princess Street) Inc.;
 - (d) “**525 Trust Co.**” means Textbook Student Suites (525 Princess Street) Trustee Corporation;
 - (e) “**555 Princess**” means Textbook (555 Princess Street) Inc.;
 - (f) “**555 Trust Co.**” means Textbook Student Suites (555 Princess Street) Trustee Corporation;
 - (g) “**Aeolian**” means the defendant Aeolian Investments Ltd.;
 - (h) “**Brokers**” means Tier 1 Mortgage and the defendant FCMC;
 - (i) “**Bronson**” means Textbook (774 Bronson Avenue) Inc.;
 - (j) “**Bronson Trust Co.**” means Textbook Student Suites (774 Bronson Avenue) Trustee Corporation;
 - (k) “**Burlington**” means 1703858 Ontario Ltd.;

- (l) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (m) “**Dachstein**” means Dachstein Holdings Inc.;
- (n) “**Davies Children**” means the children of Mr. and Ms. Davies: Jessica Deborah Davies, Sarah Ramona Davies, Andrew John Davies and Walter Robert Jackson Davies;
- (o) “**Davies Defendants**” means Aeolian, Mr. Davies, Ms. Davies and Mr. Harris (solely in his capacity as trustee and representative of the Family Trust and not in his personal capacity or any other capacity):
- (p) “**Davies, Thompson, Stewart and Singh Defendants**” means the Davies Defendants, the Thompson Defendants, the Stewart Defendants and the Singh Former Defendants;
- (q) “**Development Companies**” means the Receivership Companies and the Non-Receivership Development Companies;
- (r) “**Elliot Co.**” means the defendant Elliot Law Professional Corporation;
- (s) “**Elliot Defendants**” means Ms. Elliot and Elliot Co.;
- (t) “**FCMC**” means the defendant First Commonwealth Mortgage Corporation;
- (u) “**Guildwood**” means 1416958 Ontario Inc.;
- (v) “**Grant Thornton**” means Grant Thornton Limited;
- (w) “**Harris Defendants**” means Mr. Harris (in his personal capacity) and Harris LLP;

- (x) “**Harris LLP**” means the defendant Harris + Harris LLP;
- (y) “**Hazelton**” means Hazelton Development Corporation;
- (z) “**Hazelton Trust Co.**” means Hazelton 4070 Dixie Road Trustee Corporation;
- (aa) “**Keele Medical**” means Keele Medical Properties Ltd.;
- (bb) “**Keele Medical Trust Co.**” means Keele Medical Trustee Corporation;
- (cc) “**Kitchener**” means Memory Care Investments (Kitchener) Ltd.;
- (dd) “**Kitchener Trust Co.**” means MC Trustee (Kitchener) Ltd.;
- (ee) “**KSV**” means KSV Kofman Inc.;
- (ff) “**Legacy Lane**” means Legacy Lane Investments Ltd.;
- (gg) “**Loan Agreements**” means the loan agreements respectively between the Development Companies and the Tier 1 Trust Companies;
- (hh) “**MC Burlington**” means Memory Care Investments Burlington Ltd.;
- (ii) “**McMurray**” means McMurray Street Investments Inc.;
- (jj) “**McMurray Trust Co.**” means 7743718 Canada Inc.;
- (kk) “**MCIL**” means the defendant Memory Care Investments Ltd.;
- (ll) “**Moscowitz**” means Moscovitz Capital Mortgage Fund II;
- (mm) “**Mr. Arsenault**” means the defendant David Arsenault;

- (nn) “**Mr. Cane**” means the defendant Michael Cane;
- (oo) “**Mr. Cassimy**” means the defendant Jude Cassimy;
- (pp) “**Mr. Davies**” means the defendant John Davies in his personal capacity and, separately, in his capacity as trustee and/or representative of both the Davies Arizona Trust and the Davies Family Trust;
- (qq) “**Mr. Grace**” means the former defendant James Grace;
- (rr) “**Mr. Harris**” means the defendant Gregory Harris;
- (ss) “**Mr. Singh**” means the former defendant Raj Singh;
- (tt) “**Mr. Stewart**” means the defendant Bruce Stewart;
- (uu) “**Mr. Thompson**” means the defendant Walter Thompson;
- (vv) “**Ms. Davies**” means the defendant Judith Davies in her personal capacity and, separately, in her capacity as trustee and/or representative of the Davies Family Trust;
- (ww) “**Ms. Elliott**” means the defendant Nancy Elliott;
- (xx) “**Ms. Harris**” means Erika Harris;
- (yy) “**Non-Receivership Development Companies**” means Vaughan Crossings, Silver Seven, Keele Medical, Guildwood, and Hazelton;
- (zz) “**Oakville**” means Memory Care Investments (Oakville) Ltd.;

- (aaa) “**Oakville/Burlington/Guildwood/Legacy Lane Trust Co.**” means 2223947 Ontario Limited;
- (bbb) “**Project**” means, for each Development Company, the real estate development project that was to have been developed by such Development Company;
- (ccc) “**Receiver**” means KSV, solely in its capacity as the court-appointed receiver and manager or, as applicable, receiver, of certain property of the Receivership Companies and not in its personal capacity or any other capacity;
- (ddd) “**Receivership Companies**” means 445 Princess, 525 Princess, 555 Princess, Bronson, Burlington, Kitchener, Legacy Lane, McMurray, Oakville, Ross Park and Scollard;
- (eee) “**Ross Park**” means Textbook Ross Park Inc.;
- (fff) “**Ross Park Trust Co.**” means Textbook Student Suites (Ross Park) Trustee Corporation;
- (ggg) “**Scollard**” means Scollard Development Corporation;
- (hhh) “**Scollard/Vaughan Crossings/Silver Seven Trust Co.**” means Scollard Trustee Corporation;
- (iii) “**Silver Seven**” means Silver Seven Corporate Centre Inc.;
- (jjj) “**Singh Co.**” means the former defendant RS Consulting Group Inc.;
- (kkk) “**Singh Former Defendants**” means Mr. Singh, Singh Co. and Tier 1 Advisory;

- (lll) “**SMIs**” means syndicated mortgage investments, specifically in respect of the Tier 1 Trust Companies;
- (mmm) “**Stewart Co.**” means the defendant Traditions Development Company Ltd.;
- (nnn) “**Stewart Defendants**” means Mr. Stewart and Stewart Co.;
- (ooo) “**Thompson Co.**” means the defendant 1321805 Ontario Inc.;
- (ppp) “**Thompson Defendants**” means Mr. Thompson and Thompson Co.;
- (qqq) “**Tier 1 Advisory**” means the former defendant Tier 1 Transaction Advisory Services Inc.;
- (rrr) “**Tier 1 Mortgage**” means Tier 1 Mortgage Corporation;
- (sss) “**Tier 1 Trust Companies**” means 445 Trust Co., 525 Trust Co., 555 Trust Co., Bronson Trust Co., Hazelton Trust Co., Keele Medical Trust Co., Kitchener Trust Co., McMurray Trust Co., Oakville/Burlington/Guildwood/Legacy Lane Trust Co., Ross Park Trust Co, and Scollard/Vaughan Crossings/Silver Seven Trust Co.;
- (ttt) “**Trust Companies**” means 445 Trust Co., 525 Trust Co., 555 Trust Co., Bronson Trust Co., Kitchener Trust Co., McMurray Trust Co., Oakville/Burlington/Guildwood/Legacy Lane Trust Co. (solely in its capacity as lender to Oakville, Burlington and Legacy Lane), Ross Park Trust Co, and Scollard/Vaughan Crossings/Silver Seven Trust Co. (solely in its capacity as lender to Scollard);

(uuu) “Trustee” means Grant Thornton, solely in its capacity as the court appointed trustee of the Trust Companies and not in its personal capacity or any other capacity;

(vvv) “TSI” means the defendant Textbook Suites Inc.;

(www) “TSSI” means the defendant Textbook Student Suites Inc.; and

(xxx) “Vaughan Crossings” means Vaughan Crossings Inc.

Relief Sought

2. The plaintiffs, the Trustee and the Receiver, as applicable, make the following claims as against the defendants on a joint and several basis (as particularized in more detail below):

(a) ~~As against the Singh Defendants:~~

(i) ~~a constructive trust and/or damages in the sum of \$106 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for fraud, deceit, conspiracy, conversion and/or unjust enrichment, and, additionally, as against Mr. Singh, for breach of fiduciary duty, knowing assistance in breach of fiduciary duty and/or negligence;~~

(ii) ~~a declaration that the liability of Mr. Singh in his personal capacity arises out of fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity; and/or that the liability of the Singh Defendants arises from obtaining property or services by false pretenses or fraudulent misrepresentation, for purposes of sections 178(1)(d) and/or~~

~~178(1)(c) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended;~~

- ~~(iii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Singh Defendants or any person, corporation or other entity on any of their behalf;~~
- ~~(iv) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of the Singh Defendants, and a declaration that the Singh Defendants hold these assets, properties, and funds as constructive trustees for the plaintiffs; and~~
- ~~(v) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Singh Defendants or any person, corporation or other entity on any of their behalf, and in respect of all the traceable products thereof~~

(b) As against the Davies Defendants:

- (i) a constructive trust and/or damages in the sum of \$84 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for fraud, deceit, conspiracy, conversion and/or unjust

enrichment, and, additionally, as against Mr. Davies, for breach of fiduciary duty, knowing assistance in breach of fiduciary duty and/or negligence;

- (ii) a declaration that the liability of Mr. Davies in his personal capacity arises out of fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity; and/or that the liability of the Davies Defendants arises from obtaining property or services by false pretenses or fraudulent misrepresentation, for purposes of sections 178(1)(d) and/or 178(1)(e) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended;
- (iii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Davies Defendants or any person, corporation or other entity on any of their behalf;
- (iv) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of the Davies Defendants, and a declaration that the Davies Defendants hold those assets, properties, and funds as constructive trustees for the plaintiffs; and
- (v) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the

Davies Defendants or any person, corporation or other entity on any of their behalf, and in respect of all the traceable products thereof; ~~and.~~

~~(vi) an interim, interlocutory and permanent order, in the form of a worldwide *Mareva* injunction, restraining the Davies Defendants, and, as applicable, their respective servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, whether directly or indirectly, from selling, liquidating, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of their assets, wherever situated.~~

(c) As against the Stewart Defendants:

- (i) a constructive trust and/or damages in the sum of \$30 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for unjust enrichment, and, additionally, as against Mr. Stewart, for breach of fiduciary duty, knowing assistance in breach of fiduciary duty and negligence;
- (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Stewart Defendants or any person, corporation or other entity on any of their behalf;

- (iii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of the Stewart Defendants, and a declaration that the Stewart Defendants hold those assets, properties, and funds as a constructive trustee for the plaintiffs; and
 - (iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Stewart Defendants, or any person, corporation or other entity on any of their behalf, and in respect of all the traceable products thereof.
- (d) As against the Thompson Defendants:
- (i) a constructive trust and/or damages in the sum of \$40 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for unjust enrichment, and, additionally, as against Mr. Thompson for breach of fiduciary duty, knowing assistance in breach of fiduciary duty and negligence;
 - (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Thompson Defendants or any person, corporation or other entity on any of their behalf;

- (iii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of the Thompson Defendants, and a declaration that the Thompson Defendants hold those assets, properties, and funds as a constructive trustee for the plaintiffs; and
 - (iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Thompson Defendants, or any person, corporation or other entity on any of their behalf, and in respect of all the traceable products thereof.
- (e) As against Mr. Arsenault:
 - (i) a constructive trust and/or damages in the sum of \$3.5 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for breach of fiduciary duty, knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;
 - (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to Mr. Arsenault or any person, corporation or other entity on his behalf;
 - (iii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into

the hands of Mr. Arsenault, and a declaration that Mr. Arsenault holds those assets, properties, and funds as a constructive trustee for the plaintiffs; and

- (iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to Mr. Arsenault, or any person, corporation or other entity on his behalf, and in respect of all the traceable products thereof.

(f) ~~As against Mr. Grace:~~

- (i) ~~a constructive trust and/or damages in the sum of \$8.4 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for breach of fiduciary duty, knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;~~
- (ii) ~~orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to Mr. Grace or any person, corporation or other entity on his behalf;~~
- (iii) ~~a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of Mr. Grace, and a declaration that Mr. Grace holds those assets, properties, and funds as a constructive trustee for the plaintiffs; and~~

(iv) ~~a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to Mr. Grace, or any person, corporation or other entity on his behalf, and in respect of all the traceable products thereof.~~

(g) As against Mr. Cassimy:

(i) a constructive trust and/or damages in the sum of \$8.4 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for, breach of fiduciary duty, knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;

(ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies, and improperly diverted by or to Mr. Cassimy or any person, corporation or other entity on his behalf;

(iii) a declaration that the Trustee is entitled to trace the assets, properties and funds of the Tier 1 Trust Companies into the hands of Mr. Cassimy, and a declaration that Mr. Cassimy holds those assets, properties, and funds as a constructive trustee for the Trustee; and

(iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies, and

improperly diverted by or to Mr. Cassimy, or any person, corporation or other entity on his behalf, and in respect of all the traceable products thereof.

(h) As against FCMC:

- (i) a constructive trust and/or damages in the sum of \$106 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;
- (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies, and improperly diverted by or to FCMC or any person, corporation or other entity on its behalf;
- (iii) a declaration that the Trustee is entitled to trace the assets, properties and funds of the Tier 1 Trust Companies into the hands of FCMC, and a declaration that FCMC holds those assets, properties, and funds as a constructive trustee for the Trustee; and
- (iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and improperly diverted by or to FCMC, or any person, corporation or other entity on its behalf, and in respect of all the traceable products thereof.

(i) As against each of the Harris Defendants:

- (i) damages in the sum of \$106 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for negligence, breach of contract, breach of fiduciary duty and/or knowing assistance in breach of fiduciary duty; and
 - (ii) disgorgement of all costs and legal fees paid by the Tier 1 Trust Companies and the Receivership Companies to the respective Harris Defendants.
- (j) As against each of the Elliot Defendants:
 - (i) damages in the sum of \$84.6 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for negligence, breach of contract, breach of fiduciary duty and/or knowing assistance in breach of fiduciary duty; and
 - (ii) disgorgement of all costs and legal fees paid by the Tier 1 Trust Companies and the Receivership Companies to the Elliot Defendants.
- (k) As against Mr. Cane:
 - (i) damages in the sum of \$88 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for negligence and breach of contract; and
 - (ii) disgorgement of all costs and fees paid by the Receivership Companies to Mr. Cane.
- (l) As against each of MCIL, TSI and TSSI:

- (i) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to MCIL, TSI and TSSI, or any person, corporation or other entity on any of their behalf;
 - (ii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of MCIL, TSI and TSSI, and a declaration that MCIL, TSI and TSSI hold those assets, properties, and funds as constructive trustees for the plaintiffs; and
 - (iii) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to MCIL, TSI and TSSI or any person, corporation or other entity on any of their behalf, and in respect of the traceable products thereof.
- (m) In addition to the above, as against each of the Defendants, as applicable:
- (i) special damages, including all costs and expenses arising out of the detection, investigation, and quantification of the losses suffered by the Tier 1 Trust Companies and the Receivership Companies, in an amount to be particularized prior to trial;
 - (ii) punitive and/or exemplary damages in an amount to be particularized prior to trial;

- (iii) pre-judgment and post-judgment interest on a compound basis or, alternatively, pursuant to the *Courts of Justice Act*, RSO 1990, c C 43, as amended;
- (iv) costs of this action, including the costs of any and all interim and interlocutory motions, on a full indemnity or other appropriate scale, including all applicable taxes; and
- (v) such further and other relief, including equitable relief and constructive trusts in favour of the plaintiffs, as this Honourable Court deems just.

Overview

3. This action is in respect of a SMI scheme involving 16 different real estate development Projects, including (1) eleven Projects respectively undertaken by the eleven Receivership Companies (collectively, the “**Receivership Projects**”); and (2) five other distinct Projects respectively undertaken by the five Non- Receivership Development Companies (the “**Non- Receivership Projects**”).

The Receivership Projects

4. As it relates to the Receivership Projects, this action is in respect of a fraudulent scheme whereby the Davies Defendants and Singh Former Defendants conspired with each other to have the Trust Companies, and their underlying investors, loan moneys through SMIs to the Receivership Companies based on false, inaccurate and misleading statements and covenants. The Davies Defendants and Singh Former Defendants then misappropriated tens of millions of dollars of those loans from the Receivership Companies by improperly diverting funds to themselves,

related defendant parties and others through management fees, professional fees, broker and referral fees, consulting fees, dividends and/or other means using corporate structures, directly and/or indirectly controlled by and/or related to them.

5. The Davies Defendants and Singh Former Defendants were aware that appraisals used to promote investment in the SMIs were inflated and inaccurate, and that assurances that money loaned by the Trust Companies to the Receivership Companies would be fully secured were false, inaccurate and misleading. They were further aware that covenants in the applicable Loan Agreements between the Trust Companies and the Receivership Companies restricting the use of loaned funds would not be fully honoured, but instead such funds would be diverted for other purposes to the Defendants' direct and indirect personal benefit.

6. Notwithstanding this knowledge, the Davies Defendants and Singh Former Defendants continued to raise, and/or facilitated the raising of, further funds from public investors which were then advanced by the Trust Companies to Receivership Companies and other related entities they directly or indirectly owned, perpetuating a "Ponzi Scheme".

7. The actions of the Davies Defendants and Singh Former Defendants were facilitated by some or all of the other Defendants, who failed to discharge their respective duties as outlined below, and who, in many cases, benefited financially from their improper actions and from the improper actions taken by the Davies Defendants and Singh Former Defendants.

8. In this action, the Trustee and the Receiver both seek relief in respect of the Receivership Projects.

The Non-Receivership Projects

9. As it relates to the five Non-Receivership Projects, this action is in respect of a scheme whereby the Singh Former Defendants, in conjunction with others, caused the Tier 1 Trust Companies, and their underlying investors, to loan moneys through SMIs to the Non-Receivership Development Companies based on undisclosed conflicts of interest and other false, inaccurate and misleading statements and covenants. The Singh Former Defendants also then improperly diverted funds raised for two of the Non-Receivership Projects to related defendant parties and others. These actions led to millions of dollars of realized or anticipated losses, as applicable, for four of the five SMIs.

10. The Singh Former Defendants were aware that appraisals used to promote investment in three of the five SMIs were inflated and inaccurate, and that assurances that money loaned by at least two of the Tier 1 Trust Companies to the Non-Receivership Development Companies would be fully secure were false, inaccurate and misleading. They were further aware that covenants in the applicable Loan Agreements between at least two of the Tier 1 Trust Companies and the Non-Receivership Development Companies restricting the use of loaned funds would not be fully honoured, but instead such funds would be diverted for other purposes.

11. The actions of the Singh Former Defendants were facilitated by some or all of the other Defendants, who failed to discharge their respective duties as outlined below, and who, in certain cases, benefited financially from their improper actions and from the improper actions taken by the Singh Former Defendants.

12. In this action, only the Trustee seeks relief in respect of the Non-Receivership Projects. The Receiver seeks no relief in respect of the Non-Receivership Projects.

Parties

(a) Plaintiffs

13. The plaintiff, Grant Thornton, is the court-appointed Trustee, over all of the assets, undertakings and properties of the Tier 1 Trust Companies, appointed pursuant to an order of the Court dated October 27, 2016.

14. The purpose of the Trustee's appointment is to, among other things, protect the interests of the investing public, who were or are (through the Tier 1 Trust Companies and subsequently the Trustee) mortgagees with secured lending positions registered on title to real properties owned by the Development Companies. The mortgages registered on title in favour of the Tier 1 Trust Companies were or are also co-registered in favour of Olympia Trust Company, which acted as administrative agent for RRSP and other registered investments made through the Tier 1 Trust Companies.

15. The plaintiff, KSV, is the court-appointed Receiver of certain property of the Receivership Companies appointed pursuant to orders of the Court dated February 2, April 28 and May 2, 2017 (for all Receivership Companies other than 445 Princess, McMurray, Bronson and Ross Park), January 9, 2018 (for 445 Princess) and May 30, 2018 (for McMurray, Bronson and Ross Park).

16. The Receiver's mandate includes pursuing litigation claims on behalf of the Receivership Companies and maximizing recoveries on behalf of their creditors, including the Trust Companies, which are the largest creditors in each receivership, by far. In this action, the Receiver is seeking relief strictly on behalf of the Receivership Companies and not on behalf of the broader group of Development Companies or any other entities.

(b) Davies Defendants

17. The defendant, Mr. Davies, is an individual residing in King City, Ontario. He was, at all material times, a director and officer of the Receivership Companies. He was also, at all material times, the trustee and/or representative of the Davies Family Trust, together with Ms. Davies and Mr. Harris (further identified below), and the sole trustee and/or representative of the Davies Arizona Trust.

18. The defendant, Ms. Davies, is an individual residing in King City, Ontario. She is Mr. Davies' spouse. She was, at all material times, a trustee and/or representative of the Davies Family Trust, together with Mr. Davies and Mr. Harris.

19. The Davies Family Trust and the Davies Arizona Trust are trusts that were established by, or at the direction of, Mr. Davies in or around 2003 and 2013, respectively. The beneficiaries of the Davies Family Trust are Mr. Davies, Ms. Davies and the Davies Children, as well as any future children and issue of Mr. Davies. The beneficiaries of the Davies Arizona Trust are the Davies Children.

20. The defendant, Aeolian, is a company incorporated pursuant to the laws of Ontario. Aeolian's mailing address is Mr. and Ms. Davies' personal residence in King City, Ontario.

21. Aeolian is directly owned by Ms. Davies and the Davies Children. Mr. Davies is Aeolian's sole officer and director.

22. Aeolian is a direct shareholder of Scollard and Legacy Lane and an indirect shareholder of each of the other Receivership Companies (other than McMurray, which is owned, in part, by the Davies Family Trust).

23. Aeolian is also a shareholder of:

(a) MCIL, which is a shareholder of Kitchener, Oakville and MC Burlington. MC Burlington is the sole shareholder of Burlington;

(b) TSSI, which is a shareholder of 525 Princess, 555 Princess and Ross Park; and

(c) TSI, which is a shareholder of 445 Princess and Bronson.

(c) Thompson Defendants

24. The defendant, Mr. Thompson, is an individual residing in Aurora, Ontario.

25. He was, at all material times, a director and officer of certain of the Receivership Companies, including 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park.

26. He was also, at all material times, a director and officer of TSI and TSSI.

27. The defendant, Thompson Co., is a company incorporated pursuant to the laws of Ontario. Mr. Thompson is Thompson Co.'s sole officer and director.

28. Thompson Co. is an indirect shareholder of certain of the Receivership Companies. Specifically, Thompson Co. is a shareholder of TSI and TSSI, which are shareholders of 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park.

(d) Stewart Defendants

29. The defendant, Mr. Stewart, is an individual residing in Clarksburg, Ontario. He was, at all material times, a founder and directing mind of MCIL and associated with certain Receivership Companies.

30. Mr. Stewart previously had an indirect ownership interest in MCIL and Legacy Lane.

31. He was formerly a director and officer of certain Receivership Companies, including Legacy Lane, Kitchener, Burlington and Oakville.

32. The defendant, Stewart Co., is a company incorporated pursuant to the laws of Ontario. Mr. Stewart is a director and officer of Stewart Co.

(e) Singh Former Defendants

33. The former defendant, Mr. Singh, is an individual residing in Richmond Hill, Ontario.

34. He is the sole director, officer and shareholder of each of the Tier 1 Trust Companies (other than 445 Trust Co. and Hazelton Trust Co., for both of which Mr. Cassidy is the sole registered director and officer, although Mr. Singh was a de facto director and officer of these entities).

35. Mr. Singh was also the sole director and officer of three of the five Non-Receivership Development Companies, being Keele Medical, Guildwood and Hazelton.

36. Mr. Singh was also a director and the sole officer of Tier 1 Mortgage, which was a licensed mortgage brokerage firm that promoted and sold the SMIs to public investors.

37. Mr. Singh was also previously a licensed mortgage broker with FCMC, which was also a licensed mortgage brokerage firm that promoted and sold the SMIs to public investors.

38. Mr. Singh's and Tier 1 Mortgage's mortgage brokerage licenses were ultimately revoked by the Financial Services Commission of Ontario in connection with its investigation into the SMIs that form the subject matter of this litigation.

39. The former defendant, Singh Co., is a company incorporated pursuant to the laws of Ontario. Singh Co. is owned by Mr. Singh, and he is the sole director and officer of Singh Co.

40. Singh Co. is a direct shareholder of certain Development Companies, including 555 Princess, 525 Princess, 445 Princess, Bronson and Ross Park, and one or more of the Singh Former Defendants is or was also a shareholder of Vaughan Crossings.

41. Singh Co. is also a shareholder of TSI and TSSI, which are also shareholders of 555 Princess, 525 Princess, 445 Princess, Bronson, and Ross Park.

42. The former defendant, Tier 1 Advisory, is a company incorporated pursuant to the laws of Ontario. Mr. Singh is the sole director, officer and shareholder of Tier 1 Advisory.

43. Tier 1 Advisory arranged and facilitated the SMIs that the Brokers marketed and sold to public investors. In particular, Tier 1 Advisory performed marketing and project development consultation services and structured deals with the Development Companies, it prepared investment information and it developed and presented promotional materials for the various Projects to solicit investments in the Projects.

(f) The defendant Jude Cassimy

44. The defendant, Mr. Cassimy, is an individual residing in Markham, Ontario.

45. He was a director and officer of 445 Trust Co. and Hazelton Trust Co. He was also the sole director and officer of the defendant, FCMC.

46. Mr. Cassimy was a licensed mortgage broker. He was the principal broker of FCMC.

47. Mr. Cassimy's and FCMC's licenses were also ultimately revoked by the Financial Services Commission of Ontario in connection with its investigation into the SMIs that form the subject matter of this litigation.

(g) The defendant FCMC

48. The defendant, FCMC, was formerly a licensed mortgage brokerage firm, which promoted and sold the SMIs to public investors.

(h) The defendant David Arsenault

49. The defendant, Mr. Arsenault, is an individual residing in Toronto, Ontario. At all material times, he was an officer of McMurray. At all material times, he was also an indirect shareholder of McMurray through his holding company, D. Arsenault Holdings Inc.

(i) The former defendant James Grace

50. The former defendant, Mr. Grace, is an individual residing in Toronto, Ontario. At all material times, he was an officer of 445 Princess.

(j) Harris Defendants

51. The defendant, Mr. Harris, is an individual residing in the Town of Nobleton, Ontario.

52. He is a licensed Ontario lawyer in private practice and a partner at Harris LLP.

53. As noted above, Mr. Harris was a trustee and/or representative of the Davies Family Trust, together with Mr. Davies and Ms. Davies. The Receiver has no knowledge of any material facts indicating that Mr. Harris in his capacity as a trustee and/or representative of the Davies Family

Trust engaged in any fraudulent, deceitful or other misconduct relating to the Davies Family Trust. Nevertheless, given that the Davies Family Trust improperly received and retained funds that were initially sourced from SMI monies advanced to the Receivership Companies, one or more of the trustees of the Family Trust caused, directed and/or had knowledge of such improper transfers. The role that each of the trustees played (or did not play) in these improper transfers is known only to the Davies Defendants. In any event, each of the trustees of the Family Trust must be named as a defendant to allow the Receiver to obtain the sought after relief regarding the assets improperly funneled to the Davies Family Trust.

54. Mr. Harris was also legal counsel at all material times to each of the Development Companies except for Vaughan Crossings and Silver Seven, and served as legal counsel providing ongoing legal advice to all the Tier 1 Trust Companies at material times.

55. The defendant, Harris LLP, is an Ontario limited liability partnership of lawyers which carries on business from an office located in Mississauga, Ontario.

56. At all material times, Harris LLP acted as the solicitors for each of the Development Companies except for Vaughan Crossings and Silver Seven.

57. At material times, Harris LLP also acted as the solicitors for each of the Tier 1 Trust Companies and provided ongoing advice and representation to the Tier 1 Trust Companies.

58. Throughout the material period, Harris LLP held itself out as being experienced in advising clients on corporate and real estate law matters, including in relation to commercial real estate transactions, real estate financing, property and asset acquisitions, and general corporate law matters.

59. One or more of the Harris Defendants is or was also a shareholder of Vaughan Crossings.

(k) Elliott Defendants

60. The defendant, Ms. Elliott, is an individual residing in Toronto, Ontario. She is a licensed Ontario lawyer in private practice and the principal and sole director of Elliot Co.

61. The defendant, Elliot Co., is a professional corporation incorporated pursuant to the laws of Ontario.

62. The Elliot Defendants specialize in Canadian immigration law, providing immigration and related legal services to individual and corporate clients.

63. At material times, the Elliott Defendants acted as the solicitors for the Tier 1 Trust Companies except for McMurray Trust Co. and Scollard/Vaughan Crossings/Silver Seven Trust Co. to the extent of its advancement of monies to Vaughan Crossings and Silver Seven. In other words, the Elliot Defendants provided advice and representation to the lenders in respect of their loans to the following Development Companies: 445 Princess, 525 Princess, 555 Princess, Bronson, Scollard, Legacy Lane, Burlington, Ross Park, Oakville, Kitchener, Keele Medical, Guildwood and Hazelton.

(l) The defendant MCIL

64. The defendant, MCIL, is a company incorporated pursuant to the laws of Ontario. Mr. Davies is the sole officer and director of MCIL. MCIL is owned by Aeolian and Ms. Harris. MCIL is a shareholder of Kitchener, Oakville and MC Burlington, which is the sole shareholder of Burlington.

(m) The defendant TSI

65. The defendant, TSI, is a company incorporated pursuant to the laws of Ontario. The only officers and directors of TSI are Messrs. Davies and Thompson.

66. TSI is owned by Aeolian, Thompson Co., Singh Co. and Dachstein.

67. TSI is a shareholder of 445 Princess and Bronson.

(n) The defendant TSSI

68. The defendant, TSSI, is a company incorporated pursuant to the laws of Ontario. The only officers and directors of TSSI are Messrs. Davies and Thompson.

69. TSSI is owned by Aeolian, Thompson Co., Singh Co. and Dachstein.

70. TSSI is a shareholder of 525 Princess, 555 Princess and Ross Park.

(o) The defendant Michael Cane

71. The defendant, Mr. Cane, is an individual residing in the City of Toronto, Ontario.

72. He is an appraiser of real property, with over 40 years of experience, who focuses on the valuation of commercial real estate on behalf of developers, mortgage lenders and others.

73. He is a member of the Appraiser Institute of Canada, a fellow of the Royal Institution of Chartered Surveyors and Professional Land Economist from the Association of Ontario Land Economists, among other professional accreditations.

74. At all material times, he acted as the appraiser for each of the Development Companies in respect of their real properties and related Projects, except for Vaughan Crossings and Silver Seven. Mr. Cane was aware that his appraisals were used and relied upon to promote and solicit the SMIs in the various Projects.

Capital Raised Through SMIs

75. SMIs are mortgages for which there are more than one lender or investor. SMIs are a financial instrument used by real estate developers to finance real estate development.

76. The Brokers, in conjunction with Tier 1 Advisory, promoted and sold SMIs to investors in relation to the Projects.

77. The Tier 1 Trust Companies were incorporated to hold the SMIs in trust and to administer the SMIs on behalf of investors.

78. The Tier 1 Trust Companies are distinct entities from the Development Companies. They are the lenders to the Development Companies.

79. Approximately \$131 million was raised through SMIs administered by the Tier 1 Trust Companies and advanced for the benefit of the Development Companies' in respect of their Projects, of which approximately \$94 million was advanced, on a secured basis, by the Trust Companies for the benefit of the Receivership Companies. The Development Companies further raised an additional amount of approximately \$62 million from other mortgage lenders, for a combined total of approximately \$193 million in secured loans.

Mortgages by the Tier 1 Trust Companies to the Development Companies

80. The relevant mortgages between the Tier 1 Trust Companies and the Development Companies are as follows:

Real Property Project	Development Company (Mortgagee)	Tier 1 Trust Company (Mortgagor)	Approximate Principal Amount of SMI
445 Princess Street	445 Princess	445 Trust Co.	\$8.4 million
525 Princess Street	525 Princess	525 Trust Co.	\$6.4 million
555 Princess Street	555 Princess	555 Trust Co.	\$7.9 million
Bronson Ave.	Bronson	Bronson Trust Co.	\$10.8 million
Scollard Project	Scollard	Scollard/Vaughan Crossings/Silver Seven Trust Co.	\$13.6 million
Legacy Lane Project	Legacy Lane	Oakville / Burlington / Guildwood / Legacy Trust Co.	\$3.5 million
Memory Care Burlington	MC Burlington	Oakville / Burlington / Guildwood / Legacy Trust Co.	\$8.3 million
Memory Care Oakville	Oakville	Oakville / Burlington / Guildwood / Legacy Trust Co.	\$9 million
Memory Care Kitchener	Kitchener	Kitchener Trust Co.	\$10.6 million
McMurray Street	McMurray	McMurray Trust Co.	\$3.5 million
Ross Park	Ross Park	Ross Park Trust Co.	\$11.6 million
TOTAL FOR ALL RECEIVERSHIP COMPANIES			\$93.6 million
Keele Medical Project	Keele Medical	Keele Medical Trust Co.	\$4.1 million
Highlands Mississauga	Hazelton	Hazelton Trust Co.	\$6.4 million
Guildwood Project	Guildwood	Oakville / Burlington / Guildwood / Legacy Trust Co.	\$6.4 million

Real Property Project	Development Company (Mortgagee)	Tier 1 Trust Company (Mortgagor)	Approximate Principal Amount of SMI
Silver Seven Project	Silver Seven	Scollard/Vaughan Crossings/Silver Seven Trust Co.	\$6 million
Vaughan Crossings Project	Vaughan Crossings	Scollard/Vaughan Crossings/Silver Seven Trust Co.	\$14.8 million
TOTAL FOR ALL NON-RECEIVERSHIP DEVELOPMENT COMPANIES			\$37.7 million
TOTAL FOR ALL DEVELOPMENT COMPANIES			\$131.3 million

81. As described further below, these various Development Companies continue to owe, in each case, millions of dollars to the corresponding Tier 1 Trust Companies without the means to satisfy such indebtedness (other than Hazelton, which paid its indebtedness in respect of the Hazelton SMI, and Guildwood and Silver Seven, which entered into settlement agreements to pay less than the indebtedness owing in respect of the Guildwood SMI and the Silver Seven SMI). Apart from the Hazelton SMI, the other SMIs, including all of the SMIs for which the Receivership Companies were borrowers, were effectively doomed to fail from the outset, and they did in fact fail. In this action, the plaintiffs seek no relief from any of the Defendants with respect to the Hazelton SMI (which was the only SMI that was repaid in full) or the Guildwood SMI (the settlement agreement for which treats the Guildwood SMI’s indebtedness as having been repaid in full).

Faulty and Misleading Appraisals

82. To support the amounts raised for the SMIs, all the Receivership Companies and certain of the Development Companies retained the defendant Mr. Cane as an appraiser to provide estimated hypothetical market values of the subject sites, assuming they could be developed.

83. The appraisals were based on several other assumptions, including: (i) development costs, as estimated by the applicable Development Company and as set out in the applicable Project pro forma, remaining consistent with the budget; (ii) the necessary planning approvals being obtained in a timely manner; and (iii) the development being commenced, and completed, in a timely manner.

84. Importantly, certain of the Project pro formas on which the appraisals were based contained false, inaccurate and/or materially misleading information. For instance, certain of the pro formas:

- (a) reflected an equity injection by the shareholders of the respective Development Company in cases where no such equity contribution was ever made by Mr. Davies, Aeolian, Mr. Thompson, Thompson Co., Mr. Stewart, Stewart Co., Mr. Singh, Singh Co., Mr. Arsenault, D. Arsenault Holdings Inc., or any of the other shareholders of the applicable Development Companies;¹
- (b) failed to account for a significant portion of the initial costs, consisting of fees payable to Tier 1, amounts paid or payable to agents who sold the SMIs to investors, professional costs and amounts to fund a one-year interest reserve; and

¹ Oakville raised \$1 million from five individuals through the issuance of preference shares. These individuals were also investors in the Oakville SMI.

- (c) did not reflect the payment of dividends, which, as described in more detail below, were paid from the initial SMI advances for each of 525 Princess, 555 Princess, Bronson and Ross Park.

85. Further, certain appraisals were based on unrealistic and unattainable development plans that could never come to fruition given, among other things, zoning, planning and other restrictions.

86. Other appraisal reports contained development timelines that had already lapsed by the time Mr. Cane was asked to prepare a further appraisal report for that same property at a higher value.

SMIs Under Secured

87. Each SMI was registered on title in favour of the applicable Tier 1 Trust Company (and, as set out above, Olympia Trust for administrative purposes).

88. The Singh Former Defendants and/or Mr. Davies (in the latter case in relation to the Receivership Companies), and/or individuals and/or entities acting on their instruction or behalf, led the SMI investors to believe that the advances from the Tier 1 Trust Companies to the Development Companies would be used for, and fully secured against, specific real property projects of the applicable Development Companies with a first-ranking security interest (which would only be subordinated to construction financing intended to advance the applicable Project).

89. Based on these assurances, investors invested in the SMIs and the Tier 1 Trust Companies advanced the funds raised from investors through SMIs to the Development Companies.

90. However, contrary to the above representations made to investors and the Tier 1 Trust Companies that the SMIs would have first-ranking security, certain Development Companies, including Scollard, Oakville, Kitchener, Burlington and McMurray, borrowed funds on a first-ranking secured basis against the applicable real property after funding for the SMIs was raised and advanced.

91. Furthermore, and more generally, each SMI, together with any applicable pre-existing encumbrances, significantly exceeded the purchase price of the real property, resulting in the advances from each of the Tier 1 Trust Companies to the Development Companies being under-secured from the day they were made.

92. In particular, at all material times, the only assets of material value owned by the Development Companies were their real properties, for which they paid, collectively, approximately \$77 million.

93. All of the Receivership Companies' properties remain in the pre-construction phase, with the exception of Burlington, which has footings and foundations.

94. Of the approximately \$94 million advanced by the Trust Companies to the Receivership Companies, only approximately \$12.4 million was spent on development costs.

95. With the exception of Oakville (which was purchased for \$1.945 million and sold for \$4.25 million during the receivership proceedings), none of the Receivership Companies' properties has increased materially in value from the time it was purchased, including as a result of any development activities undertaken by the Receivership Companies. The increase in Oakville's value is not attributable to any activity performed by the Davies Developers but, rather, it is mainly

a result of the increase in the value of real estate in the Greater Toronto Area during the relevant period.

96. Further, as at each of the respective receivership dates, none of the Receivership Companies had any cash or any access to capital to further develop their Projects.

97. All the Receivership Companies, and some of the non-Receivership Development Companies, were insolvent from the date of the first SMI advance, and the Projects undertaken by these Development Companies had virtually no prospect of success due to, among other things, the lack of capital (which necessitated further borrowing to advance the Projects), the significant initial costs, the improper use of monies to fund expenses on other unrelated projects and the front-end loading of excessive dividends, management fees and other undue payments directly or indirectly to some or all of the Davies, Thompson, Stewart and Singh Former Defendants and Mr. Cassimy and to affiliates of, and persons related to, the Davies, Thompson, Stewart and Singh Former Defendants and Mr. Cassimy, as well as others, as described in more detail below.

98. Had there not been new financings in other projects that raised additional funds from new investors, which funds were loaned to and among the Receivership Companies to fund pre-existing liabilities and future costs, the Receivership Companies would have been unable much earlier to service interest and other obligations they were required to pay. Accordingly, the scheme as among the Receivership Companies had the hallmarks of a Ponzi scheme as its continuance was dependent upon the raising of ever-increasing sums of new money.

Restrictions on Use of Advanced Funds under the Loan Agreements

99. Under the Loan Agreements between the respective Development Companies and the applicable Tier 1 Trust Companies, the funds advanced from the Tier 1 Trust Companies to the Development Companies were to be used to purchase real property and to pay the soft costs associated with the Projects for which the funds were invested and advanced.

100. Under the Loan Agreements, the Development Companies covenanted that they would not, without the consent of the applicable Tier 1 Trust Company (subject to certain limited exceptions), “use the proceeds of any Loan Instalment for any purposes other than the development and construction of the project on the Property”.

101. Despite these restrictions, as particularized below, the Defendants collectively received at least \$45 million from the Development Companies making use of the funds advanced under the SMIs

(a) Prohibited Management Fees

102. Pursuant to Section 7.02(c) of the Loan Agreements with Scollard, Oakville, Kitchener, Burlington, Legacy Lane, McMurray, Silver Seven and Vaughan Crossings, the payment of management fees to shareholders is prohibited absent the written consent of the applicable Tier 1 Trust Company.

103. Pursuant to Section 7.02(c) of the Loan Agreements with 525 Princess, 555 Princess, 445 Princess, Ross Park, Bronson and Keele Medical, ordinary course payments to shareholders for amounts related to the management, development and operation of the property are permitted, but

only if such payments are reasonable in relation to the services rendered, unless the written consent of the applicable Tier 1 Trust Company is obtained.

104. Contrary to the terms of these Loan Agreements and the Receivership Companies' other legal obligations, and contrary to Messrs. Davies', Thompson's and Stewarts' respective fiduciary and other obligations, Mr. Davies caused, and Messrs. Thompson and/or Stewart allowed, certain Receivership Companies to improperly pay millions of dollars in management fees directly to Aeolian, Thompson Co. and Stewart Co., notwithstanding that, among other things, the Receivership Companies never:

- (a) received the written consent of the Trust Companies for these payments (or, alternatively, to the extent such consent was provided, it was provided unlawfully given the clear conflict of interest of Mr. Singh who was the controlling mind of the Trust Companies and simultaneously held a financial interest in each of the Receivership Companies to which the funds were advanced by the Trust Companies);
- (b) entered into any management services agreements; or
- (c) received services that would justify such payments.

105. Specifically, Mr. Davies caused, and in some instances Mr. Stewart allowed, certain Receivership Companies, including Scollard, Oakville, Kitchener, Burlington, Legacy Lane and McMurray, to transfer approximately \$4.069 million in prohibited management fees directly to Aeolian, as follows:

- (a) Scollard transferred approximately \$1,244,000;

- (b) Oakville transferred approximately \$1,112,000;
- (c) Kitchener transferred approximately \$506,000;
- (d) Burlington transferred approximately \$592,000;
- (e) Legacy Lane transferred approximately \$341,000; and
- (f) McMurray transferred approximately \$274,000.

106. Mr. Davies further caused, and Mr. Stewart allowed, certain Receivership Companies, including Kitchener, Burlington, Oakville and Legacy Lane, to transfer approximately \$1.487 million in prohibited management fees directly to Stewart Co.

107. These payments are all prohibited under the Loan Agreements. In addition, these payments were caused and/or allowed to be made on the basis of knowingly false representations and/or material omissions made by Mr. Davies.

108. Mr. Davies also caused, and Mr. Thompson allowed, 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park to transfer to Aeolian and Thompson Co. (purportedly in respect of management fees) amounts that are unreasonable, particularly given that these Receivership Companies never entered into any management agreements with Aeolian or Thompson Co., the Projects for which the funds were advanced have achieved very limited progress (they all remain in the pre-development phase), and the intended Projects are unlikely to ever be developed because of, among other things, zoning and other restrictions that preclude such developments. Specifically, Aeolian received approximately \$500,000 and Thompson Co. received

approximately \$947,000 in management fees from 525 Princess, 555 Princess, 445 Princess, Ross Park and/or Bronson.

109. These payments are also all prohibited under the Loan Agreements.

110. The management fees in respect of each of the Projects were also paid at an accelerated rate inconsistent with the stage of development of the Projects.

(b) Improper Transfers to TSI, TSSI and MCIL

111. Contrary to the terms of the Loan Agreements and the Receivership Companies' other legal obligations, Mr. Davies caused, and Messrs. Thompson and/or Stewart allowed, certain of the Receivership Companies to improperly transfer approximately \$5.5 million to TSI, TSSI and MCIL, the parent companies of Kitchener, Oakville, Burlington, 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park.

112. TSI and TSSI are both owned by Aeolian, Thompson Co., Singh Co. and Dachstein.

113. MCIL is owned by Aeolian and Ms. Harris.

114. Of the approximately \$5.5 million transferred to TSI, TSSI and MCIL, approximately \$4.1 million was transferred by cheque. The memo line on each of the cheques indicated that payment was a "loan", notwithstanding that:

(a) none of these "loans" were documented;

(b) no interest has been received by any of the applicable Receivership Companies on account of any such "loan"; and

- (c) the relevant Loan Agreements do not permit the applicable Receivership Companies to make these loans absent the applicable Trust Company's consent.

115. The balance of approximately \$1.4 million was also transferred by the relevant Receivership Companies to TSI, TSSI and MCIL for which no explanation is available in the books and records of the applicable Receivership Companies or the books and records of TSI, TSSI and MCIL.

(c) Improper Dividends

116. Mr. Davies also caused, and Mr. Thompson allowed, certain Receivership Companies to improperly pay significant dividends to Aeolian, Thompson Co. and Singh Co. Specifically, Mr. Davies caused, and Mr. Thompson allowed, each of 525 Princess, 555 Princess, Bronson and Ross Park to pay:

- (a) \$250,000 in dividends to Aeolian (for a total of \$1 million);
- (b) \$250,000 in dividends to Thompson Co. (for a further total of \$1 million); and
- (c) \$250,000 in dividends to Singh Co. (for a further total of \$1 million).

117. While the payment of dividends is permitted under the Loan Agreements in certain circumstances, dividends are only to be paid from the "excess proceeds after the [real estate development property] has been acquired". In each instance, Mr. Davies caused, and Mr. Thompson allowed, the dividends to be paid to Aeolian, Thompson Co. and Singh Co. immediately after 525 Princess, 555 Princess, Bronson and Ross Park received the funds from the applicable Trust Company at a time when each of 525 Princess, 555 Princess, Bronson and Ross Park had no profits and insufficient cash to develop their respective Projects. As a result of the payment of

dividends and other payments to related parties, 525 Princess, 555 Princess, Bronson and Ross Park essentially had no further monies to advance their respective Projects.

118. The payment of improper dividends as set out above was done on the basis of knowingly false representations and/or material omissions made by Mr. Davies.

119. These dividend distributions caused 525 Princess, 555 Princess, Bronson and Ross Park to become insolvent or contributed to their insolvency (if they were not already insolvent at the time of payment).

120. At or around the same time of the above-noted dividend payments to Aeolian, Thompson Co. and Singh Co., an additional \$250,000 in dividends was paid by each of 525 Princess, 555 Princess, Bronson and Ross Park to Dachstein (for a total payment of \$1 million to Dachstein). The Receiver and the Trustee recently entered into a settlement with Dachstein pursuant to which the full amount of \$1 million was returned to the Receiver and the Trustee by Dachstein. In this action, the plaintiffs seek no relief from any of the Defendants with respect to the dividend payments made by 525 Princess, 555 Princess, Bronson and Ross Park to Dachstein.

(d) Improper Inter-Company Transfers and Transfers to Affiliates

121. In further contravention of the Loan Agreements, and their own legal and contractual obligations, Mr. Davies routinely caused, and/or Messrs. Thompson, Stewart and/or Singh routinely allowed, the Receivership Companies to improperly transfer monies between entities and to affiliates, including over \$17 million to and among the Receivership Companies.

122. Mr. Davies caused, and/or Messrs. Thompson, Stewart and/or Singh allowed, such intercompany transfers to be made as the Receivership Companies' Projects were facing a liquidity

crisis, which necessitated the making of intercompany loans to perpetuate the scheme and avoid defaulting on the loans from the Trust Companies and the Receivership Companies' other obligations. This has the hallmarks of a Ponzi scheme.

123. Mr. Davies caused, and Messrs. Thompson Stewart and/or Singh allowed, certain Receivership Companies to improperly transfer monies to Lafontaine Terrace Management Corporation and Memory Care Investments (Victoria) Ltd. – two companies in respect of which Mr. Davies is the sole director and officer. Specifically:

- (a) Scollard, Legacy Lane, Burlington and Oakville improperly transferred a total of \$324,000 to Lafontaine Terrace Management Corporation; and
- (b) Legacy Lane improperly transferred \$15,000 to Memory Care Investments (Victoria) Ltd.

124. These transfers are prohibited under the applicable Loan Agreements and constitute a breach of the Loan Agreements.

(e) Misappropriation of Funds to Finance the Purchase of the Ottawa Property

125. Mr. Davies improperly diverted and Mr. Thompson allowed the diversion of further funds from 555 Princess, Kitchener and Ross Park (and the respective Projects in which the funds were required to be invested) to a company they controlled, Generx (Byward Hall) Inc. (formerly Textbook (256 Rideau St.) Inc.) (“**Rideau**”), to finance its purchase of real property municipally described as 256 Rideau Street, Ottawa, Ontario and 211 Besserer Street, Ottawa, Ontario (collectively, the “**Ottawa Property**”).

126. The Ottawa Property was purchased by Rideau on or around November 6, 2015 for \$11 million.

127. Immediately prior to Rideau's purchase of the Ottawa Property, on October 27, 2015, Mr. Davies caused, and Mr. Thompson allowed, 555 Princess to improperly transfer \$1.39 million to Rideau, Mr. Davies caused Kitchener to improperly transfer \$111,000 to Rideau, and Mr. Davies caused, and Mr. Thompson allowed, Ross Park to transfer approximately \$1.25 million to Rideau, all by way of cheque. The cheques were all signed by Mr. Davies. These monies were used to fund the purchase price of the Ottawa Property. The balance of the purchase price was funded by way of a mortgage.

128. The funds were transferred from 555 Princess, Kitchener and Ross Park to Rideau for no consideration, with no security, for an illegitimate business purpose and in contravention of the relevant Loan Agreements.

129. Despite the fact that the funds were required to be used for specific projects to be respectively undertaken by 555 Princess, Kitchener and Ross Park, Mr. Davies caused, and Mr. Thompson allowed, the funds to be transferred to Rideau with complete disregard for the separate corporate identities of 555 Princess, Kitchener, Ross Park and Rideau and the contractual and other legal obligations of the parties, which had the result of sheltering assets and frustrating creditors of each of 555 Princess, Kitchener and Ross Park.

130. Following Rideau's acquisition of the Ottawa Property, Mr. Davies and/or Mr. Thompson caused and/or allowed a further \$900,900 to be improperly transferred to Rideau from 555 Princess, 525 Princess, Burlington, 445 Princess, Bronson and Ross Park by way of cheques, each

of which was also signed by Mr. Davies. Specifically, Mr. Davies caused, and Mr. Thompson allowed, these Receivership Companies to transfer the following amounts to Rideau:

(unaudited; \$)	
Transferor	Amount
445 Princess	766,500
Bronson	56,200
555 Princess	43,000
Ross Park	17,000
525 Princess	16,000
Burlington	2,200
Total	900,900

131. Despite the fact that these funds were required to be used for the specific Projects to be respectively undertaken by 555 Princess, 525 Princess, Burlington, 445 Princess, Bronson and Ross Park, the \$900,900 was transferred to Rideau for no consideration, with no security, for an illegitimate business purpose and in contravention of the relevant Loan Agreements.

132. The above misappropriations were based on knowingly false representations and/or material omissions made by Mr. Davies.

133. The Ottawa Property was recently sold through a Court-approved receivership sale, and, given the purchase price and the quantum of the liens registered against the property, there are no funds available to satisfy any of the plaintiffs' claims with respect to this property.

(f) Improper Payments to Mr. Davies' Family Members

134. Mr. Davies also caused certain of the Receivership Companies to make further payments, totaling approximately \$423,000 to Ms. Davies and certain Davies Children for services purportedly rendered by them in connection with the Projects. To the extent these services were

not provided, or the payments in respect of any services that were provided are unreasonable, these payments are prohibited under the applicable Loan Agreements and constitute a breach of the Loan Agreements.

(g) Prohibited Payments in Respect of Mr. and Ms. Davies' Mortgage on their Personal Residence

135. Mr. Davies improperly caused McMurray to make prohibited payments in the total amount of approximately \$935,000 to Moscowitz, a mortgage lender. Moscowitz is not a mortgagee on the property owned by McMurray; however, it is a mortgagee on Mr. and Ms. Davies' personal residence (and formerly on their cottage, which they recently sold). The Loan Agreement between McMurray and McMurray Trust Co. prohibits these payments. There is no legitimate reason why SMI funds were used to service Mr. Davies' mortgage payments, or any of the other personal obligations of Mr. and Ms. Davies.

(h) The Arizona Property

136. Mr. Davies, in his capacity as sole trustee of the Davies Arizona Trust, owns, among other things, real property municipally described as 35411 N. 66th Place in Carefree, Arizona, United States (the "**Arizona Property**"), that was acquired with funds from Aeolian, which were initially sourced from SMI monies advanced to the Receivership Companies.

137. The Arizona Property was purchased by the Davies Arizona Trust for US\$1.2 million. The funds used to purchase the Arizona Property came from Aeolian, with the BofI Federal Bank having a US\$600,000 mortgage on the Arizona Property. Almost US\$2 million was spent to renovate the Arizona Property following its acquisition.

138. Aeolian funded a substantial portion of the costs to purchase and renovate the Arizona Property (at least in part through the Davies Family Trust and the Davies Arizona Trust), which funds came from the Receivership Companies.

139. Ms. Davies and Mr. Harris in their capacities as trustees and/or representatives of the Davies Family Trust had knowledge of, facilitated and/or allowed some of these payments.

(i) Aeolian and Ms. Davies

140. Aeolian's only source of income and/or receipts was from the Davies Developers. Aeolian transferred over \$2.5 million, which it received from the Receivership Companies, directly to Ms. Davies, purportedly in respect of management fees, although she performed no work for or on behalf of Aeolian or any of the Receivership Companies. Aeolian further used approximately \$1.3 million, which it received from the Receivership Companies, to service an American Express card used by Mr. and Ms. Davies to fund their personal day-to-day and other expenses. Additionally, as described above, the Receivership Companies' funds went from Aeolian toward the purchase and renovation of the Arizona Property. Mr. and Ms. Davies had no personal bank accounts and they used Aeolian's account for their own personal banking.

141. At all material times, Aeolian and Ms. Davies knowingly acted as a conduit for Mr. Davies to improperly divert and funnel millions of dollars from the Receivership Companies to himself and his family members for their own personal use and benefit.

(j) Repayment of Purported Loan to Mr. Singh

142. Mr. Singh received \$650,000 from Kitchener, which is characterized in Kitchener's books and records as a loan repayment. To the extent Singh did not advance funds to Kitchener, or to the

extent such funds were advanced but not in an amount commensurate to the repayment, Singh's receipt of such funds from Kitchener was improper.

(k) Improper Broker and Referral Fees Paid to Parties related to Mr. Singh

143. Each of the Loan Agreements includes a provision requiring the Development Companies to pay the following brokerage and referral fees (collectively, the "**Broker and Referral Fees**"):

- (a) 1% of the amounts raised by the relevant Trust Companies as a brokerage fee to the Brokers; and
- (b) 15% to 16% of the amounts raised by the Tier 1 Trust Companies as a referral fee to an entity directed by the Brokers;
- (c) Except for:
 - (i) the McMurray Loan Agreement, which provides fixed referral fees of \$445,000 (i.e., 12.7% of the funds raised);
 - (ii) the Silver Seven Loan Agreement, which provides for a 16.5% broker fee and no referral fee;
 - (iii) the Vaughan Crossings Loan Agreement, which provides for a 16% broker fee and a 2% referral fee; and
 - (iv) the Keele Medical Loan Agreement, which provides for a 1% broker fee and a 17% referral fee.

144. The Broker and Referral Fees paid to the Brokers and/or Tier 1 Advisory in respect of Kitchener, Burlington, Silver Seven and Vaughan Crossings are, cumulatively, approximately \$272,000 greater than permitted under the Loan Agreements.

145. In total, entities related to Mr. Singh received Broker and Referral Fees of approximately \$21.9 million from the Development Companies comprised of approximately \$11.9 million to Tier 1 Advisory, \$9.8 million to FCMC and \$200,000 to other referring brokers.

146. Mr. Singh, as a director, officer and/or shareholder of Tier 1 Advisory and FCMC, was also an officer, director and/or shareholder (directly or indirectly) and/or had other financial interests in many of the Development Companies that borrowed investor funds from the Tier 1 Trust Companies. As such, Mr. Singh not only benefitted from the Broker and Referral Fees, but he also benefitted from his financial interests in the Development Companies (which were not disclosed to the investors from whom the SMI funds were raised).

147. Mr. Singh also authorized approximately \$2 million of monies raised by Scollard/Vaughan Crossings/Silver Seven Trust Co. to be diverted to certain shareholders of Vaughan Crossings and a further amount of approximately \$5 million of monies raised by Scollard/Vaughan Crossings/Silver Seven Trust Co. to be diverted to pay another mortgagee, when, according to the applicable Loan Agreement, these monies should have been used for the sole purpose of developing and constructing a commercial/office development on the Vaughan Crossings property.

(l) Improper Consulting and Diligence Fees Paid to Parties related to Mr. Singh

148. Approximately \$1.485 million in purported consulting and diligence fees were paid by the Receivership Companies to Singh Co. and/or Tier 1 Advisory. These amounts were not referenced or disclosed in any of the Loan Agreements or the ancillary documents. As such, these payments constitute a breach of the applicable Loan Agreements.

(m) Improper Notary Fees Paid to Parties related to Mr. Singh

149. Approximately \$420,000 in purported notary fees were paid by the Development Companies and related entities to Tier 1 Advisory to have each investor's loan documents notarized, notwithstanding that these amounts are unreasonable.

Causes of Action

(a) Causes of Action Asserted by the Receiver Alone

Messrs. Davies', Thompson's and/or Stewart's Breach of Fiduciary Duty, Negligence, Breach of Contract and Knowing Assistance in Breach of Fiduciary Duty

150. By virtue of the positions Messrs. Davies, Thompson and Stewart respectively held, Mr. Davies was a fiduciary of each of the Receivership Companies, Mr. Thompson was a fiduciary of 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park and Mr. Stewart was a fiduciary of Legacy Lane, Kitchener, Burlington and Oakville, and they respectively owed the applicable Receivership Companies fiduciary duties, contractual duties, statutory duties (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended) and a duty of care to, among other things:

- (a) act honestly and in good faith with a view to their best interests;

- (b) avoid improper self-dealing;
- (c) avoid conflicts of interest; and
- (d) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

151. By reason of the facts described above, Messrs. Davies, Thompson and Stewart breached these duties and failed to act in a manner that was required of them as directors and officers of the applicable companies.

152. The applicable companies were vulnerable to the unilateral exercise of Messrs. Davies', Thompson's and Stewart's respective discretion and power, particularly given that they were the controlling minds and management of the applicable companies. By reason of the facts described above, Messrs. Davies, Thompson and Stewart breached their respective duties to the companies, including their fiduciary and other duties owed, including but not limited to their duties of good faith, honest performance and loyalty.

153. By reason of the facts described above, Messrs. Davies, Thompson and Stewart also breached express and/or implied terms of their employment agreements with the respective companies. Among other things, Messrs. Davies, Thompson and Stewart were, at a minimum, required to conduct themselves and the operations of the applicable companies in a competent and lawful manner, which they failed to do. Additionally, Messrs. Davies', Thompson's and Stewart's conduct breached the standard of care required of them and they were grossly negligent in the performance of their duties as officers and directors of the applicable companies.

154. Messrs. Davies, Thompson and/or Stewart effectively treated the respective companies as their own personal fiefdoms, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest, or corporate separateness, amongst other things. Messrs. Davies, Thompson and/or Stewart effectively operated the applicable companies as their own personal corporations and saw the respective corporations' assets as their own. This resulted in their failure to act in the best interests of the companies, including by Messrs. Thompson and Stewart allowing the Davies Defendants to defraud the Receivership Companies, all the while enriching themselves, parties related to them, and parties working with them, at the expense of the Receivership Companies and their creditors, including the Trust Companies.

155. Like Mr. Davies, Messrs. Thompson and Stewart were both compensated handsomely for facilitating the Davies Defendants' fraudulent scheme in breach of their respective fiduciary, contractual and other duties owed to the applicable Receivership Companies. Mr. Thompson and entities related to him (including Thompson Co., TSI and/or TSSI) received undue management fees (which exceeded \$900,000 from the Receivership Companies), dividends (\$1 million from the Receivership Companies) and/or other amounts to which they were not properly entitled. Mr. Stewart and entities related to him (including Stewart Co., Lafontaine and/or MC Victoria) received undue management fees (which exceeded \$1.48 million from the Receivership Companies) and/or other amounts to which they were not properly entitled.

156. Messrs. Davies, Thompson and Stewart each had knowledge of one another's fiduciary duties owed to the applicable Receivership Companies. By virtue of their acts and omissions as described above, each of Messrs. Davies, Thompson and Stewart assisted one another in breaching their respective fiduciary duties owed to the applicable Receivership Companies.

Mr. Arsenault's Breach of Fiduciary Duty, Negligence, Breach of Contract and Knowing Assistance in Breach of Fiduciary Duty

157. As an officer of McMurray, Mr. Arsenault was a fiduciary of McMurray and owed it fiduciary duties, contractual duties, statutory duties (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended) and a common law duty of care to, among other things, act competently, diligently and in its best interests. In particular, Mr. Arsenault was, at a minimum, required to have a rudimentary knowledge of McMurray's business and exercise a degree of monitoring in order to keep himself apprised of and familiar with the general affairs of the company, including the financial status of the company.

158. Mr. Arsenault failed to act in a competent or diligent manner, or in the company's best interests, as he preferred the interests of management, including Mr. Davies, over the interests of the company itself, in contravention of his duties owed to McMurray. Mr. Arsenault allowed Mr. Davies to engage in gross misconduct and treat McMurray as his own personal fiefdom, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest, or corporate separateness, amongst other things. Mr. Arsenault's conduct breached the standard of care required of him and he was negligent in the performance of his duties as an officer of McMurray. Mr. Arsenault also assisted Mr. Davies' breach of fiduciary and other legal duties owed to McMurray, and the wider group of Receivership Companies.

159. By reason of the facts described above, Mr. Arsenault also breached express and/or implied terms of his employment agreement with McMurray. Among other things, Mr. Arsenault was, at a minimum, required to ensure that McMurray conducted itself in a competent and lawful manner, which he failed to do.

160. Mr. Arsenault's failure to fulfill his fiduciary, contractual, statutory and other obligations as an officer of McMurray allowed Mr. Davies to perpetrate the fraudulent scheme described herein and caused damages to McMurray and the other Receivership Companies.

Mr. Grace's Breach of Fiduciary Duty, Negligence, Breach of Contract and Knowing Assistance in Breach of Fiduciary Duty

161. As an officer of 445 Princess, Mr. Grace was a fiduciary of 445 Princess and owed it fiduciary duties, contractual duties, statutory duties (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended) and a common law duty of care to, among other things, act competently, diligently and in its best interests. In particular, Mr. Grace was, at a minimum, required to have a rudimentary knowledge of 445 Princess' business and exercise a degree of monitoring in order to keep himself apprised of and familiar with the general affairs of the company, including the financial status of the company.

162. Mr. Grace failed to act in a competent or diligent manner, or in the company's best interests, as he preferred the interests of management, including Mr. Davies, over the interests of the company itself, in contravention of his duties owed to 445 Princess. Mr. Grace allowed Mr. Davies to engage in gross misconduct and treat 445 Princess as his own personal fiefdom, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest, or corporate separateness, amongst other things. Mr. Grace's conduct breached the standard of care required of him and he was negligent in the performance of his duties as an officer of 445 Princess. Mr. Grace also assisted Messrs. Davies' and Thompson's breach of their fiduciary and other legal duties owed to 445 Princess, and the wider group of Receivership Companies.

163. By reason of the facts described above, Mr. Grace also breached express and/or implied terms of his employment agreements with 445 Princess. Among other things, Mr. Grace was, at a minimum, required to ensure that 445 Princess conducted itself in a competent and lawful manner, which he failed to do.

164. Mr. Grace's failure to fulfill his fiduciary, contractual, statutory and other obligations as an officer of 445 Princess allowed Mr. Davies to perpetrate the fraudulent scheme described herein and caused damages to 445 Princess and the other Receivership Companies.

(b) Causes of Action Jointly and Severally Asserted by the Receiver on behalf of the Receivership Companies and the Trustee exclusively on behalf of the Trust Companies

Fraud and Deceit

165. The Davies Defendants and Singh Former Defendants perpetrated the fraudulent scheme described herein. Although the precise particulars of the fraudulent scheme are only fully known to some or all of the Davies Defendants and Singh Former Defendants at this time, they include, without limitation:

- (a) intentionally and knowingly/recklessly creating, facilitating and/or allowing the creation of Project pro formas containing false information that in no way reflected commercial reality to obtain artificially inflated appraisals that were used in connection with the SMI offerings and the raising of funds from investors;
- (b) intentionally and knowingly/recklessly creating, using and/or allowing inaccurate and/or misleading appraisals containing false information to be created and/or used to raise funds from investors;

- (c) knowingly or recklessly and falsely misrepresenting the nature of the Projects and the potential for the Projects to be successfully executed in a timely manner, or at all, including the likelihood of obtaining the necessary zoning and planning approvals;
- (d) knowingly or recklessly and falsely misrepresenting other facts and omitting material risks in order to raise and/or facilitate the raising of funds from investors;
- (e) knowingly and falsely representing, and making material omissions regarding, the capital structure of the Receivership Companies, including the purported equity injections that would be made by their shareholders;
- (f) intentionally, deceitfully and knowingly/recklessly making false representations to raise and/or facilitate the raising of funds from investors, and diverting those funds from the Receivership Companies to which they were advanced (and, in at least two cases, from the Non- Receivership Development Companies to which they were advanced), for purposes inconsistent with their intended use;
- (g) knowingly and falsely representing, and/or knowingly/recklessly making material omissions regarding, the relationships between themselves and other related, non-arm's length parties;
- (h) knowingly/recklessly and falsely directing, causing, facilitating and/or allowing prohibited payments and transfers to be made by certain of the Development Companies to such related, non-arm's length parties, including payments and

transfers for which no goods or services, or no goods or services of any material value, were provided;

- (i) knowingly, falsely and dishonestly diverting funds from certain of the Development Companies to shell corporations and a network of non-arm's length parties and others to obtain secret profits for their own benefits;
- (j) intentionally, deceitfully and knowingly/recklessly making false representations to direct and/or facilitate payments to shell corporations and a network of non-arm's length parties to covertly divert funds from the Receivership Companies, shelter the funds, avoid detection and thwart recovery attempts;
- (k) knowingly receiving, retaining and/or using funds, which rightfully belonged to the Development Companies;
- (l) intentionally and knowingly/recklessly making the false representations and undertaking the acts and omissions with respect to prohibited management fees as set out above;
- (m) intentionally and knowingly/recklessly making the false representations and undertaking the acts and omissions with respect to improper dividends as set out above;
- (n) intentionally and knowingly/recklessly making the false representations and undertaking the acts and omissions with respect to the misappropriation of funds as set out above; and/or

- (o) making material omissions, failing to take any steps, or any reasonable or sufficient steps, to stop the improper conduct or mitigate the harm being caused by it.

166. All of the above acts, false representations and material omissions were intended to and did cause the Trust Companies and the Receivership Companies to act.

167. All of the above acts, false representations and material omissions caused detriment and deprivation to each of the Trust Companies and the Receivership Companies, as further set out below.

168. The Davies Defendants and Singh Former Defendants perpetrated and/or facilitated the fraudulent scheme described herein in order to profit, and continue to profit, through the receipt of millions in undue fees, dividends, and/or other amounts to which they were not properly entitled.

Conspiracy

169. The Davies Defendants and Singh Former Defendants acted in combination or in concert, by agreement or with a common design, to perpetrate the scheme described herein. The full particulars of the agreement or common design are only fully known to these Defendants at this time, but further particulars will be provided in advance of trial.

170. The conduct of these Defendants in perpetrating the scheme was unlawful (including the torts and other wrongful acts and omissions described herein) and directed towards the Trust Companies, the Receivership Companies and the innocent investors whose funds they misappropriated. As described herein, for which further particulars will be provided in advance of trial as such particulars are currently only known to these Defendants at this time, these Defendants each committed overt acts in furtherance of the agreement. These Defendants knew that injury to

the Trust Companies, the Receivership Companies and the innocent investors whose funds they misappropriated was likely to result in the circumstances, and such injury did result.

171. The predominant purpose of these Defendants' conduct was to intentionally harm the Trust Companies, the Receivership Companies and/or the innocent investors whose funds they misappropriated, and the conduct of these Defendants did harm them.

172. As further described below, as a result of the above, each of the Trust Companies and the Receivership Companies suffered injury and damage.

173. These Defendants are liable to the Trust Companies and the Receivership Companies for predominant purpose conspiracy and unlawful act conspiracy, amongst other things.

Conversion

174. The Receivership Companies were in possession of, or entitled to immediate possession of, the specific and identifiable funds described above. The Davies Defendants and Singh Former Defendants intentionally and wrongfully converted and/or facilitated the conversion of the Receivership Companies' funds inconsistent with the Receivership Companies' right of possession and other rights, and thereby deprived the Receivership Companies and their creditors, including the Trust Companies, of the benefit of the funds, exposing them to significant liabilities. The Receivership Companies, for the benefit of their creditors, including the Trust Companies, are entitled to recover the amounts that these Defendants have converted.

(c) **Causes of Action Jointly and Severally Asserted by the Receiver on behalf of the Receivership Companies and the Trustee on behalf of all Tier 1 Trust Companies**

Unjust Enrichment

175. As particularized above, some or all of the Defendants received by improper means or purposes monies from the Tier 1 Trust Companies and the Receivership Companies, enriching these Defendants.

176. The Tier 1 Trust Companies and the Receivership Companies have suffered a corresponding deprivation.

177. There is no juristic reason for these Defendants' enrichment or for the Tier 1 Trust Companies' and the Receivership Companies' corresponding deprivation.

178. These Defendants should be held to account for their enrichment and for the corresponding deprivation they have caused.

Constructive Trust(s)

179. Some or all of the Defendants received and retained the Tier 1 Trust Companies' and/or the Development Companies' funds with full knowledge of some or all of the unlawful acts pleaded herein, including Messrs. Davies', Thompson's, Stewart's, Arsenault's, Grace's, Singh's and/or Cassimy's breach of their respective fiduciary and other legal duties owed to the Tier 1 Trust Companies and the Development Companies, as applicable.

180. By virtue of the facts described herein, these Defendants hold all assets, properties, and funds that they diverted, misappropriated and improperly received from the Tier 1 Trust

Companies and the Development Companies, and all traceable products thereof, as trustees of a constructive trust (or trusts) for the benefit of the plaintiffs.

Mr. Cane's Professional Negligence and Breach of Contract

181. As the appraiser for certain of the Development Companies' respective real properties (including, without limitation, all the Receivership Companies' respective real properties), Mr. Cane owed these Development Companies contractual, common law, regulatory, professional and other duties, which required him to bring reasonable care, skill and knowledge to the performance of his professional services in order to meet the standards of a reasonable, competent appraiser.

182. The legal standards of conduct that applied to Mr. Cane are informed by, among other things, the Canadian Uniform Standards of Professional Appraisal Practice, which provide, among other things, that:

- (a) members shall carry out work with integrity, due skill, care and diligence and with proper regard for the technical standards expected of them;
- (b) members shall carry out work in a timely manner and avoid conflicts of interests and situations inconsistent with their professional obligations;
- (c) members shall have the competence for any professional services assignment undertaken; and
- (d) members shall comply with the applicable legislative and/or licensing requirements for all types of professional services assignments undertaken.

183. Mr. Cane knew that his appraisal reports would be used by most of the Development Companies and relied on by the Tier 1 Trust Companies in raising funds from investors and advancing those funds to these Development Companies. Given Mr. Cane's knowledge and all of the other circumstances, he was, and is, subject to a higher standard in performing professional services for these Development Companies.

184. The engagement agreements between Mr. Cane and these Development Companies also contained express and/or implied terms that required Mr. Cane to, among other things, perform his services in a competent, skilled, diligent and workmanlike manner.

185. Mr. Cane breached his contractual, common law, regulatory, professional and other duties owed to each of these Development Companies. Mr. Cane is liable for his acts and omissions as the appraiser for these Development Companies' Projects.

186. The particulars of Mr. Cane's breach of contract, breach of duty and professional negligence include but are not limited to the following errors and omissions made in the course of preparing his appraisal reports and rendering professional services to these Development Companies, many of which are unrelated and gave rise to discrete losses specific to each of these Development Companies and the Tier 1 Trust Companies (other than in respect to the Hazelton Project, for which no losses have been suffered, or the Guildwood Project, the settlement agreement for which treats the Guildwood SMI's indebtedness as having been repaid in full):

- (a) failing to adequately identify the scope of work employed in the appraisal reports;

- (b) failing to make thorough inquiries of the actions of marketplace participants to obtain market derived data that might be relevant to answering the appraisal questions in issue;
- (c) failing to provide market support for supply analysis;
- (d) failing to provide market support for absorption of the proposed units over the development timelines;
- (e) failing to obtain adequate support for the costs of development;
- (f) failing to obtain comparative support for revenues and operating expenses in the development pro formas relied on;
- (g) failing to adequately vet the purported construction costs and other relevant financial information;
- (h) failing to adequately disclose any vetting and/or investigations of factual and/or unaudited information upon which the appraisal reports were based;
- (i) failing to describe and analyze all data relevant to the assignments;
- (j) failing to use comparables and failing to make such inquiries and investigations as were necessary with respect to the use of such comparables;
- (k) failing to take sufficient steps to inform himself about the values of relevant properties and the relevant circumstances which affect the properties;
- (l) basing his appraisal reports on unreasonable, irrational and unrealistic assumptions;

- (m) failing to adequately disclose extraordinary assumptions and hypothetical conditions;
- (n) failing to explore different appraisal techniques that were available in the toolbox of appraisal theory and practice that would have assisted in answering the ultimate questions of value;
- (o) failing to use as many appraisal methodologies as possible to arrive at answers to the inquiries from different approaches so that the most accurate market derived determinations of the ultimate issues were obtained and provided;
- (p) failing to describe and apply the appraisal procedures relevant to the assignments and support the reasons for the exclusion of any of the usual valuation procedures;
- (q) failing to adequately disclose extraordinary limiting conditions necessary for the exclusion of certain valuation approaches in valuing the properties through comparative analyses;
- (r) employing a hybrid valuation methodology and/or other valuation approaches that were not common, proper or appropriate for the given assignments;
- (s) using questionable inputs in the Argus Developer software modelling used in connection with the appraisals;
- (t) relying on unsupported results from the Argus Developer software;
- (u) failing to properly detail the reasoning supporting the analyses, opinions and conclusions of the employed valuation approaches;

- (v) failing to make reasoned reconciliations of the indicators to obtain the best estimates of the answers to the ultimate issues of value;
- (w) failing to provide proper opinions as to whether the analyses and conclusions in the reports were appropriate, reasonable and suitable for reliance by the intended user for the intended use;
- (x) preparing reports that were flawed by inconsistencies, typos, incongruent procedures and incorrect arithmetical results;
- (y) grossly overstating the values of the applicable properties; and/or
- (z) ignoring or, alternatively, failing to identify major red flags which ought to have caused heightened caution relating to the Development Companies' Projects.

187. Further particulars may be provided prior to trial.

188. By virtue of his acts and omissions as described above, Mr. Cane failed to meet the standards of a reasonable, competent appraiser and he was professionally negligent. Mr. Cane also breached express and/or implied terms of his agreements with the applicable Development Companies to provide appraisals with integrity, due skill, care and diligence and with proper regard for the technical standards expected of him. Mr. Cane's failure to appropriately discharge his contractual, common law, regulatory, professional and other duties and obligations owed to these Development Companies allowed a multi-million dollar fraud to be perpetrated by the Davies Defendants and Singh Former Defendants and caused significant damage to these Development Companies and their creditors, including the Tier 1 Trust Companies.

189. Had Mr. Cane fulfilled his duties and professional obligations, the fraud and other misconduct would not have occurred, or it would not have occurred to the same degree or extent.

Harris LLP's and its Lawyers' Breach of Duties, Professional Negligence, Breach of Contract and Knowing Assistance in Breach of Fiduciary Duty

190. Mr. Harris introduced Mr. Davies to Tier 1, which helped set in motion the wheels of the SMI scheme.

191. Harris LLP and its lawyers then provided professional legal services and acted as the solicitors for each of the non-Vaughan Crossings and non-Silver Seven Development Companies in connection with the loan transactions pursuant to which approximately \$131 million in SMI monies were loaned by the Tier 1 Trust Companies to the Development Companies for purposes of purchasing real estate and developing projects thereon.

192. Pursuant to the Loan Agreements, Harris was to charge fees ranging from \$25,000 to \$35,000 on the first advance under a Loan Agreement and \$15,000 to \$20,000 on subsequent advances.

193. Section 2.01 of the Loan Agreements provide that:

- (a) "Borrower's Solicitors" shall mean Harris + Harris LLP, or such other solicitors that the Borrower may in writing designate (except in the case of the Loan Agreements for Vaughan Crossings and Silver Seven, where a third-party law firm is listed as "Borrower's Solicitors"); and
- (b) "Lender's Solicitors" shall mean Nancy Elliot, Barrister & Solicitor, or such other solicitors that the Lender may in writing designate (except in the case of the Loan

Agreements for McMurray, where Harris LLP is listed as both “Lender’s Solicitors” and “Borrower’s Solicitors”, and Vaughan Crossings and Silver Seven, where Harris LLP is listed as “Lender’s Solicitors”).

194. Pursuant to delegation agreements between Harris LLP and Ms. Elliot, certain mortgage administration and facilitation responsibilities were delegated by Ms. Elliot to Harris LLP in connection with the loan transactions. Under these delegation agreements, Harris LLP was delegated the responsibilities of, among other things, holding the Interest Reserve (as defined in the Loan Agreements) in trust for the benefit of the SMI lenders (the Tier 1 Trust Companies) and disbursing the Interest Reserve proceeds to the SMI lenders from its trust account.

195. Harris LLP and, in particular, Mr. Harris, also performed further functions on behalf of the Tier 1 Trust Companies and/or Mr. Singh, including providing ongoing advice and representation to the Tier 1 Trust Companies and/or Mr. Singh with respect to the Loan Agreements and the other affairs and operations of the Tier 1 Trust Companies, including their ongoing relations with the Development Companies and their rights under the Loan Agreements. For these services, Harris LLP was paid by the Development Corporations.

196. Harris LLP and its lawyers, including but not limited to Mr. Harris, also provided ongoing advice and representation to each of the Development Companies (except for Vaughan Crossings and Silver Seven) in respect of other matters unrelated to the loan transactions both before and after funds were advanced to the Development Companies, including advice and representation with respect to incorporation, property acquisitions, property development, zoning, planning and other discrete matters. Essentially, Harris LLP and its lawyers provided ongoing advice and

representation to each of the Development Companies (except for Vaughan Crossings and Silver Seven) in respect of substantially all legal matters relating to the companies and their business.

197. Throughout the retainers, several lawyers at Harris LLP provided legal advice and performed legal services for the various applicable Development Companies, including not only Mr. Harris but also Peter Matukas, Amy Lok and Mark McMackin. Other staff of Harris LLP, including articling students and law clerks, also performed services for the various applicable Development Companies.

198. Each of the Tier 1 Trust Companies and the Development Companies (except in the latter case for Vaughan Crossings and Silver Seven) as well as their respective management were highly reliant upon the legal advice and professional services provided by Harris LLP. At all material times, the Tier 1 Trust Companies and these Development Companies effectively had no other legal counsel advising them other than lawyers of Harris LLP. This fact was well known to Harris LLP and Mr. Harris.

199. Harris LLP and its lawyers owed these Development Companies contractual, professional and other duties, which required them to bring reasonable care, skill and knowledge to the performance of their professional services.

200. Harris LLP held itself out as having “significant experience in commercial real estate transactions, including real estate financing using syndicated mortgages”. It further held itself out as having “extensive experience in buying, selling and financing all types of commercial real estate and all its concomitant perils and nuances.” As the Harris Defendants were hired to provide legal services in the areas of, among other things, real estate law, corporate law and corporate finance requiring expertise, which it and its lawyers claimed to possess, and given all the other

circumstances, the Harris Defendants were, and are, subject to a higher standard in performing legal services for these Development Companies.

201. The legal standards of conduct that applied to Harris LLP and its lawyers are informed by, among other things, the Rules of Professional Conduct of the Law Society of Upper Canada (the “**Rules**”). The Rules state, among other things, that:

- (a) a lawyer is required to perform any legal services undertaken on behalf of a client to the standard of a competent lawyer (Rule 3.1(2));
- (b) when retained by a corporation, a lawyer must recognize that the client is the corporation itself, not the individual members of management or the board of directors (Rule 3.2(3));
- (c) a lawyer shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct, or do or omit to do anything that the lawyer ought to know assists in, encourages or facilitates any dishonesty, fraud, crime, or illegal conduct by a client or any other person (Rule 3.2(7));
- (d) a lawyer has a duty to avoid conflicts of interest (Rule 3.4); and
- (e) a lawyer, or two or more lawyers practising in partnership or association, must not act for or otherwise represent both lender and borrower in a mortgage or loan transaction (Rule 3.4(11)).

202. In performing its duties, Harris LLP and its lawyers were also required to:

- (a) make reasonable efforts to ascertain the purpose and objectives of the retainer and to obtain information about the client necessary to fulfill this obligation (Rule 3.2(7.2));
- (b) be on guard against being used as the tool or dupe of an unscrupulous client or persons associated with such a client or any other person (Commentary to Rule 3.2(7)); and
- (c) be vigilant in identifying the presence of 'red flags' in their areas of practice and make inquiries to determine whether a proposed retainer relates to a bona fide transaction (Commentary to Rule 3.2(7)).

203. The retainer agreements between Harris LLP and the respective Tier 1 Trust Companies and Development Companies contained express and/or implied terms that required Harris LLP and its lawyers to, among other things, perform services in a competent manner, act in the best interests of each of the companies and avoid conflicts of interest.

204. Similarly, as fiduciaries, Harris LLP and its lawyers were required to protect and act in the best interests of each of the Tier 1 Trust Companies and the applicable Development Companies while avoiding conflicts of interest.

205. Harris LLP and its lawyers breached their contractual, common law and other duties owed to each of the respective Tier 1 Trust Companies and non-Vaughan Crossings and non-Silver Seven Development Companies. Harris LLP and its lawyers are liable for their acts and/or omissions as the lawyers for the respective Tier 1 Trust Companies and these Development

Companies, which have caused damages to the Tier 1 Trust Companies and the Receivership Companies.

206. The particulars of the Harris Defendants' breach of contract, breach of duty and professional negligence include but are not limited to the following errors and omissions, many of which are unrelated and gave rise to discrete losses specific to each of the Receivership Companies and the Tier 1 Trust Companies (other than in respect to the Hazelton Project, for which no losses have been suffered, or the Guildwood Project, the settlement agreement for which treats the Guildwood SMI's indebtedness as having been repaid in full):

- (a) entering into delegation agreements and/or other formal arrangements pursuant to which Harris LLP and its lawyers acted for both the borrowers and the lenders in connection with certain or all aspects of the various loan transactions;
- (b) acting in the cases set out above for both the Development Companies as borrowers and the Tier 1 Trust Companies as lenders, in a conflict of interest, in connection with certain aspects of the various loan transactions and the ongoing relations between these Development Companies and the Tier 1 Trust Companies;
- (c) providing ongoing advice and representation to the Tier 1 Trust Companies and Tier 1 and/or its representatives, including Mr. Singh, while simultaneously providing ongoing advice and representation to the applicable Development Companies, despite conflicts of interest at the outset and/or the emergence of diverging and conflicting interests;

- (d) failing to recognize when potential conflicts of interest, referred to above, ripened into actual conflicts or, in the alternative, failing to take steps to appropriately avoid or resolve those conflicts;
- (e) failing to recognize inaccuracies and materially misleading information in marketing material being used in connection with the SMI offerings and/or having recognized such inaccuracies and/or materially misleading information and failing to take any adequate steps to correct the information and/or ensure that representations regarding the Tier 1 Trust Companies, the applicable Development Companies and their affairs were true and accurate;
- (f) failing to properly consider and/or advise the Tier 1 Trust Companies of the statutory requirements under relevant legislation, including, for instance, the *Loan and Trust Corporations Act*, R.S.O. 1990, c. L.25, as amended;
- (g) failing to take steps at the outset to properly structure the SMIs and the subsequent loans by the Tier 1 Trust Companies to the Development Companies with appropriate controls to safeguard funds;
- (h) failing to properly consider and/or advise the applicable Development Companies of the regulatory, planning, zoning and other perils and nuances associated with their acquisitions of various real properties;
- (i) failing to recognize and/or to take appropriate steps to ensure that the security of certain of the SMIs was secured on a first-ranked basis against the real property for which the investments were made and the funds were advanced;

- (j) failing to recognize that some of the borrowing of funds by the Development Companies on a first-ranking secured basis was contrary to the representations made to investors in the respective SMIs and/or failing to take appropriate and/or any steps to ensure that such borrowing was appropriately secured;
- (k) failing to advise of and recommend to the applicable Development Companies and Tier 1 Trust Companies appropriate, or any, corporate governance safeguards;
- (l) failing to prevent, facilitating, suggesting and/or directing that intercompany loans be made by certain Receivership Companies to other Receivership Companies in order to fund ongoing interest payment obligations and/or other costs and liabilities;
- (m) failing to prevent, facilitating, suggesting and/or directing that intercompany loans be made by certain Development Companies to non-Development Companies;
- (n) acting for both borrowers and lenders in connection with such intercompany loan transactions (including (1) between and among the Receivership Companies, and (2) between and among the Development Companies and non-Development Companies);
- (o) failing to properly document such intercompany loans;
- (p) failing to ensure such intercompany loans were made on reasonable terms;
- (q) failing to ensure that reasonable or sufficient security was obtained by the lending Development Companies in respect of such intercompany loans;

- (r) disbursing and/or facilitating the disbursement of interest payments to the SMI lenders in respect of one Receivership Company with funds obtained from another Receivership Company, while failing to recognize that this was inappropriate and/or contrary to representations made to investors and the covenants given to the Trust Companies;
- (s) failing to prevent and/or facilitating the funding of liabilities of one Receivership Company with funds obtained from another Receivership Company, while failing to recognize that this was inappropriate and/or contrary to representations made to investors and the covenants given to the Trust Companies;
- (t) acting, and continuing to act, for all of the Development Companies (other than Vaughan Crossings and Silver Seven) notwithstanding the emergence of diverging and conflicting interests between and among them;
- (u) failing to terminate the retainers with the applicable Development Companies when conflicts arose and circumstances rendered the continued representation of some or all of the applicable Development Companies inappropriate;
- (v) ignoring or, alternatively, failing to identify major red flags which ought to have caused heightened caution relating to the Development Companies and their affairs;
- (w) failing to make the requisite inquiries regarding the highly unusual business practices of the Development Companies, the Tier 1 Trust Companies and others;

- (x) failing to insist on the verification of the legitimacy of the Development Companies' business, development Projects, representations and financial condition in light of all the red flags;
- (y) failing to provide appropriate advice regarding the raising of SMI monies in circumstances where it was known that such monies could be applied and used in a manner inconsistent with representations made to investors, brokers and others;
- (z) failing to provide appropriate advice and/or take reasonable, appropriate or adequate steps to address the highly unusual business practices of the Development Companies, the Tier 1 Trust Companies and others; and/or
- (aa) failing to guide the Development Companies and the Tier 1 Trust Companies to act in ways that were ethical and consistent with their responsibilities to their stakeholders and to the public.

207. The Harris Defendants' failure to appropriately discharge the duties owed to the Development Companies (except for Vaughan Crossings and Silver Seven) and the Tier 1 Trust Companies constituted a breach of their duties as these Development Companies' counsel and the Tier 1 Trust Companies' counsel and allowed a multi-million dollar fraud to be perpetrated by the Davies Defendants and Singh Former Defendants on the Receivership Companies and the Tier 1 Trust Companies.

208. By virtue of their positions as lawyers for these Development Companies and the Tier 1 Trust Companies, the Harris Defendants had knowledge of Messrs. Davies', Thompson's, Stewart's, Arsenault's, Grace's, Singh's and Cassimy's fiduciary duties respectively owed to the

Tier 1 Trust Companies and/or the Receivership Companies, as applicable. By virtue of the Harris Defendants' acts and omissions as described above, they knowingly assisted Messrs. Davies, Thompson, Stewart, Aresenault, Grace, Singh and/or Cassimy in breaching their respective fiduciary duties owed to the Tier 1 Trust Companies and Receivership Companies, as applicable.

209. Had the Harris Defendants fulfilled their duties and professional obligations as the lawyers for the Tier 1 Trust Companies and the Receivership Companies, provided proper advice and taken steps to address the misconduct by management of the Tier 1 Trust Companies and the Receivership Companies, the fraud and other misconduct would not have occurred, or it would not have occurred to the same degree or extent.

210. Through their negligent acts and omissions, the Harris Defendants breached their duties and obligations owed to the Development Companies (except for Vaughan Crossings and Silver Seven) and the Tier 1 Trust Companies. As a result, the Receivership Companies and the Tier 1 Trust Companies (and thereby their respective creditors, including public investors), suffered significant damages for which the Harris Defendants are jointly and severally responsible.

Improper Legal Fees Paid to the Harris Defendants

211. The Development Companies improperly paid over \$3.1 million in fees to the Harris Defendants for legal services purportedly rendered by them in connection with the Projects, of which approximately \$2.4 million was paid by the Receivership Companies for which the plaintiffs are seeking recovery, notwithstanding that the Loan Agreements provide a combined estimate for Harris LLP's fees in an amount well-below that.

(d) **Additional Causes of Action Asserted by the Trustee Alone**

Breach of Fiduciary Duty and Duty of Care Owed by Directors & Officers of the Tier 1 Trust Companies

212. The Tier 1 Trust Companies were special purpose entities required to hold the mortgages in trust for the investors and to act in a fiduciary capacity to administer and enforce the mortgages.

213. At all material times, Mr. Singh was the sole director and officer of each of the Tier 1 Trust Companies (other than 445 Trust Co. and Hazelton Trust Co.).

214. At all material times, Mr. Cassimy was a director and officer of 445 Trust Co. and Hazelton Trust Co. However, Mr. Singh also served as a de facto director and officer of 445 Trust Co. and Hazelton Trust Co.

215. By virtue of the positions held by Mr. Singh and Mr. Cassimy, they respectively owed fiduciary duties and duties of care both at common law and pursuant to statute (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended, and sections 120 and 122 of the *Canada Business Corporations Act*, RSC, 1985, c C-44, as amended) to the applicable Tier 1 Trust Companies.

216. These duties also formed part of the terms of their employment with the Tier 1 Trust Companies.

217. Their duties required that they, among other things, act diligently and in the Tier 1 Trust Companies' best interests while avoiding conflicts of interest and improper self-dealing.

218. By reason of the facts described above and further summarized below, Mr. Singh and Mr. Cassimy each breached these duties and failed to act in a manner that was required of them.

219. Mr. Singh's and Mr. Cassimy's duties required that they each administer and enforce the applicable SMIs on behalf of the applicable Tier 1 Trust Companies against the applicable Development Companies in the best interests of the Tier 1 Trust Companies' investors.

220. Instead of fulfilling their duties, Mr. Singh and Mr. Cassimy, solicited and/or knowingly obtained appraisal reports that did not reflect the as-is value of the applicable real properties at the time of the SMIs but, rather, reflected the hypothetical value of the fully developed Projects (premised on the successful completion of the proposed developments), such that the Tier 1 Trust Companies and their investors were presented a false and/or misleading appraisal value that failed to disclose to the Tier 1 Trust Companies and their investors that the true values of the properties and corresponding security were inadequate to cover the respective SMIs.

221. They each also failed to notify the investors of numerous Events of Default as defined in the applicable Loan Agreements (for instance, under section 6.01 the Loan Agreements, in which the applicable Development Companies represented that they had obtained all material licences, permits and approvals, which were required and which would allow for the development of the applicable property, which they had not, in fact, obtained). By virtue of their respective failures to properly administer and enforce some or all of the SMIs as required, they caused the Tier 1 Trust Companies to suffer significant losses and harm.

222. Furthermore, they each knowingly and/or recklessly permitted the funds advanced by the Tier 1 Trust Companies to the Development Companies to be used for purposes other than for which they were intended pursuant to the applicable Loan Agreements.

223. As described above, among the improper uses of such funds, were payments and transfers directly or indirectly to Mr. Singh or entities in which he had a financial interest, including but not

limited to certain Receivership Companies. Specifically, Mr. Singh and entities related to him (including Singh Co., Tier 1 Advisory and the Brokers) received undue Broker and Referral fees (approximately \$15.848 million), undue consulting and diligence fees (approximately \$1.45 million), dividends (\$1 million) and/or other amounts to which they were not properly entitled.

224. Mr. Singh and Mr. Cassimy also facilitated and/or furthered Mr. Davies' gross mismanagement and other misconduct vis-à-vis the Receivership Companies, including with respect to the making of improper inter-company transfers as between the Receivership Companies and to affiliates and other related entities.

225. Mr. Singh, who simultaneously to his positions with the Tier 1 Trust Companies, was (i) the President, the CEO and a shareholder of Tier 1 Advisory, (ii) a mortgage agent of FCMC, and (iii) a director, officer, shareholder (either directly or indirectly) and/or a financial interest holder in some or all of the Development Companies. As such, he was in a clear conflict of interest position, which was not properly disclosed to the investors. Among other non-disclosures, Mr. Singh did not disclose that he would benefit from the loans to the entities in which he had a financial interest.

226. Mr. Cassimy, who simultaneously to his positions with 445 Trust Co. and Hazelton Trust Co., was (i) the sole director and officer of FCMC and (ii) the principal mortgage agent of FCMC, was also in a clear conflict of interest position, which was not properly disclosed to the investors.

227. Rather than properly administering and enforcing the SMIs as required, Mr. Singh and/or Mr. Cassimy were instead driven to further market SMIs and raise as much money as possible from further investors in order to obtain further Broker and Referral Fees, consulting and diligence

fees and other compensation while simultaneously feeding more funds to the Development Companies in which Mr. Singh had a financial interest.

228. Mr. Cassimy and entities related to him (including FCMC) received undue Broker and Referral fees totaling \$9.8 million and/or other amounts to which they were not properly entitled.

229. The Tier 1 Trust Companies were vulnerable to the unilateral exercise of Mr. Singh's and Mr. Cassimy's discretion and power, particularly given that they were the controlling mind of the applicable Tier 1 Trust Companies.

230. They effectively treated the applicable Tier 1 Trust Companies as their own personal fiefdom, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest.

231. By reason of the facts described above, Mr. Singh and Mr. Cassimy breached their respective statutory, common law and employment duties to the applicable Tier 1 Trust Companies including, but not limited to, their fiduciary duties of good faith, honest performance and loyalty and their duties of care.

232. Mr. Singh, and the companies which he owned, directed and/or managed (including the Brokers), failed to comply with minimum standards of practice, including failing to provide investors with proper disclosure of material risks, and failing to conduct proper suitability analyses to ensure that the SMIs were suitable for the investors to whom they were presented, marketed and sold.

233. Mr. Singh also conducted the business of the Trust Companies in a manner that contravened applicable statutes and regulations. Among other things, the Trust Companies were

required to be licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the “**MBLAA**”) because they performed mortgage administration functions; however, contrary to the MBLAA, the Trust Companies were never licensed as required. Likewise, Mr. Singh himself was never licensed as a mortgage administrator under the MBLAA, yet this is the very function he was required to perform.

234. The Trust Companies were also not licensed to carry on business as trust corporations in Ontario. Consequently, Mr. Singh conducted their business in a manner that contravened the *Loan and Trust Corporations Act*, R.S.O. 1990, c. L.25, as amended.

235. Mr. Singh also caused and/or allowed the Trust Companies and the Development Companies to engage in business with companies that he owned, directed and/or managed (including Tier 1 Advisory and the Brokers), which had widespread, systematic and recurrent failures to abide by the basic consumer protection measures put in place by the MBLAA, which resulted in, among other things, the Superintendent of Financial Services revoking the licenses of the Brokers and Mr. Singh (amongst others), preventing them from dealing or trading in mortgages in Ontario. Likewise, Tier 1 Advisory was ordered by the regulator to cease and desist its operations for improperly soliciting persons or entities to borrow or lend money on the security of real property; providing information about a prospective borrower to a prospective lender; assessing prospective borrowers on behalf of prospective lenders; negotiating or arranging SMIs on behalf of another person and entity; and/or providing fees and remuneration to licensed and unlicensed individuals.

Knowing Assistance in Breach of Fiduciary Duty

236. FCMC knew of Messrs. Singh's and Cassimy's fiduciary duties owed to the applicable Tier 1 Trust Companies.

237. Notwithstanding its knowledge, FCMC willfully induced and/or assisted these Defendants to breach their respective fiduciary duties owed to the applicable Tier 1 Trust Companies, including by, among other things, encouraging and/or causing them to raise funds from investors and not enforce or properly administer the SMIs such that certain Tier 1 Trust Companies and Development Companies could solicit and obtain further funds from investors and FCMC could continue to earn further Broker and Referral fees. FCMC knowingly participated in, and assisted, Messrs. Singh's and Cassimy's conduct in this respect.

238. The Trustee has suffered damages as a direct result of FCMC's inducement and assistance, and Messrs. Singh's and Cassimy's corresponding breach of their fiduciary duties owed to the applicable Tier 1 Trust Companies.

239. As such, FCMC holds any proceeds of the scheme, including all Broker and Referral fees, as a constructive trustee for the Trustee.

240. The Trustee claims the return of those proceeds in whatever form to which they can be traced and claim damages against FCMC to the extent that such proceeds have been dissipated.

241. Besides FCMC, the defendants Messrs. Singh and Cassimy were aware of each other's fiduciary duties owed to the applicable Tier 1 Trust Companies, yet willfully induced and/or assisted one another in breaching their respective fiduciary duties.

242. These defendants are jointly and several liable to the applicable Tier 1 Trust Companies for all losses resulting from such breaches of fiduciary duties and other misconduct.

The Elliot Defendants' Negligence, Breach of Contract, Breach of Fiduciary Duty and Knowing Assistance in Breach of Fiduciary Duty

243. The Elliot Defendants purported to render professional legal services and act as the solicitors for all the Tier 1 Trust Companies except for McMurray Trust Co. (and Scollard/Vaughan Crossings/Silver Seven Trust Co. to the extent of its advancement of monies to Vaughan Crossings and Silver Seven) in connection with the loan transactions pursuant to which approximately \$107 million in SMI monies were loaned by these Tier 1 Trust Companies to these Development Companies for purposes of purchasing real estate and developing the Projects thereon.

244. Although under the applicable Loan Agreements, the "Lender's Solicitors" are defined to mean Ms. Elliot, at or around the time that funds were advanced by the applicable Tier 1 Trust Companies to the applicable Development Companies, Ms. Elliot delegated substantially all of her duties to Harris LLP, the borrower's solicitors. In doing so, she created, facilitated the creation of and/or furthered a conflict of interest situation in which Harris LLP and its lawyers acted for both borrowers and lenders under the applicable Loan Agreements.

245. Ms. Elliot effectively acted as a "straw man" under the applicable Loan Agreements in order to lend these Loan Agreements an air of legitimacy and create the false impression of an arm's length relationship between the borrowers and lenders when, in fact, the applicable Tier 1 Trust Companies and Development Companies were not at arm's length and were being directed by persons with conflicts of interest.

246. The Elliot Defendants owed the applicable Tier 1 Trust Companies duties in contract and at common law, which required them to, among other things, bring reasonable care, skill and knowledge to the performance of their professional services.

247. As immigration law practitioners, the Elliot Defendants were not qualified to act as corporate counsel to the applicable Tier 1 Trust Companies under the Loan Agreements and they failed to meet the requisite degree of care, skill and knowledge required of them in the performance, if any, of their professional services.

248. The Elliot Defendants failed to provide appropriate advice to the applicable Tier 1 Trust Companies and/or take reasonable, appropriate or adequate steps to protect their interests, including by, among other things, making the following errors and omissions, many of which are unrelated and gave rise to discrete losses specific to each of the applicable Tier 1 Trust Companies (other than in respect to the Hazelton Project, for which no losses have been suffered, or the Guildwood Project, the settlement agreement for which treats the Guildwood SMI's indebtedness as having been repaid in full):

- (a) failing to advise the applicable Tier 1 Trust Companies of the perils of having the Harris Defendants act for both them as lenders and the Development Companies as borrowers in connection with the Loan Agreements and the related matters thereunder;
- (b) failing to ensure the applicable Tier 1 Trust Companies received appropriate, independent advice and representation in connection with the Loan Agreements and the related matters thereunder; and

- (c) failing to appropriate diligence the applicable loan transactions to adequately protect the interests of the Tier 1 Trust Companies, including against, among other things, (i) transactions proceeding with what was clearly inadequate security to satisfy the amount of the mortgage loans and (ii) inter-company transfers and other payments being made by the Development Companies in the face of contractual provisions in the Loan Agreements prohibiting such transfers.

249. By virtue of their acts and omissions, the Elliot Defendants breached their duties and obligations owed to the applicable Tier 1 Trust Companies. Had the Elliot Defendants fulfilled their duties and professional obligations as the lawyers for the applicable Tier 1 Trust Companies, provided proper advice and taken steps to address the misconduct by management of the Tier 1 Trust Companies and the Harris Defendants, the damages claimed would not have been suffered, or they would not have suffered to the same degree or extent.

250. The Elliot Defendants also knowingly assisted the Harris Defendants' breach of their fiduciary and other legal duties owed to the Development Companies by delegating certain responsibilities to Harris LLP and allowing the Harris Defendants to act for both the Development Companies, as borrowers, and the Tier 1 Trust Companies, as lenders, on virtually all aspects of the loan transactions and the ongoing relations as between these companies. As a result, the Tier 1 Trust Companies, the Development Companies and their creditors, including public investors, suffered significant damages for which the Elliot Defendants are jointly and severally responsible.

Improper Legal Fees Paid to the Elliot Defendants

251. The Development Companies paid approximately \$410,000 in fees to the Elliot Defendants for legal services purportedly rendered by them to the applicable Tier 1 Trust Companies in

connection with the Loan Agreements, of which approximately \$354,000 was paid by the Receivership Companies to the Elliot Defendants. However, the Elliot Defendants delegated all, or substantially all, of their responsibilities to Harris LLP and performed virtually no services, or no services of value, for the Tier 1 Trust Companies and the Development Companies. These are fees to which the Elliot Defendants are not properly entitled.

Losses and Harm

252. The conduct of the Defendants as described above has caused, and is continuing to cause, reasonably foreseeable and proximate damage to the Tier 1 Trust Companies, the Receivership Companies and their respective creditors, including financial losses and loss of profitable business opportunities, the full extent of which has not yet fully materialized and is not yet fully known to the plaintiffs at this time.

253. Specifically:

(a) Scollard/Vaughan Crossings/Silver Seven Trust Co.:

- (i) held an SMI in the principal amount of \$13.6 million over Scollard's real property, which was registered on title behind encumbrances of approximately \$2.5 million. The Receiver conducted a thorough marketing and sale process for Scollard's real property, resulting in a Court-approved sale for approximately \$11.1 million;
- (ii) held an SMI in the principal amount of approximately \$14.8 million over Vaughan Crossings' real property, which was registered on title behind encumbrances in excess of \$11.5 million. Vaughan Crossings' real property

was worth no more than \$15 million. To preserve the SMI investors' interest in Vaughan Crossings' real property in some capacity, the Court approved a \$15 million sale transaction pursuant to which, in substance, the SMI was partially converted into an equity position in the purchaser (which purchaser had to borrow \$15 million against the real property to fund the transaction), with the balance of the SMI retained by Scollard/Vaughan Crossings/Silver Seven Trust Co. on an entirely unsecured basis (for which balance of the SMI Vaughan Crossings has no assets to satisfy). The Court ordered that the Trustee has no further interests, duties or obligations in respect of the purchaser of Vaughan Crossings' real property; and

- (iii) held an SMI in the principal amount of approximately \$6 million over Silver Seven's real property, which was registered on title behind encumbrances in excess of \$15 million. The Court approved a settlement transaction pursuant to which Silver Seven paid approximately \$2.9 million to the Trustee in exchange for certain conditional releases and an assignment.
- (b) Kitchener Trust Co. holds an SMI in the principal amount of approximately \$10.6 million over Kitchener's real property, which is registered on title behind encumbrances of approximately \$1.5 million. No transaction has resulted to date from the Receiver's thorough marketing and sale process for Kitchener's real property, which real property was purchased by Kitchener in 2014 for \$3.95 million.
- (c) Oakville/Burlington/Guildwood/Legacy Lane Trust Co.:

- (i) held an SMI in the principal amount of approximately \$9 million over Oakville's real property, which was registered on title behind encumbrances in excess of \$1 million. The Receiver conducted a thorough marketing and sale process for Oakville's real property, resulting in a Court-approved sale for approximately \$4.2 million;
 - (ii) held an SMI in the principal amount of approximately \$8.3 million over Burlington's real property, which is registered on title behind encumbrances of approximately \$2 million. The Receiver conducted a thorough marketing and sale process for Burlington's real property, resulting in a Court-approved sale for approximately \$3.4 million;
 - (iii) held an SMI in the principal amount of approximately \$6 million over Guildwood's real property, which was registered on title behind encumbrances in excess of \$1 million. The Court approved a settlement transaction pursuant to which Guildwood paid approximately \$4.1 million to the Trustee in exchange for certain releases; and
 - (iv) held an SMI in the principal amount of approximately \$3.5 million over Legacy Lane's real property. The Receiver conducted a thorough marketing and sale process for Legacy Lane's real property, resulting in a Court-approved sale for approximately \$650,000.
- (d) 525 Trust Co. held an SMI in the principal amount of approximately \$6.4 million over 525 Princess' real property. The Receiver conducted a thorough marketing

and sale process for 525 Princess' real property, resulting in a Court-approved sale for approximately \$2.1 million.

- (e) 555 Trust Co. held an SMI in the principal amount of approximately \$8 million over 555 Princess' real property. The Receiver conducted a thorough marketing and sale process for 555 Princess' real property, resulting in a Court-approved sale for approximately \$2.1 million.
- (f) 445 Trust Co. held an SMI in the principal amount of approximately \$8.5 million over certain of 445 Princess' real property, which was registered on title behind encumbrances of approximately \$7 million. The Receiver conducted a thorough marketing and sale process for 445 Princess' applicable real property, resulting in a Court-approved sale for approximately \$7.55 million.
- (g) McMurray Trust Co. held an SMI in the principal amount of approximately \$3.5 million over McMurray's real property, which was registered on title behind encumbrances in excess of \$2 million. McMurray's real property was sold by private sale by a prior-ranking mortgagee for approximately \$2.8 million.
- (h) Bronson Trust Co. held an SMI in the principal amount of approximately \$10.9 million over Bronson's real property, which was registered on title behind encumbrances in excess of \$5.5 million. Bronson's real property was sold by private sale by a prior-ranking mortgagee for approximately \$7.2 million.
- (i) Ross Park Trust Co. holds an SMI in the principal amount of approximately \$11.6 million over Ross Park's real property, which is registered on title behind a

conditional \$4 million mortgage and certain other encumbrances. The Court has approved a sale transaction for \$7.25 million (of which only approximately \$2.25 million in cash is to be paid on closing, with the balance satisfied by a new mortgage) that is to be shared between the two mortgages, which sale transaction has closed.

- (j) Keele Medical Trust Co. holds an SMI in the principal amount of approximately \$4.0 million over Keele Medical's real property, which is registered on title behind encumbrances of approximately \$6 million and certain additional liens. Keele Medical purchased its real property in 2012 and 2014 for the aggregate of approximately \$10.2 million.

- (k) Hazelton Trust Co. held an SMI in the principal amount of approximately \$6.3 million over Hazelton's real property, which was registered on title behind encumbrances in excess of \$2 million. The Court approved a settlement transaction pursuant to which Hazelton paid approximately \$6.6 million to the Trustee in exchange for certain releases.

254. The Defendants' conduct has exposed most of the Development Companies, including all of the Receivership Companies, to significant liabilities in the form of claims for damages and losses from their creditors, including, most notably, the applicable Tier 1 Trust Companies on behalf of the innocent investors whose funds were misappropriated.

255. At the commencement of the initial receivership proceeding for Scollard in February 2017, the secured debt obligations of the Receivership Companies alone totalled approximately \$120 million, including approximately \$94 million owing to the Trust Companies prior to interest and

costs (being monies raised by the Trust Companies from investors), and the balance owing to other lenders, primarily mortgagees.

256. Payments to date to secured lenders of the Receivership Companies total approximately \$33 million, including approximately \$11 million to the Trust Companies (being only approximately 12% of the total funds advanced by the Trust Companies to the Receivership Companies).

257. The payments to the Trust Companies have been used to cover the professional costs in those proceedings and to repay a small portion of the investor debt on certain projects, which amounts will be determined through the Receivership proceedings.

258. As at September 26, 2018, the only realizable assets of the Receivership Companies to satisfy the remaining secured debt obligations (and all the other debt obligations and liabilities of the Receivership Companies) are the unsold real properties for which the Receivership Companies collectively paid approximately \$3.95 million, or the undistributed proceeds from the sales of the real properties.

259. Some or all of the Defendants not only stripped the Receivership Companies of millions of dollars and preferred their own interests over those of the Receivership Companies and their creditors (including the investing public), but they also deprived the Receivership Companies of the opportunity to pursue legitimate and profitable real estate development and other revenue-generating business opportunities, causing considerable additional losses and damages to the Receivership Companies.

260. The plaintiffs have incurred, and are continuing to incur, costs and out-of-pocket expenses relating to investigations into the Defendants' acts and omissions, which special damages shall be particularized prior to trial.

261. Full particulars of the Tier 1 Trust Companies' and the Receivership Companies' damages will be provided prior to trial.

262. As a result of a court-approved settlement reached between the Trustee and the Receiver, on the one hand, and the Singh Former Defendants, on the other hand, as well as a court-approved settlement between the Trustee and the Receiver, on the one hand, and Mr. Grace, on the other hand, the Trustee and the Receiver seek no damages or other relief attributable to the Singh Former Defendants or Mr. Grace. The Trustee and the Receiver seek damages and other relief solely as against the remaining Defendants on a several basis from the Singh Former Defendants and Mr. Grace (though on a joint and several basis as between all remaining Defendants, excluding the Singh Former Defendants and Mr. Grace).

Punitive Damages

~~262.~~ 263. The Davies Defendants' and Singh Former Defendants' actions constitute a wanton, callous, high-handed and outrageous disregard for the Tier 1 Trust Companies' and the Development Companies' rights and interests, and for the rights and interests of their creditors, particularly the investing public whose funds were misappropriated. These Defendants deliberately and willfully undertook the fraudulent and unlawful activities described herein in an underhanded manner, knowing that their conduct was wrong and would cause harm to the Tier 1 Trust Companies, the Development Companies and their creditors. The Thompson, Stewart, Harris, Elliot and Cane Defendants, as well as MCIL, TSI and TSSI were financially incentivized

to allow this fraud to proceed in breach of the fiduciary, contractual, common law, professional, equitable and/or other duties they respectively owed. The conduct of these Defendants ought to therefore attract the disapproval of this Honourable Court and result in a material award of punitive and/or exemplary damages as well as costs on an elevated scale.

Mareva Injunction

~~263.— Following their improper conduct as described above, and after the commencement of the initial receivership proceeding for Scollard in February 2017, Mr. and Ms. Davies embarked on a course of conduct designed to liquidate their assets and put them beyond the reach of the Receivership Companies and their creditors. Among other things, on April 25, 2017, Mr. Davies sold his family cottage located in Gravenhurst, Ontario for approximately \$3 million.~~

~~264.— Mr. and Ms. Davies also attempted, and continue to attempt, to sell their personal residence located in King City, Ontario, which they jointly own in their capacities as trustees of the Davies Family Trust, as well as their personal belongings, such as art, jewelry and other assets.~~

~~265.— Given the duplicitous and deceitful manner in which Mr. Davies, Ms. Davies and Aeolian have acted, together with all the surrounding circumstances, including Mr. Davies' sale of the family cottage and Mr. and Ms. Davies' attempted sale of their personal residence as well as their sale and transferring of other personal assets, there is a real and demonstrated risk that Mr. and Ms. Davies as well as Aeolian, the Davies Family Trust and the Davies Arizona Trust (all three of which are controlled by Mr. Davies and/or Ms. Davies) will dissipate assets and/or permanently abscond with the Receivership Companies' funds to avoid enforcement of any judgment the plaintiffs may ultimately obtain. In all the circumstances, interim, interlocutory and permanent~~

~~injunctive relief, *inter alia*, enjoining these Defendants from accessing, liquidating, dissipating, alienating or otherwise dealing with their assets is necessary, just and appropriate.~~

~~266. The conduct of the Davies Defendants as described above has also caused, and is continuing to cause, irreparable harm to the Receivership Companies and their creditors. In the absence of relief from this Honourable Court, the Davies Defendants will be able to liquidate and alienate assets, and/or continue to liquidate and alienate assets, thereby causing the Receivership Companies and their creditors further harm which would not be compensable in damages alone.~~

Legislation

~~267. 263. 264.~~ The plaintiffs plead and rely on all of the provisions of the following statutes, among others, all as amended:

- (a) *Assignments and Preferences Act*, RSO 1990, c A 33;
- (b) *Bankruptcy and Insolvency Act*, RSC 1985, c B-3;
- (c) *Business Corporations Act*, RSO 1990, c B 16;
- (d) *Canada Business Corporations Act*, RSC 1985, c C-44;
- (e) *Fraudulent Conveyances Act*, RSO 1990, Chapter F 29;
- (f) *Loan and Trust Corporations Act*, RSO 1990, c L 25; and
- (g) *Mortgage Brokerages, Lenders and Administrators Act, 2006*, SO 2006, c 29.

Place of Trial

~~268.~~ ~~264.~~ 265. The plaintiffs propose that the trial of this action take place in the City of Toronto in the Province of Ontario.

October 3, 2018
May 29, 2019
December 17, 2019
August 11, 2020

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AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC# 31871V)
Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Ian Aversa (LSUC# 55449N)
Phone: (416) 865-3082
Email: iaversa@airdberlis.com

Steve Tenai (LSUC# 33726R)
Phone: (416) 865-4620
Email: stenai@airdberlis.com

Facsimile: (416) 863-1515

Lawyers for the Plaintiff, Grant Thornton Limited, in
its capacity as court-appointed Trustee

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

Sean Zweig (LSUC# 57307I)
Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSUC# 55457P)
Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSUC# 64325B)
Email: blinickj@bennettjones.com

Facsimile: (416) 863-1716

Lawyers for the Plaintiff, KSV Kofman Inc., in its
capacity as court-appointed Receiver

**GRANT THORNTON LIMITED, in its capacity as Trustee of
Textbook Student Suites (525 Princess Street) Trustee
Corporation et al.**

v.

JOHN DAVIES et al.

Plaintiffs

Defendants

Court File No: CV-18-606314-00CL

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

PROCEEDING COMMENCED AT TORONTO

THIRD AMENDED STATEMENT OF CLAIM

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

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Sean Zweig (LSUC# 57307I)
Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Steven L. Graff (LSUC# 31871V)
Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Jonathan Bell (LSUC# 55457P)
Phone: (416) 777-6511
Email: bellj@bennettjones.com

Ian Aversa (LSUC# 55449N)
Phone: (416) 865-3082
Email: iaversa@airdberlis.com

Joseph Blinick (LSUC# 64325B)
Phone: (416) 777-4828
Email: blinickj@bennettjones.com

Steve Tenai (LSUC# 33726R)
Phone: (416) 865-4620
Email: stenai@airdberlis.com

Fax: (416) 863-1716

Fax: (416) 863-1515

Lawyers for the Plaintiff, KSV
Kofman Inc., in its capacity as court-
appointed Receiver

Lawyers for the Plaintiff, Grant Thornton
Limited, in its capacity as court-
appointed Trustee

APPENDIX 5

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

B E T W E E N:

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND TEXTBOOK ROSS PARK INC.

Plaintiffs

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, JAMES GRACE, ~~BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC.,~~ JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE

Defendants

DISCOVERY PLAN

1. The Plaintiffs and Defendants (collectively, the “Parties” and, individually, a “Party”) agree to this Discovery Plan, for the purpose of compliance with Rule 29.1 of the *Rules of Civil Procedure*.

Intended Scope of Documentary Discovery

2. The Parties have an obligation to take reasonable steps to preserve all potentially relevant documentation.

3. Without detracting from the obligation on the Parties to preserve, disclose and produce every document relevant to any matter in issue in the action that is or has been in its possession, control or power under Rule 30.02(1) of the *Rules of Civil Procedure*, the Parties agree that the following categories of documents in their possession, power or control will be discoverable in this action:

- (a) Grant Thornton Limited in its capacity as Court-Appointed Trustee of the Tier 1 Trust Companies (as defined in the Statement of Claim):
 - (i) all loan documents, including the loan agreements between the Tier 1 Trust Companies and the Davies Developers, mortgage participation agreements, and related material;
 - (ii) all trust ledgers for the interest reserve accounts for the various properties and any other trust ledgers maintained by the Trust Companies;
 - (iii) all trust ledgers for the Davies Developers;
 - (iv) all directions of funds for each tranche showing all of the fees and deductions that were paid from the SMI raises (e.g., commissions, H+H invoices, interest reserve, Elliott Law Firm invoices, dividend payments, etc.);
 - (v) all redirections, where First Commonwealth redirected some of their fees to Tier 1 Transaction Advisory Services Inc.;
 - (vi) all development property related information and documents, including but not limited to SMI marketing materials, financial statements, materials related to due diligence conducted prior to the Trustee’s appointment, documents from Olympia Trust, plans, studies, drawings, and appraisals, including:
 - a. all appraisals, and all documents, correspondence, and records with respect to such appraisals, which relate to the allegation that certain appraisals contained unrealistic/unattainable development plans,

and lapsed development timelines, pleaded, inter alia, in paragraphs 85-86 of the Amended Amended Statement of Claim;

- b. all documents, correspondence, and records with respect to the appraisals, which relate to the allegation that Mr. Thompson was involved in the preparation and delivery of such appraisals, pleaded throughout the Amended Amended Statement of Claim;
 - c. all documents, correspondence, and records relating to the allegation that the risk and proposed security with respect to the development projects was not disclosed to the SMI investors, pleaded, inter alia, in paragraph 88 of the Amended Amended Statement of Claim;
 - d. all documents, correspondence, and records relating to disclosure to the SMI investors regarding the fact that SMI financing would be subordinated to construction financing, pleaded, inter alia, in paragraphs 73, 77, and 134 of the Davies Statement of Defence; and
 - e. all documents, correspondence, and records relating to the allegation that the development phase of the development projects was not disclosed to the SMI investors, pleaded, inter alia, in paragraph 108 of the Amended Amended Statement of Claim, and put at issue throughout the Davies Statement of Defence;”
- (vii) all agendas, minutes, resolutions, notes, memoranda, recordings, records, calendar invites, calendar appointments, correspondence and other documents relating to any shareholders meetings or other shareholder activities with respect to any of the Trust Companies;
 - (viii) all agendas, minutes, resolutions, notes, memoranda, recordings, records, calendar invites, calendar appointments and correspondence relating to any board meetings or other board activities with respect to any of the Trust Companies;
 - (ix) all correspondence and documents regarding the due diligence conducted by the Trustee in relation to the development projects at issue in the litigation, namely, the Scollard Project and the Rideau Project;
 - (x) all consents and approvals provided in relation to the development projects, including, without limitation, with respect to management fees, dividends, intercompany loans or transfers, loans or transfer to affiliates or related entities, and loans or transfers to unrelated entities, including any consents and approvals in relation to the development projects which are extant but allegedly deficient, contrary to what is pleaded throughout the Davies Statement of Defence;
 - (xi) all documents provided by John Davies, Walter Thompson or anyone else affiliated with the Receivership Companies, to the Trustee in fall 2016 in

relation to the development projects, and the alleged misappropriation of funds by the Davies Defendants;

- (xii) all documents and correspondence, including internal correspondence and correspondence with FSCO and/or any of the parties to this litigation, regarding the proposal by Mr. Davies to appoint an alternate, independent trustee in place of Mr. Singh;
- (xiii) all documents and correspondence, including all correspondence with Firm Capital and SMI investors, relating to the allegations regarding the mortgage held by Firm Capital in relation to the Scollard development project pleaded in paragraphs 129 and 134(d) of the Davies Statement of Defence;
- (xiv) all documents and correspondence, including internal correspondence and correspondence with FSCO and/or any of the parties to this litigation, relating to the allegations regarding the construction financing commitment for the Scollard development project pleaded in paragraphs 129-131 of the Davies Statement of Defence;
- (xv) all documents, correspondence, and records as between KingSett Capital and any of the parties to this litigation;
- (xvi) all documents and correspondence, including internal correspondence and correspondence with FSCO and/or any of the parties to this litigation, relating to the allegations regarding FSCO's knowledge of Mr. Singh's and Tier 1's activities, and the decision to take control of the receivership projects, pleaded in paragraphs 123-128 of the Davies Statement of Defence;
- (xvii) all documents, including accounting records, relating to the administration of the interest reserve pleaded at paragraph 134(e) of the Davies Statement of Defence;
- (xviii) all documents and accounting records relating to the alleged misappropriation of funds by the Davies Defendants, including:
 - a. with respect to management fees:
 - i. all documents and accounting records relating to the allegation that the payment of management fees was done in breach of the Loan Agreements, or required corresponding management agreements, pleaded, inter alia, in paragraph 108 of the Amended Amended Statement of Claim;
 - ii. all documents and accounting records relating to the allegation that Mr. Thompson "allowed" Mr. Davies to pay management fees that were unreasonable or in breach of the Loan Agreements,

pleaded, inter alia, in paragraph 108 of the Amended Amended Statement of Claim;

iii. all documents and accounting records relating to the allegation that management fees were paid at an accelerated rate and/or in unreasonable amounts contrary to industry norms, pleaded, inter alia, in paragraphs 97, 108, and 110 of the Amended Amended Statement of Claim;

b. with respect to dividends:

i. all documents and accounting records relating to the allegation that the payment of dividends was done in breach of the Loan Agreements, pleaded, inter alia, in paragraph 117 of the Amended Amended Statement of Claim;

ii. all documents and accounting records relating to the allegation that Mr. Thompson “allowed” Messrs. Davies, Singh, and/or Harris to pay dividends in breach of the Loan Agreements, pleaded, inter alia, in paragraphs 116-117, of the Amended Amended Statement of Claim;

c. with respect to inter-company loans:

i. all documents and accounting records relating to the allegation that intercompany loans to and/or from TSI, TSSI, and any of the Textbook Receivership Companies were made in breach of the Textbook Receivership Companies’ Loan Agreements, pleaded, inter alia, in paragraph 111 of the Amended Amended Statement of Claim;

ii. all documents and accounting records relating to the allegation that intercompany loans to and/or from TSI, TSSI, and any of the Receivership Companies were made contrary to the Textbook Receivership Companies’ “other legal obligations” outside of the Loan Agreements, pleaded, inter alia, in paragraph 111 of the Amended Amended Statement of Claim;

iii. all documents and accounting records relating to the allegation that Mr. Thompson “allowed” Mr. Davies to make intercompany loans to and/or from any of the Textbook Receivership Companies in breach of the Loan Agreements, pleaded, inter alia, in paragraph 111 of the Amended Amended Statement of Claim;

iv. all documents and accounting records relating to the allegation that intercompany loans were made between the Receivership Companies and affiliates, in breach of the Textbook Receivership

Companies' Loan Agreements, pleaded, inter alia, in paragraphs 121 and 124 of the Amended Amended Statement of Claim;

v. all documents and accounting records relating to the allegation that Mr. Thompson "allowed" Mr. Davies to make intercompany loans from the Textbook Receivership Companies, in breach of the Loan Agreements pleaded, inter alia, in paragraphs 121-122 of the Amended Amended Statement of Claim;

vi. all documents and accounting records relating to the allegation that intercompany loans were made by the Textbook Receivership Companies when one of these companies was "facing a liquidity crisis", pleaded, inter alia, in paragraph 122 of the Amended Amended Statement of Claim;

vii. all documents and accounting records relating to the allegation that intercompany loans were made by the Textbook Receivership Companies to Lafontaine Terrace Management Corporation and Memory Care Investments (Victoria) Ltd, in breach of the Loan Agreements, pleaded, inter alia, in paragraphs 123 and 124 of the Amended Amended Statement of Claim;

viii. all documents and accounting records relating to the allegation that Mr. Thompson "allowed" Mr. Davies to make intercompany loans from the Textbook Receivership Companies to Lafontaine Terrace Management Corporation and Memory Care Investments (Victoria) Ltd., pleaded, inter alia, in paragraph 123 of the Amended Amended Statement of Claim;

ix. all documents and accounting records relating to the allegation that the inter-company loans (without limitation) were inconsistent with industry practice, pleaded, inter alia, in paragraphs 121-124, and put at issue in paragraphs 94-100, and 111 of the Davies Statement of Defence; and

d. with respect to non-SMI funds:

i. all documents and accounting records relating to the allegation that the use of non-SMI funds was unlawful, which funds are not distinguished throughout the Amended Amended Statement of Claim, but which distinction is put at issue in paragraphs 9-11, 79, 91, and 95 of the Davies Statement of Defence;"

(xix) all documents and accounting records relating to the allegation that the Textbook Receivership Companies were insolvent, pleaded, inter alia, in paragraphs 97 and 119 of the Amended Amended Statement of Claim;

- (xx) all documents, correspondence, and records relating to the allegation that the Textbook development projects achieved very limited progress and were not significantly advanced in the pre-development phase, pleaded, inter alia, in paragraph 108 of the Amended Amended Statement of Claim, and put at issue throughout the Davies Statement of Defence;
 - (xxi) all documents, correspondence, and records relating to the allegation that Mr. Thompson was involved in the marketing or obtaining of SMI financing, as alleged throughout the Amended Amended Statement of Claim;
 - (xxii) all correspondence, and records relating to the allegation that Mr. Singh, Tier 1, and/or Harris + Harris LLP were paid at above-market rates, had an operation roles in the Textbook management or Textbook Receivership Companies, or were compensated with an undue equity interest, as alleged throughout the Amended Amended Statement of Claim, and put at issue, inter alia, in paragraph 44 of the Davies Statement of Defence;
 - (xxiii) all documents and accounting records relating to the sale of the development properties by the Receiver;
 - (xxiv) all documents and accounting records relating to the disbursement of proceeds from the sale of development properties by the Receiver;
 - (xxv) all documents and accounting records relating to the seizure of trust funds from Harris + Harris LLP and the disbursement of such funds by the Receiver;
 - (xxvi) all documents produced by Bhaktraj Singh (aka Raj Singh), RS Consulting Group Inc. and Tier 1 Transaction Advisory Services Inc.; and
 - (xxvii) all of the Trustee's Reports to Court together with all exhibits thereto, and all underlying accounting information.
- (b) KSV Kofman Inc. in its capacity as Court-Appointed Receiver of the Receivership Companies (as defined in the Statement of Claim):
- (i) all offers, agreements of purchase and sale, including amendments thereto, letter agreements, assignment agreements, statements of adjustment and other material relating to the Receivership Companies' purchase of real properties and other properties considered for development by the Receivership Companies, including:
 - a. all documents and accounting records relating to the alleged breach of the Textbook Receivership Companies' Loan Agreements arising from the transfer of funds to Generx (Byward Hall) Inc. to finance the purchase of the Ottawa Property, pleaded, inter alia, in paragraphs 125-131 of the Amended Amended Statement of Claim;

- b. all documents and accounting records relating to the allegation that Mr. Thompson “allowed” Mr. Davies to transfer funds from the Textbook management or Textbook Receivership Companies to Generx (Byward Hall) Inc. to finance the purchase of the Ottawa Property, pleaded, inter alia, in paragraphs 125, 127, 129 and 130 of the Amended Amended Statement of Claim; and
 - c. all documents and accounting records relating to the allegation that Mr. Thompson “caused” the transfer of funds to Generx (Byward Hall) Inc. to finance the purchase of the Ottawa Property, pleaded, inter alia, in paragraph 130 of the Amended Amended Statement of Claim;
- (ii) all plans, drawings, renderings, market research, surveys, reports and studies relating to the Receivership Companies' real properties and other properties considered for development by the Receivership Companies;
 - (iii) all project pro formas and budget estimates, including and all documents, pro formas, budget estimates, and records relating to the allegation that certain pro formas contained false, inaccurate, and/or materially misleading information, pleaded, inter alia, in paragraph 84 of the Amended Amended Statement of Claim;
 - (iv) all documents and correspondence relating to the allegations regarding the payments contrary to the information in the Textbook pro formas, pleaded, inter alia, in paragraphs 83-84 of the Amended Amended Statement of Claim;
 - (v) all title searches and parcel registers;
 - (vi) all property appraisals and reliance letters, including:
 - a. all appraisals, and all documents, correspondence, and records with respect to such appraisals, which relate to the allegation that certain Textbook appraisals contained unrealistic/unattainable development plans, and lapsed development timelines, pleaded, inter alia, in paragraphs 85-86 of the Amended Amended Statement of Claim; and
 - b. all documents, correspondence, and records with respect to the Textbook Receivership Company appraisals, which relate to the allegation that Mr. Thompson was involved in the preparation and delivery of such appraisals, pleaded throughout the Amended Amended Statement of Claim;
 - (vii) all site photographs, videos and maps;
 - (viii) all applications, permits and approvals;

- (ix) all sales materials, including project summaries and sales brochures;
- (x) all material contracts with respect to the Receivership Companies' properties, including development agreements, property management agreements, memoranda of understanding, etc.;
- (xi) all general ledgers and bank statements;
- (xii) all tax bills and certificates;
- (xiii) Tarion documents, including guarantees and indemnities;
- (xiv) all loan documents, including the loan agreements between the Trustee Companies and the Receivership Companies;
- (xv) all due diligence materials, including data and research;
- (xvi) all email correspondence and documentation sent or received by John Davies, Walter Thompson, or any other employee of the Receivership Companies;
- (xvii) all documents and accounting records relating to the alleged misappropriation of funds by the Davies Defendants, including:
 - a. with respect to management fees:
 - i. all documents and accounting records relating to the allegation that the payment of management fees was done in breach of the Loan Agreements, or required corresponding management agreements, pleaded, inter alia, in paragraph 108 of the Amended Amended Statement of Claim;
 - ii. all documents and accounting records relating to the allegation that Mr. Thompson "allowed" Mr. Davies to pay management fees that were unreasonable or in breach of the Loan Agreements, pleaded, inter alia, in paragraph 108 of the Amended Amended Statement of Claim;
 - iii. all documents and accounting records relating to the allegation that management fees were paid at an accelerated rate and/or in unreasonable amounts contrary to industry norms, pleaded, inter alia, in paragraphs 97, 108, and 110 of the Amended Amended Statement of Claim;
 - b. with respect to dividends:
 - i. all documents and accounting records relating to the allegation that the payment of dividends was done in breach of the Loan

Agreements, pleaded, inter alia, in paragraph 117 of the Amended Amended Statement of Claim;

ii. all documents and accounting records relating to the allegation that Mr. Thompson “allowed” Messrs. Davies, Singh, and/or Harris to pay dividends in breach of the Loan Agreements, pleaded, inter alia, in paragraphs 116-117, of the Amended Amended Statement of Claim;

c. with respect to inter-company loans:

i. all documents and accounting records relating to the allegation that intercompany loans to and/or from TSI, TSSI, and any of the Textbook Receivership Companies were made in breach of the Textbook Receivership Companies’ Loan Agreements, pleaded, inter alia, in paragraph 111 of the Amended Amended Statement of Claim;

ii. all documents and accounting records relating to the allegation that intercompany loans to and/or from TSI, TSSI, and any of the Receivership Companies were made contrary to the Textbook Receivership Companies’ “other legal obligations” outside of the Loan Agreements, pleaded, inter alia, in paragraph 111 of the Amended Amended Statement of Claim;

iii. all documents and accounting records relating to the allegation that Mr. Thompson “allowed” Mr. Davies to make intercompany loans to and/or from any of the Textbook Receivership Companies in breach of the Loan Agreements, pleaded, inter alia, in paragraph 111 of the Amended Amended Statement of Claim;

iv. all documents and accounting records relating to the allegation that intercompany loans were made between the Receivership Companies and affiliates, in breach of the Textbook Receivership Companies’ Loan Agreements, pleaded, inter alia, in paragraphs 121 and 124 of the Amended Amended Statement of Claim;

v. all documents and accounting records relating to the allegation that Mr. Thompson “allowed” Mr. Davies to make intercompany loans from the Textbook Receivership Companies, in breach of the Loan Agreements pleaded, inter alia, in paragraphs 121-122 of the Amended Amended Statement of Claim;

vi. all documents and accounting records relating to the allegation that intercompany loans were made by the Textbook Receivership Companies when one of these companies was “facing a liquidity crisis”, pleaded, inter alia, in paragraph 122 of the Amended Amended Statement of Claim;

vii. all documents and accounting records relating to the allegation that intercompany loans were made by the Textbook Receivership Companies to Lafontaine Terrace Management Corporation and Memory Care Investments (Victoria) Ltd, in breach of the Loan Agreements, pleaded, inter alia, in paragraphs 123 and 124 of the Amended Amended Statement of Claim;

viii. all documents and accounting records relating to the allegation that Mr. Thompson “allowed” Mr. Davies to make intercompany loans from the Textbook Receivership Companies to Lafontaine Terrace Management Corporation and Memory Care Investments (Victoria) Ltd., pleaded, inter alia, in paragraph 123 of the Amended Amended Statement of Claim;

ix. all documents and accounting records relating to the allegation that the inter-company loans (without limitation) were inconsistent with industry practice, pleaded, inter alia, in paragraphs 121-124, and put at issue in paragraphs 94-100, and 111 of the Davies Statement of Defence; and

d. With respect to non-SMI funds:

i. all documents and accounting records relating to the allegation that the use of non-SMI funds was unlawful, which funds are not distinguished throughout the Amended Amended Statement of Claim, but which distinction is put at issue in paragraphs 9-11, 79, 91, and 95 of the Davies Statement of Defence;

(xviii) all documents and accounting records relating to the allegation that the Textbook Receivership Companies were insolvent, pleaded, inter alia, in paragraphs 97 and 119 of the Amended Amended Statement of Claim;

(xix) all documents, correspondence, and records relating to the allegation that the Textbook development projects achieved very limited progress and were not significantly advanced in the pre-development phase, pleaded, inter alia, in paragraph 108 of the Amended Amended Statement of Claim, and put at issue throughout the Davies Statement of Defence;

(xx) all documents, correspondence, and records relating to the allegation that Mr. Thompson was involved in the marketing or obtaining of SMI financing, as alleged throughout the Amended Amended Statement of Claim;

(xxi) all correspondence, and records relating to the allegation that Mr. Singh, Tier 1, and/or Harris + Harris LLP were paid above-market rates, had an operation roles in the Textbook management or Textbook Receivership Companies, or were compensated with an undue equity interest, as alleged

throughout the Amended Amended Statement of Claim, and put at issue, inter alia, in paragraph 44 of the Davies Statement of Defence;

- (xxii) all documents and accounting records relating to the sale of the development properties by the Receiver;
 - (xxiii) all documents and accounting records relating to the disbursement of proceeds from the sale of development properties by the Receiver;
 - (xxiv) all documents produced by Bhaktraj Singh (aka Raj Singh), RS Consulting Group Inc. and Tier 1 Transaction Advisory Services Inc.;
 - (xxv) all of the Receiver's Reports to Court together with all exhibits thereto; and
 - (xxvi) all documents, correspondence, and records as between KingSett Capital and any of the parties to this litigation.
- (c) John Davies, Aeolian Investments Ltd., Judith Davies, the Davies Family Trust and the Davies Arizona Trust:
- (i) all employment agreements and other contracts or agreements of any kind between John Davies, Judith Davies, Sarah Davies, Andrew Davies, Jessica Davies and/or Aeolian Investments Ltd., on the one hand, and any of the Receivership Companies and/or any of their respective parent, subsidiary, affiliated and related companies or entities, on the other hand;
 - (ii) all shareholder agreements, subscription agreements, and other contracts or agreements of any kind directly or indirectly involving John Davies, Judith Davies, and/or Aeolian Investments Ltd., and any persons and entities to which they are related, which they control or in which they have an interest, in any way relating to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities;
 - (iii) all communications between John Davies, Judith Davies, and/or any defendants to the litigation and/or other persons or entities relating in any way to any equity or other financial interests in any of the Receivership Companies, any of the Trustee Corporations, and any of their respective parent, subsidiary, affiliated and related persons, companies or entities;
 - (iv) all share certificates, shareholder resolutions, letters, emails, memoranda, reports, and other communications and documents relating to John Davies', Judith Davies', Aeolian Investments Ltd.'s, the Trusts', and any persons and entities to which they are related, which they control or in which they have an interest, direct and indirect financial interests (including equity interests) in any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities;

- (v) all agendas, minutes, resolutions, notes, memoranda, recordings, records, calendar invites, calendar appointments, correspondence and other documents relating to any shareholders meetings or other shareholder activities with respect to any of the Receivership Companies and/or any of their respective parent, subsidiary, affiliated and related companies or entities;
- (vi) all agendas, minutes, resolutions, notes, memoranda, recordings, records, calendar invites, calendar appointments and correspondence relating to any board meetings or other board activities with respect to any of the Receivership Companies and/or any of their respective parent, subsidiary, affiliated and related persons, companies or entities;
- (vii) all letters, emails, memoranda, reports, and other communications and documents relating to the performance of Mr. Davies' duties as a director and/or officer of any of the Receivership Companies and/or any of their respective parent, subsidiary, affiliated and related persons, companies or entities;
- (viii) all letters, emails, memoranda, reports, and other communications and documents relating to the performance of Sarah Davies' duties as a marketing director of any of the Receivership Companies;
- (ix) all letters, emails, memoranda, reports, and other communications and documents relating to the performance of Andrew Davies' provision of advertising consulting or other work for or on behalf of any of the Receivership Companies;
- (x) all letters, emails, memoranda, reports, and other communications and documents relating to the performance of Jessica Davies' duties as a part-time receptionist for the McMurray sales centre;
- (xi) all communications, records (including, without limitation, accounting and other financial records), memoranda, notes and other documents in any way relating to appraisals, the raising of capital, the identification of development projects (including with respect to the alleged "exhaustive and detailed due diligence process" used to identify the development projects at issue in the litigation or referenced in the Statement of Defence), land acquisition, the progress of the development projects, the use of syndicated mortgage funds, the payment of broker fees, the payment of management fees, the payment to consultants and other third parties, the payment of dividends, other distributions, the transfer of funds, inter-company loans or transfers, loans or transfers to affiliates or related entities, transfers to unrelated entities, construction financing and commitments (including the alleged \$49 million financing for Scollard and the financing commitment for the Rideau property), and other matters relating in any way to the development projects;

- (xii) all consents and approvals received from any of the Trustee Corporations in relation to the development projects, including, without limitation, with respect to management fees, dividends, inter-company loans or transfers, loans or transfers to affiliates or related entities and loans or transfers to unrelated entities;
- (xiii) all documents provided to mortgage brokers and syndicated mortgage investors with respect to the development projects;
- (xiv) all documents relating to the non-syndicated mortgage investment funds raised from private lenders or others in relation to the development projects through equity raises, preferred share offerings, loans, mortgages and any other means, including, without limitation, all offering documents, agreements, promissory notes, share certificates and mortgage documents, as well as all documents relating to the application and use of such funds, including, without limitation, with respect to the payment of management fees, dividends, inter-company loans or transfers, loans or transfers to affiliates or related entities and transfers to unrelated entities;
- (xv) all documents reflecting the alleged “umbrella” structure of the Receivership Companies and any of their parent, subsidiary, affiliated and related companies or entities;
- (xvi) all communications with BayBridge Seniors Housing Inc. and its representatives relating to McMurray;
- (xvii) all due diligence, including all material reviewed and analyzed with respect to specialized design and configuration of US dementia care facilities, projected facility costs and revenues, and ideal Canadian markets, for the standalone dementia care facility development projects;
- (xviii) all due diligence, including all material reviewed and analyzed (including with respect to market rents, construction techniques, unit layouts, amenities and provisions for parking), for the condominium development projects;
- (xix) all due diligence, including all material reviewed and analyzed, with respect to the student housing development projects;
- (xx) all documents showing the “thorough review of potential development markets and properties to assess their development potential and identify appropriate sites for the Receivership Projects”;
- (xxi) all due diligence reports, findings and results reviewed with Messrs. Singh and Harris;
- (xxii) all business plans relating to the development projects;

- (xxiii) all project pro formas relating to the development projects, including all versions of, drafts of, revisions to, comments on, blacklines of and mark-ups of such pro formas, and all supporting data, spreadsheets, studies, architectural drawings, planning documents, condominium sales analysis, residential leasing analysis, retail leasing analysis, development schedules, other documents and other material (whether created internally or otherwise, including by architects, engineers, planners, contractors and other consultants) used or relied upon in any way to create, edit, revise, modify or update the pro formas;
- (xxiv) all communications and documents sent or provided to, or received or obtained from, Michael Cane in respect of the development projects;
- (xxv) all feasibility studies and other documents commissioned or obtained from third parties relating to the development projects;
- (xxvi) all communications with real estate agents, architects, engineers, designers, city planners, planning offices, zoning offices, city and municipal officials, and others relating to the development projects;
- (xxvii) all documents relating to the rezoning, planning, development and creation of incremental value in respect of the development projects, including all permits, zoning approvals, site plan approvals, other approvals, planning agreements, bylaw amendments, design work, planning and engineering consents, design and construction drawings, marketing materials, sales records, and other records or materials;
- (xxviii) all agreements of purchase and sale, including all conditional agreements of purchase and sale (including, without limitation, for all of the development projects subject to the litigation and the site in Aurora upon which a 200-unit luxury condominium was considered being developed);
- (xxix) all design drawings, hydrogeological analysis, the environmental impact assessment, notes of meetings with local politicians and municipal staff, communications with the local Conservation Authority, communications with the civil engineering firm which conducted a flood plain study, copies of the flood plain study and any related material, the formal development application, and any other documents relating to the due diligence on, and financing obtained in respect of, the Aurora site, including all communications with Mr. Raj Singh advising that the Aurora project would not be pursued;
- (xxx) all documents, communications and other records relating to any efforts to obtain conventional financing for the development projects from large, institutional or other investors;
- (xxxi) all documents reflecting Olympia Trust's "crucial role in providing arm's length oversight and control of the SMI financings for the Receivership

Projects”, including all communications, analysis, due diligence, approvals and other documents relating to Olympia Trust and the development projects, including copies of all materials given to Olympia Trust, all materials received from Olympia Trust, and all questions posed by, and responses given to, Olympia Trust about the materials and projections for each of the development projects;

- (xxxii) all communications, analysis, due diligence, commitments (whether binding or not, including for land acquisition and construction financing), agreements, contracts, letters, memoranda, reports and other documents relating to the involvement of independent project monitors, cost consultants (including Pelican Woodcliff, Altus Group and CB Ross Consulting) and institutional lenders (including KingSett Capital, Vector Financial, DUCA Credit and Centurion REIT) in relation to the development projects, including all materials provided to such parties and all materials received from such parties;
- (xxxiii) all documents and records relating to the Tarion accreditation process in relation to the development projects, including all project documentation and material provided to Tarion (such as architectural and engineering drawings, consultants’ reports, cost estimates, marketing materials and development pro formas) and all documentation and material received from Tarion;
- (xxxiv) all documents relating to Trisura Guarantee Insurance Company’s vetting, due diligence and accreditation process in relation to the development projects, including all documents and records provided to Trisura and all documents and records received from Trisura, including copies of all insurance policies, declarations, endorsements and other material relating to any insurance coverage given in respect of any of the development projects;
- (xxxv) all communications, notes, records and other documents relating to broker fees and commissions for the syndicated mortgage investments, including all communications and other documents relating to the negotiation, fixing and payment of such fees and commissions;
- (xxxvi) all communications, notes, records and other documents relating to consulting, diligence and notary fees for the syndicated mortgage investments, including all communications and other documents relating to the negotiation, fixing and payment of such fees;
- (xxxvii) a sample of the SMI Investment Documentation (as defined in the Statement of Defence) consisting of one complete set of the investment transaction documents for each of the development projects;

- (xxxviii) a sample of the Olympia Trust Documentation (as defined in the Statement of Defence) consisting of one complete set of documents for each of the development projects;
 - (xxxix) all documents relating to the business expenses of managing the Receivership Companies and their parent, affiliated and related companies, including, without limitation, for rent, travel, utilities, office, expenses, and salaries;
 - (xl) all employment agreements, management agreements and other agreements or contracts of any kind involving any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities;
 - (xli) documents evidencing the amounts received directly and indirectly by John Davies, Aeolian Investments Ltd., Judith Davies, the Davies Family Trust, the Davies Arizona Trust, Sarah Davies, Andrew Davies and/or Jessica Davies directly and indirectly from any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related persons, companies or entities; and
 - (xlii) all accounting advice allegedly received relating to the payment of John Davies' management fees and other amounts to Judith Davies.
- (d) Walter Thompson:
- (i) all employment agreements and other contracts or agreements of any kind between Mr. Thompson and/or 1321805 Ontario Inc., on the one hand, and any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities, on the other hand;
 - (ii) all shareholder agreements, subscription agreements, and other contracts or agreements of any kind directly or indirectly involving Mr. Thompson and/or 1321805 Ontario Inc., and any persons and entities to which they are related, which they control or in which they have an interest, in any way relating to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities;
 - (iii) all communications between Mr. Thompson and any defendants to the litigation or other persons or entities relating to any equity or other financial interests in any of the Receivership Companies, any of the Trustee Corporations, and any of their respective parent, subsidiary, affiliated and related persons, companies or entities;
 - (iv) all share certificates, shareholder resolutions, letters, emails, memoranda, reports, and other communications and documents relating to Mr.

Thompson's and/or 1321805 Ontario Inc.'s direct and indirect financial interests (including equity interests) in any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related persons, companies or entities;

- (v) all agendas, minutes, resolutions, notes, memoranda, recordings, records, calendar invites, calendar appointments, correspondence and other documents relating to any shareholders meetings or other shareholder activities with respect to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities;
- (vi) all agendas, minutes, resolutions, notes, memoranda, recordings, records, calendar invites, calendar appointments and correspondence relating to any board meetings or other board activities with respect to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related persons, companies or entities;
- (vii) all letters, emails, memoranda, reports, and other communications and documents relating to the performance of Mr. Thompson's duties as a director and/or officer of any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related persons, companies or entities;
- (viii) all communications, records (including, without limitation, accounting and other financial records), memoranda, notes and other documents in any way relating to appraisals, the raising of capital, the identification of development projects (including with respect to the alleged "exhaustive and detailed due diligence process" used to identify the development projects at issue in the litigation or referenced in the Statement of Defence), land acquisition, the progress of the development projects, the use of syndicated mortgage funds, the payment of broker fees, the interest reserve, the payment of interest to syndicated mortgage investors, the payment of management fees, the payment to consultants and other third parties, the payment of dividends, other distributions, the transfer of funds, inter-company loans or transfers, loans or transfers to affiliates or related entities, transfers to unrelated entities, the payment of interest to syndicated mortgage investors, construction financing and commitments (including the alleged \$49 million financing for Scollard and the financing commitment for the Rideau property), and other matters relating in any way to the development projects, the syndicated mortgage investments, the Receivership Companies, the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related persons, companies or entities;

- (ix) all consents and approvals received from any of the Trustee Corporations, including, without limitation, with respect to management fees, inter-company loans or transfers, loans or transfers to affiliates or related entities and loans or transfers to unrelated entities;
- (x) all documents provided to mortgage brokers and syndicated mortgage investors with respect to the development projects;
- (xi) all documents relating to the non-syndicated mortgage investment funds raised from private lenders or others through equity raises, preferred share offerings, loans, mortgages and any other means, including, without limitation, all offering documents, agreements, promissory notes, share certificates and mortgage documents, as well as all documents relating to the application and use of such funds, including, without limitation, with respect to the payment of management fees, inter-company loans or transfers, loans or transfers to affiliates or related entities and transfers to unrelated entities;
- (xii) all documents reflecting the alleged “umbrella” structure of the Receivership Companies and any of their parent, subsidiary, affiliated and related companies or entities;
- (xiii) all communications with BayBridge Seniors Housing Inc. and its representatives relating to McMurray;
- (xiv) all due diligence, including all material reviewed and analyzed with respect to specialized design and configuration of US dementia care facilities, projected facility costs and revenues, and ideal Canadian markets, for standalone dementia care facilities;
- (xv) all due diligence, including all material reviewed and analyzed (including with respect to market rents, construction techniques, unit layouts, amenities and provisions for parking), for condominiums;
- (xvi) all due diligence, including all material reviewed and analyzed, with respect to student housing;
- (xvii) all documents showing the “thorough review of potential development markets and properties to assess their development potential and identify appropriate sites for the Receivership Projects”;
- (xviii) all due diligence reports, findings and results reviewed with Messrs. Singh and Harris;
- (xix) all business plans relating to the development projects;
- (xx) all project pro formas, including all versions of, drafts of, revisions to, comments on, blacklines of and mark-ups of such pro formas, and all

supporting data, spreadsheets, studies, architectural drawings, planning documents, condominium sales analysis, residential leasing analysis, retail leasing analysis, development schedules, other documents and other material (whether created internally or otherwise, including by architects, engineers, planners, contractors and other consultants) used or relied upon in any way to create, edit, revise, modify or update the pro formas;

- (xxi) all communications and documents sent or provided to, or received or obtained from, Michael Cane in respect of the development projects;
- (xxii) all feasibility studies and other documents commissioned or obtained from third parties relating to the development projects;
- (xxiii) all communications with real estate agents, architects, engineers, designers, city planners, planning offices, zoning offices, city and municipal officials, and others relating to the development projects subject to the litigation;
- (xxiv) all documents relating to the rezoning, planning, development and creation of incremental value in respect of the projects subject to the litigation, including all permits, zoning approvals, site plan approvals, other approvals, planning agreements, bylaw amendments, design work, planning and engineering consents, design and construction drawings, marketing materials, sales records, and other records or materials;
- (xxv) all agreements of purchase and sale, including all conditional agreements of purchase and sale (including, without limitation, for all of the development projects subject to the litigation and the site in Aurora upon which a 200-unit luxury condominium was considered being developed);
- (xxvi) all design drawings, hydrogeological analysis, the environmental impact assessment, notes of meetings with local politicians and municipal staff, communications with the local Conservation Authority, communications with the civil engineering firm which conducted a flood plain study, copies of the flood plain study and any related material, the formal development application, and any other documents relating to the due diligence on, and financing obtained in respect of, the Aurora site, including all communications with Mr. Raj Singh advising that the Aurora project would not be pursued;
- (xxvii) all documents, communications and other records relating to any efforts to obtain conventional financing for the development projects from large, institutional or other investors;
- (xxviii) all documents reflecting Olympia Trust's "crucial role in providing arm's length oversight and control of the SMI financings for the Receivership Projects", including all communications, analysis, due diligence, approvals and other documents relating to Olympia Trust and the development projects, including copies of all materials given to Olympia Trust, all

materials received from Olympia Trust, and all questions posed by, and responses given to, Olympia Trust about the materials and projections for each of the development projects;

- (xxix) all communications, analysis, due diligence, commitments (whether binding or not, including for land acquisition and construction financing), agreements, contracts, letters, memoranda, reports and other documents relating to independent project monitors, cost consultants (including Pelican Woodcliff, Altus Group and CB Ross Consulting) and institutional lenders (including KingSett Capital, Vector Financial, DUCA Credit and Centurion REIT), including all materials provided to such parties and all materials received from such parties;
- (xxx) all documents and records relating to the Tarion accreditation process, including all project documentation and material provided to Tarion (such as architectural and engineering drawings, consultants' reports, cost estimates, marketing materials and development pro formas) and all documentation and material received from Tarion;
- (xxx i) all documents relating to Trisura Guarantee Insurance Company's vetting, due diligence and accreditation process, including all documents and records provided to Trisura and all documents and records received from Trisura, including copies of all insurance policies, declarations, endorsements and other material relating to any insurance coverage given in respect of any of the development projects;
- (xxx ii) all communications, notes, records and other documents relating to broker fees and commissions for the syndicated mortgage investments, including all communications and other documents relating to the negotiation, fixing and payment of such fees and commissions;
- (xxx iii) all communications, notes, records and other documents relating to consulting, diligence and notary fees for the syndicated mortgage investments, including all communications and other documents relating to the negotiation, fixing and payment of such fees;
- (xxx iv) all SMI Investment Documentation (as defined in the Statement of Defence) and all investment transaction documents for each of the development projects, including all memoranda of understanding from investors;
- (xxx v) all Olympia Trust Documentation (as defined in the Statement of Defence);
- (xxx vi) all documents, invoices, receipts, bank statements, transaction records and other documents relating to the business expenses of managing the Receivership Companies and their parent, affiliated and relates companies, including, without limitation, for rent, travel, utilities, office, expenses, and salaries;

- (xxxvii) all employment agreements, management agreements and other agreements or contracts of any kind involving any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities; and
 - (xxxviii) all cheques, pay stubs, deposits, receipts, wire confirmations, bank statements, transaction records and other documentation and information relating to amounts received directly and indirectly by Mr. Thompson and/or 1321805 Ontario Inc. directly and indirectly from any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related persons, companies or entities.
- (e) 1321805 Ontario Inc.:
- (i) all documents reflecting the ownership and management structure of 1321805 Ontario Inc., including all incorporation documents, share certificates, shareholder agreements, management agreements and other contracts and agreements relating to the ownership and management structure of 1321805 Ontario Inc.;
 - (ii) all contracts or agreements of any kind between 1321805 Ontario Inc., on the one hand, and any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities (including, without limitation, Generx (Byward Hall) Inc.), on the other hand;
 - (iii) all shareholder agreements, subscription agreements, and other contracts or agreements of any kind directly or indirectly involving 1321805 Ontario Inc., and any persons and entities to which it is related, which it controls or in which it has an interest, in any way relating to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities (including, without limitation, Generx (Byward Hall) Inc.);
 - (iv) all share certificates, shareholder resolutions, letters, emails, memoranda, reports, and other communications and documents relating to 1321805 Ontario Inc.'s direct and indirect financial interests (including equity interests) in any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related persons, companies or entities (including, without limitation, Generx (Byward Hall) Inc.); and
 - (v) all cheques, pay stubs, deposits, receipts, wire confirmations, bank statements, transaction records and other documentation and information relating to amounts received directly and indirectly by 1321805 Ontario Inc. directly and indirectly from any of the Receivership Companies, any of the

Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related persons, companies or entities (including, without limitation, Generx (Byward Hall) Inc.).

- (f) Bruce Stewart and the Traditions Development Company Ltd.:
- (i) all employment agreements and other contracts or agreements of any kind between Mr. Stewart and/or the Traditions Development Company Ltd., on the one hand, and any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities, including, without limitation, Memory Care Investment (Oakville) Ltd., Memory Care Investments (Burlington) Ltd., Legacy Lane Investments Ltd. and 1703858 Ontario Ltd., on the other hand;
 - (ii) all shareholder agreements, subscription agreements, and other contracts or agreements of any kind directly or indirectly involving Mr. Stewart and/or the Traditions Development Company Ltd., and any persons and entities to which they are related, which they control or in which they have an interest, in any way relating to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities;
 - (iii) all communications between Mr. Stewart and any defendants to the litigation or other persons or entities relating to any equity or other financial interests in any of the Receivership Companies, any of the Trustee Corporations, and any of their respective parent, subsidiary, affiliated and related companies or entities;
 - (iv) all share certificates, shareholder resolutions, letters, emails, memoranda, reports, and other communications and documents relating to Mr. Stewart's and/or the Traditions Development Company Ltd.'s direct or indirect financial interests (including equity interests) in any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities;
 - (v) all agendas, minutes, resolutions, notes, memoranda, recordings, records, calendar invites, calendar appointments and correspondence relating to any board meetings or other board activities with respect to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities, including, without limitation, Memory Care Investment (Oakville) Ltd., Memory Care Investments (Burlington) Ltd., Legacy Lane Investments Ltd. and 1703858 Ontario Ltd.;
 - (vi) all agendas, minutes, resolutions, notes, memoranda, recordings, records, calendar invites, calendar appointments, correspondence and other

documents relating to any shareholders meetings or other shareholder activities with respect to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities, including, without limitation, Memory Care Investment (Oakville) Ltd., Memory Care Investments (Burlington) Ltd., Legacy Lane Investments Ltd. and 1703858 Ontario Ltd.;

- (vii) all agendas, minutes, resolutions, notes, memoranda, recordings, records, calendar invites, calendar appointments correspondence and other documents relating to any board meetings or other board activities with respect to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities;
- (viii) all letters, emails, memoranda, reports, and other communications and documents relating to the performance of Mr. Stewart's duties as a director and/or officer of any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities, including, without limitation, Memory Care Investment (Oakville) Ltd., Memory Care Investments (Burlington) Ltd., Legacy Lane Investments Ltd. and 1703858 Ontario Ltd.;
- (ix) all documents reflecting the alleged "actual and valuable services rendered" by Mr. Stewart and/or the Traditions Development Company Ltd. to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities, including, without limitation, Memory Care Investment (Oakville) Ltd., Memory Care Investments (Burlington) Ltd., Legacy Lane Investments Ltd. and 1703858 Ontario Ltd.;
- (x) all communications, records, memoranda, notes and other documents in any way relating to appraisals, the progress of the development projects, the use of syndicated mortgage funds, the interest reserve, the payment of interest to syndicated mortgage investors, the payment of management fees, the payment of dividends, other distributions, the transfer of funds, inter-company transfers, transfers to affiliates or related entities, transfers to unrelated entities, the payment of interest to syndicated mortgage investors, construction financing, and other matters relating in any way to the syndicated mortgage investments, the Receivership Companies, the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities; and
- (xi) all cheques, pay stubs, direct deposit receipts, wire confirmations, bank statements, transaction records and other documentation and information relating to amounts received directly and indirectly by Mr. Stewart and/or the Traditions Development Company Ltd.. directly and indirectly from any of the Receivership Companies, any of the Trustee Corporations, and/or any

of their respective parent, subsidiary, affiliated and related persons, companies or entities, including, without limitation, Memory Care Investment (Oakville) Ltd., Memory Care Investments (Burlington) Ltd., Legacy Lane Investments Ltd. and 1703858 Ontario Ltd.

- (g) Gregory Harris and Harris + Harris LLP:
- (i) all shareholder agreements, subscription agreements and other contracts or agreements of any kind directly or indirectly involving Gregory Harris and any persons and entities to which he is related, controls or in which he has an interest in any way relating to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related persons, companies or entities;
 - (ii) all communications, contracts, and other documents of any kind between Gregory Harris, Alan Harris, Erika Harris and/or Dachstein Holdings Inc. relating to any equity or other financial interest in any of the Receivership Companies, any of the Trustee Corporations, and any of their respective parent, subsidiary, affiliated and related companies or entities;
 - (iii) all communications between Gregory Harris and any defendants to the litigation relating to any equity or other financial interest in any of the Receivership Companies, any of the Trustee Corporations, and any of their respective parent, subsidiary, affiliated and related companies or entities;
 - (iv) all share certificates, shareholder resolutions, letters, emails, memoranda, reports, and other communications and documents relating to Gregory Harris's direct or indirect financial interests (including equity interests) in any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities;
 - (v) all retainer agreements, engagement letters and other contracts or agreements of any kind between Harris + Harris LLP (including all of its lawyers, counsel, students, employees and staff), on the one hand, and any of the Receivership Companies, and any of the Trustee Corporations on the other hand;
 - (vi) for each SMI raise for each project in which Harris + Harris LLP represented either a Trustee Corporation or a Receivership Company, all delegation agreements, assignment agreements and other contracts or agreements of any kind between Harris + Harris LLP (including all of its lawyers, counsel, students, employees and staff), on the one hand, and Nancy Elliot, Elliot Law Professional Corporation and Brattys LLP (including all of their respective lawyers, counsel, students, employees and staff), on the other hand;

- (vii) all minute books related to the incorporation and formation of any of the Receivership Companies, or any of the Trustee Corporations;
- (viii) for each SMI raise for each project in which Harris + Harris LLP represented either a Trustee Corporation or a Receivership Company, all communications between Gregory Harris and/or Harris + Harris LLP (including all of its lawyers, counsel, students, employees and staff), on the one hand, and Nancy Elliot and/or Elliot Law Professional Corporation (including all of its lawyers, counsel, students, employees and staff) on the other hand;
- (ix) for each SMI raise for each project in which Harris + Harris LLP represented either a Trustee Corporation or a Receivership Company, all loan agreements, registration documents and transaction documents between or with respect to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities;
- (x) for each SMI raise for each project in which Harris + Harris LLP represented either a Trustee Corporation or a Receivership Company, a sample consisting of one complete set of Investor Documents (as defined in the Statement of Defence of Gregory Harris and Harris + Harris LLP) for each of cash and RRSP investors;
- (xi) for each SMI raise for each project in which Harris + Harris LLP represented either a Trustee Corporation or a Receivership Company, all communications, records, memoranda, notes and other documents in any way relating to appraisals, the progress of the development projects, the use of syndicated mortgage funds, the payment of management fees, the payment of dividends, other distributions, the transfer of funds, inter-company transfers, transfers to affiliates or related entities, transfers to unrelated entities, and other matters relating in any way to the syndicated mortgage investments;
- (xii) for each SMI raise for each project in which Harris + Harris LLP represented either a Trustee Corporation or a Receivership Company, all communications, analysis, due diligence, approvals and other documents relating to Olympia Trust and the development projects, including copies of all materials given to Olympia Trust, all materials received from Olympia Trust, and all questions posed by, and responses given to, Olympia Trust about the materials and projections for each of the development projects (subject to any claims of solicitor-client privilege);
- (xiii) all communications, analysis, due diligence, commitments (whether binding or not, including for land acquisition and construction financing), agreements, contracts, letters, memoranda, reports and other documents relating to independent project monitors, cost consultants (including Pelican

Woodcliff, Altus Group and CB Ross Consulting) and institutional lenders (including KingSett Capital, Vector Financial, DUCA Credit and Centurion REIT), including all materials provided to such parties and all materials received from such parties, in respect of any projects for which Harris + Harris LLP represented either a Trustee Corporation or a Receivership Company;

- (xiv) for each SMI raise for each project in which Harris + Harris LLP represented either a Trustee Corporation or a Receivership Company, all due diligence reports, findings and results reviewed with respect to any of the development projects in question;
 - (xv) all dockets, billings, bills, invoices, accounts, statements and other documents reflecting the work performed for any of the Receivership Companies and any of the Trustee Corporations;
 - (xvi) all trust ledgers and other documentation and information relating to amounts received directly and indirectly by Gregory Harris and/or Harris + Harris LLP and any persons and entities to which they are related, control or in which they have an interest, directly and indirectly from (1) the Trustee Corporations; (2) the Receivership Companies; (3) Nancy Elliot and/or Elliot Law Professional Corporation and any related or affiliated persons, companies or entities; (4) Alan Harris, Erika Harris, Dachstein Holdings Inc. and any related or affiliated persons, companies or entities; and (5) any other defendants to the litigation; and
 - (xvii) all other relevant communications with any defendants or any other parties.
- (h) Nancy Elliot and Elliot Law Professional Corporation:
- (i) all retainer agreements and engagement letters between Nancy Elliot and/or Elliot Law Professional Corporation, on the one hand, and the Trustee Corporations on the other hand;
 - (ii) all delegation agreements and assignment agreements between Nancy Elliot and/or Elliot Law Professional Corporation, on the one hand, and Gregory Harris and/or Harris + Harris LLP (including all of its lawyers, counsel, students, employees and staff), on the other hand with respect to each SMI raise for each project in which Elliot represented a Trustee Corporation;
 - (iii) for each SMI raise for each project in which Elliot represented a Trustee Corporation, all communications between Nancy Elliot and/or Elliot Law Professional Corporation, on the one hand, and Gregory Harris and/or Harris + Harris LLP (including all of its lawyers, counsel, students, employees and staff), on the other hand, relating in any way to any of the Trustee Corporations and any of the Receivership Companies (subject to claims of solicitor-client privilege);

- (iv) for each SMI raise for each project in which Elliot represented a Trustee Corporation, all loan agreements, registration documents and transaction documents between or with respect to any of the Trustee Corporations and any of the Receivership Companies;
 - (v) all work product relating to the independent investigations and inquiries made, undertaken, performed, directed or reviewed by Nancy Elliot and/or Elliot Law Professional Corporation with respect to the loan agreements, the syndicated mortgages and the transactions being contemplated or undertaken by the Trustee Corporations (subject to claims of solicitor-client privilege);
 - (vi) all dockets, billings, bills, invoices, accounts, statements and other documents reflecting the work performed for the Trustee Corporations;
 - (vii) all trust ledgers, transaction records and other documentation and information relating to amounts received by Nancy Elliot and/or Elliot Law Professional Corporation directly and indirectly from (1) the Trustee Corporations; (2) the Receivership Companies; and (3) Gregory Harris and/or Harris + Harris LLP, or any related or affiliated persons, companies and entities; and
 - (viii) all other relevant communications with any defendants or any other parties.
- (i) David Arsenault:
- (i) all employment agreements and other contracts or agreements of any kind between Mr. Arsenault and/or D. Arsenault Holdings Inc., on the one hand, and McMurray Street Investments Ltd. and any of its parent, subsidiary, affiliated and related entities, on the other hand;
 - (ii) shareholder agreements, subscription agreements, and other contracts or agreements of any kind between Mr. Arsenault and/or D. Arsenault Holdings Inc., and any persons and entities to which he or it is related, controls or in which he or it has an interest, in any way relating to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related companies or entities;
 - (iii) all share certificates, shareholder resolutions, letters, emails, memoranda, reports, and other communications and documents relating to D. Arsenault Holdings Inc.'s financial interests (including equity interests) in McMurray Street Investments Ltd. and any parent, subsidiary, affiliated and related companies or entities;
 - (iv) all letters, emails, memoranda, reports, and other communications and documents relating to the performance of Mr. Arsenault's duties as an

officer of McMurray Street Investments Ltd., including with respect to any parent, subsidiary, affiliated and related companies;

- (v) all financial and accounting analysis and reporting undertaken by, performed by, directed by, reviewed by, sent by, or sent to Mr. Arsenault in respect of McMurray Street Investments Ltd., including with respect to any parent, subsidiary, affiliated and related companies;
 - (vi) all communications, including with the directors, officers and/or shareholders of McMurray Street Investments Ltd. and any of its parent, subsidiary, affiliated and related companies, and other documents relating to the use of funds by McMurray Street Investments Ltd. and any of its parent, subsidiary, affiliated and related entities, including all communications and other documents relating to the payment of management fees, the payment of dividends, inter-company transfers, transfers to affiliates or related entities, transfers to unrelated entities, and the payment of interest to syndicated mortgage investors;
 - (vii) all cheques, pay stubs, direct deposit receipts, wire confirmations, bank statements, transaction records and other documentation and information relating to amounts received directly and indirectly by Mr. Arsenault and D. Arsenault Holdings Inc. directly and indirectly from McMurray Street Investments Ltd. and any parent, subsidiary, affiliated and related persons, companies and entities; and
 - (viii) all communications with any defendants or any other parties.
- (j) Jude Cassimy and First Commonwealth Mortgage Corporation:
- (i) particulars and all documents relating to all referral fees, brokerage fees, broker fees, commissions, and other amounts received directly or indirectly by Mr. Cassimy and First Commonwealth Mortgage Corporation from any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related persons, companies or entities;
 - (ii) all communications with Raj Singh, RS Consulting Group, Tier 1 Transaction Advisory Services Inc., Tier 1 Mortgage Corporation, Dave Balkisoon, and any related persons, companies or entities relating in any way to the syndicated mortgages, the development projects subject to the litigation, the raising of capital, and the negotiation, fixing and payment of referral fees, brokerage fees, broker fees, commissions, and other amounts;
 - (iii) all communications with any of the Receivership Companies, any of the Trustee Corporations, any of their respective parent, subsidiary, affiliated and related persons, companies or entities, and any of the defendants to the litigation relating in any way to the syndicated mortgages, the development projects subject to the litigation, the raising of capital, and the negotiation,

fixing and payment of referral fees, brokerage fees, broker fees, commissions, and other amounts;

- (iv) all communications with any investors and prospective investors in the syndicated mortgages relating in any way to the syndicated mortgages, the development projects subject to the litigation, the raising of capital, and the negotiation, fixing and payment of referral fees, brokerage fees, broker fees, commissions, and other amounts;
- (v) all communications with any agents, brokerages or brokers in any way to the syndicated mortgages, the development projects subject to the litigation, the raising of capital, and the negotiation, fixing and payment of referral fees, brokerage fees, broker fees, commissions, and other amounts;
- (vi) copies of all documents and other material provided by Mr. Cassimy and/or First Commonwealth Mortgage Corporation directly and indirectly to any agents, brokerages, brokers, investors, prospective investors, Raj Singh, RS Consulting Group, Tier 1 Transaction Advisory Services Inc., Tier 1 Mortgage Corporation, Dave Balkisoon, and any related persons, companies or entities;
- (vii) copies of all documents and other material received by Mr. Cassimy and/or First Commonwealth Mortgage Corporation directly and indirectly from any agents, brokerages, brokers, investors, prospective investors, Raj Singh, RS Consulting Group, Tier 1 Transaction Advisory Services Inc., Tier 1 Mortgage Corporation, Dave Balkisoon, and any related persons, companies or entities;
- (viii) all cheques, pay stubs, direct deposit receipts, wire confirmations, bank statements, transaction records and other documentation and information relating to amounts received directly and indirectly by Mr. Cassimy and/or First Commonwealth Mortgage Corporation directly and indirectly from any of the Receivership Companies, any of the Trustee Corporations, any of their respective parent, subsidiary, affiliated and related persons, companies or entities, Raj Singh, RS Consulting Group, Tier 1 Transaction Advisory Services Inc., Tier 1 Mortgage Corporation, Dave Balkisoon, and any related persons, companies or entities;
- (ix) all cheques, pay stubs, direct deposit receipts, wire confirmations, bank statements, transaction records and other documentation and information relating to amounts paid directly and indirectly by Mr. Cassimy and/or First Commonwealth Mortgage Corporation directly and indirectly to any agents, brokers, brokerages, Raj Singh, RS Consulting Group, Tier 1 Transaction Advisory Services Inc., Tier 1 Mortgage Corporation, Dave Balkisoon, and any related persons, companies or entities; and
- (x) all other communications with any defendants or any other parties.

(k) Michael Cane:

- (i) all retainer agreements, engagement letters, requests, and other documents relating to Mr. Cane's engagements and preparation and provision of appraisal reports and related work in respect of the properties subject to the litigation;
- (ii) all appraisal reports, draft reports, work product relating to such reports, forecasts, and other material relating to Mr. Cane's engagements and preparation and provision of appraisal reports and related work in respect of the properties subject to the litigation;
- (iii) all instructions, directions, requests, queries, transmittal letters and other communications relating to the preparation, revision, finalizing and updating of appraisal reports in respect of the properties subject to the litigation;
- (iv) all documents and information used, considered or relied upon in any way in connection with the preparation, revision and updating of the appraisal reports, including all project pro formas (including all versions, drafts, revisions and updates, both as provided to Mr. Cane and as independently prepared by Mr. Cane), supporting data and analysis, development and site plans, specifications, timelines, permits and approvals, search results, inspection reports, field notes, sales data, comparable property information, market data, research, valuation models, financial and other models, inputs, spreadsheets, software (including Argus Developer) reports and other related data and information, memoranda, analysis, and other such material relating in any way to the appraisal reports and related work in respect of the properties subject to the litigation;
- (v) all independent assessments of the projections set out in the pro formas, including the supporting information for the hard and soft cost projections and contingencies, independent research and market analysis regarding the proposed development concepts;
- (vi) all invoices, receipts, billings, bills, accounts, cheques, pay stubs, deposits, receipts, wire confirmations, transaction records and other documentation and information relating to any amounts or other consideration received directly and indirectly by Mr. Cane or any persons or entities to which he is related, which he controls, or in which he has an interest, in connection with Mr. Cane's engagements in respect of the properties subject to the litigation or in any way relating to any of the Receivership Companies, any of the Trustee Corporations, and/or any of their respective parent, subsidiary, affiliated and related persons, companies or entities;
- (vii) all communications with city planners, planning offices, zoning offices, city and municipal officials, and others relating to the properties subject to the

litigation, including, without limitation, for purposes of assessing the likelihood and timing of obtaining zoning and planning approvals; and

(viii) all other communications with any defendants or other parties.

4. The documents to be disclosed and produced (subject to privilege) include both paper documents and electronic documents.

5. The Parties will employ the use of an electronic database such as Eclipse or Relativity to facilitate the review and production of the Parties' documents.

6. No Party will be required, when conducting searches for relevant documents, to search for or access back-up tapes or similar forms of long-term archives of electronically stored information.

Affidavits of Documents

7. The Parties will exchange affidavits of documents by no later than October 31, 2020.

8. Schedule "A" documents will be listed in chronological order and with the following detail:

- Begdoc/Enddoc
- Begatt/Endatt
- Lead Date
- Document Date
- Mail Sent Date
- Author
- Mail From
- Recipient
- Mail To
- Document Title
- Subject

9. Notwithstanding paragraph 8 above, the following fields of coding will be provided in the DAT Loadfile as provided for in paragraph 12 below:

- For any hard copy documents:
 - (a) Begdoc/Enddoc

- (b) Begatt/Endatt
 - (c) Leaddate
 - (d) Document Date
 - (e) Document Title
 - (f) Author
 - (g) Recipient
 - (h) CC
- For any electronically stored documents, to the extent that this information is available for each record through the metadata associated and collected for that electronically stored record:
 - (i) Begdoc/Enddoc
 - (j) Begatt/Endatt
 - (k) Leaddate
 - (l) Document Date
 - (m) Email Date Sent
 - (n) File Name
 - (o) Email To
 - (p) Email From
 - (q) Email CC
 - (r) Email Subject
 - (s) Filetype
 - (t) Native File

10. Schedule "B" and "C" documents may initially be listed by category, without prejudice to the parties' rights to subsequently request detailed Schedules "B" and "C" listing such documents in a similar manner to Schedule "A" documents.

Production of Documents

11. Productions of Schedule “A” documents will be exchanged along with the affidavits of documents.

12. The Parties will produce native files of electronic records including metadata, unless a redaction is required, in which case the Parties may produce images of the redacted record. Hard copy records will be scanned and produced in image format. All images shall be black and white single page TIF images with resolution of 300 dpi (dots per inch) with OCR generated text. Loadfiles shall be provided in DAT, OPT and TXT format.

13. The costs associated with producing relevant non-privileged documents will be borne by the respective Parties producing the relevant non-privileged documents.

14. In the event that a Party inadvertently produces a privileged document or a document that is irrelevant to the proceedings but confidential in nature, the Party who receives it will return the document immediately and destroy any copy of it, paper or electronic. Inadvertent production does not constitute a waiver of privilege.

Production of Documents

15. Productions of Schedule “A” documents will be exchanged along with the affidavits of documents.

16. The Parties will produce native files of electronic records including metadata, unless a redaction is required, in which case the Parties may produce images of the redacted record. Hard copy records will be scanned and produced in image format. All images shall be black and white single page TIF images with resolution of 300 dpi (dots per inch) with OCR generated text. Loadfiles shall be provided in DAT, OPT and LST format.

17. The costs associated with producing relevant non-privileged documents will be borne by the respective Parties producing the relevant non-privileged documents.

18. In the event that a Party inadvertently produces a privileged document or a document that is irrelevant to the proceedings but confidential in nature, the Party who receives it will return the document immediately and destroy any copy of it, paper or electronic. Inadvertent production does not constitute a waiver of privilege.

Examinations for Discovery

19. Examinations for discovery will be held in Toronto, Ontario, or remotely via video-conference, on or before March 31, 2021. Examinations will be scheduled with reasonable attempts made to accommodate the schedules of counsel and the persons to be examined.

20. On behalf of the Plaintiff, Grant Thornton Limited in its capacity as the Court-Appointed Trustee, Jonathan Krieger will be examined.

21. On behalf of the Plaintiff, KSV Kofman Inc. in its capacity as the Court-Appointed Receiver, Robert Kofman will be examined.
22. The Defendant, John Davies (in his Personal Capacity, in his Capacity as Trustee of both the Davies Arizona Trust and the Davies Family Trust, and in his Capacity as representative for the defendant, Aeolian Investments Ltd.), will be examined.
23. The Defendant, Judith Davies (in her Personal Capacity and in her Capacity as Trustee of the Davies Family Trust), will be examined.
24. The Defendant, Gregory Harris (in his Personal Capacity, in his Capacity as Trustee of the Davies Family Trust, and in his Capacity as representative for the defendant, Harris + Harris LLP), will be examined.
25. The Defendant, Nancy Elliott (in her Personal Capacity and in her Capacity as representative for the defendant, Elliott Law Professional Corporation), will be examined.
26. The Defendant, Walter Thompson (in his Personal Capacity and in his Capacity as representative for the defendant, 1321805 Ontario Inc.), will be examined. The parties agree that reasonable accommodations will be made for Mr. Thompson's examination for discovery in light of his counsel's advice that he has suffered a traumatic brain injury, subject to appropriate medical documentation being delivered setting out the need for any such accommodations.
27. The Defendant, Bruce Stewart (in his Personal Capacity and in his Capacity as representative for the defendant, The Traditions Development Company Ltd.), will be examined.
28. The Defendant, David Arsenault (in his Personal Capacity), will be examined.
29. The Defendant, Jude Cassimy (in his Personal Capacity and in his Capacity as representative for the defendant, First Commonwealth Mortgage Corporation), will be examined.
30. The Defendant, Michael Cane (in his Personal Capacity), will be examined.
31. The parties agree that, notwithstanding Rule 31.05.1(1), more than seven (7) hours will likely be required to conduct the examinations for discoveries for some or all of the parties and/or their representatives. Accordingly, the parties agree that they will consent to reasonable extensions of time for such examinations for discovery, with such consent not to be unreasonably withheld.

Answers to Undertakings, Motions and Other Matters

32. The Parties will provide answers to undertakings and, if applicable, questions taken under advisement within 90 days of the hearing of their respective examinations for discovery.
33. Motions arising out of discoveries will be scheduled with the court within 90 days of the deadline for providing answers to undertakings.
34. Pursuant to Rule 29.1.04 of the *Rules of Civil Procedure*, the Parties will update this Discovery Plan as necessary to reflect any changes. Updates will be in writing.

35. This Discovery Plan is signed by the Parties' counsel and shall bind the parties.

Date: _____



For and on behalf of the plaintiff, KSV
Kofman Inc., in its capacity as court-
appointed Receiver

Per: Jonathan Bell, Bennett Jones LLP

Date: August 19, 2020



For and on behalf of the plaintiff, Grant
Thornton Limited, in its capacity as court-
appointed Trustee

Per: Miranda Spence, Aird & Berlis LLP

Date: _____

For and on behalf of the defendants,
Aeolian Investments Ltd, John Davies in
his Personal Capacity and in his Capacity
as Trustee of both The Davies Arizona
Trust and The Davies Family Trust, and
Judith Davies in her Personal Capacity and
in her Capacity as Trustee of The Davies
Family Trust

Per: Michael Beeforth, Dentons LLP

Date: _____

For and on behalf of the defendant, Walter
Thompson

Per: James Zibarras, Miller Thomson LLP

35. This Discovery Plan is signed by the Parties' counsel and shall bind the parties.

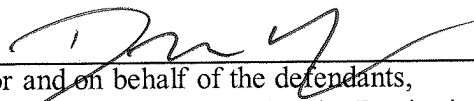
Date: _____

For and on behalf of the plaintiff, KSV
Kofman Inc., in its capacity as court-
appointed Receiver
Per: Jonathan Bell, Bennett Jones LLP

Date: _____

For and on behalf of the plaintiff, Grant
Thornton Limited, in its capacity as court-
appointed Trustee
Per: Ian Aversa, Aird & Berlis LLP

Date: Aug. 19/20



For and on behalf of the defendants,
Aeolian Investments Ltd, John Davies in
his Personal Capacity and in his Capacity
as Trustee of both The Davies Arizona
Trust and The Davies Family Trust, and
Judith Davies in her Personal Capacity and
in her Capacity as Trustee of The Davies
Family Trust
Per: Michael Beeforth, Dentons LLP

Date: _____

For and on behalf of the defendant, Walter
Thompson
Per: James Zibarras, Miller Thomson LLP

35. This Discovery Plan is signed by the Parties' counsel and shall bind the parties.

Date: _____

For and on behalf of the plaintiff, KSV
Kofman Inc., in its capacity as court-
appointed Receiver
Per: Jonathan Bell, Bennett Jones LLP


Date: _____

For and on behalf of the plaintiff, Grant
Thornton Limited, in its capacity as court-
appointed Trustee
Per: Ian Aversa, Aird & Berlis LLP

Date: _____

For and on behalf of the defendants,
Aeolian Investments Ltd, John Davies in
his Personal Capacity and in his Capacity
as Trustee of both The Davies Arizona
Trust and The Davies Family Trust, and
Judith Davies in her Personal Capacity and
in her Capacity as Trustee of The Davies
Family Trust
Per: Michael Beeforth, Dentons LLP

Date: September 2, 2020

 FOR:

For and on behalf of the defendant, Walter
Thompson
Per: James Zibarras, Miller Thomson LLP

Date: September 3, 2020



For and on behalf of the defendant,
1321805 Ontario Inc.
Per: Clarence Lui, Reain Lui Stock LLP

Date: _____

For and on behalf of the defendants,
Gregory Harris and Harris+Harris LLP
Per: Peter Wardle, Singleton Urquhart
Reynolds Vogel LLP

Date: _____

For and on behalf of the defendants, Nancy
Elliot and Elliot Law Professional
Corporation
Per: Michael Kestenberg, Kestenberg
Siegal Lipkus LLP

Date: _____

For and on behalf of the defendants, Bruce
Stewart and The Traditions Development
Company Ltd.
Per: Andrea M. Habas, Bresver
Grossman Chapman & Habas LLP

Date: _____

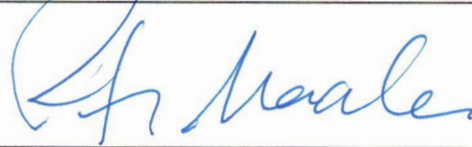
For and on behalf of the defendant, David
Arsenault
Per: Christopher A. L. Caruana, Wilson
Vukelich LLP

Date: _____

For and on behalf of the defendant,
13281805 Ontario Inc.

Per: Clarence Lui, Reain Lui Stock LLP

Date: Aug 19/2020



For and on behalf of the defendants,
Gregory Harris and Harris+Harris LLP

Per: Peter Wardle, Singleton Urquhart
Reynolds Vogel LLP

Date: _____

For and on behalf of the defendants, Nancy
Elliot and Elliot Law Professional
Corporation

Per: Michael Kestenber, Kestenber
Siegal Lipkus LLP

Date: _____

For and on behalf of the defendants, Bruce
Stewart and The Traditions Development
Company Ltd.

Per: Andrea M. Habas, Bresver
Grossman Chapman & Habas LLP

Date: _____

For and on behalf of the defendant, David
Arsenault

Per: Christopher A. L. Caruana, Wilson
Vukelich LLP

Date: _____

For and on behalf of the defendant,
13281805 Ontario Inc.
Per: Clarence Lui, Reain Lui Stock LLP

Date: _____

For and on behalf of the defendants,
Gregory Harris and Harris+Harris LLP
Per: Peter Wardle, Singleton Urquhart
Reynolds Vogel LLP

Date: August 20, 2020

M i c h a e l K e s t e n b e r g
For and on behalf of the defendants, Nancy
Elliot and Elliot Law Professional
Corporation
Per: Michael Kestenberg, Kestenberg
Siegal Lipkus LLP

Date: _____

For and on behalf of the defendants, Bruce
Stewart and The Traditions Development
Company Ltd.
Per: Andrea M. Habas, Bresver
Grossman Chapman & Habas LLP

Date: _____

For and on behalf of the defendant, David
Arsenault
Per: Christopher A. L. Caruana, Wilson
Vukelich LLP

Date: _____

For and on behalf of the defendant,
13281805 Ontario Inc.
Per: Clarence Lui, Reain Lui Stock LLP

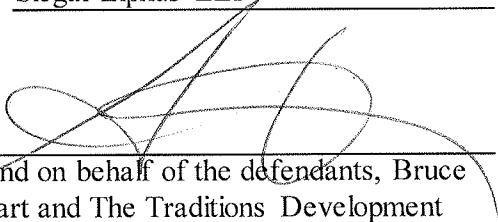
Date: _____

For and on behalf of the defendants,
Gregory Harris and Harris+Harris LLP
Per: Peter Wardle, Singleton Urquhart
Reynolds Vogel LLP

Date: _____

For and on behalf of the defendants, Nancy
Elliot and Elliot Law Professional
Corporation
Per: Michael Kestenberg, Kestenberg
Siegal Lipkus LLP

Date: _____



For and on behalf of the defendants, Bruce
Stewart and The Traditions Development
Company Ltd.
Per: Andrea M. Habas, Bresver
Grossman Chapman & Habas LLP

Date: _____

For and on behalf of the defendant, David
Arsenault
Per: Christopher A. L. Caruana, Wilson
Vukelich LLP

Date: _____

For and on behalf of the defendant,
13281805 Ontario Inc.
Per: Clarence Lui, Reain Lui Stock LLP

Date: _____

For and on behalf of the defendants,
Gregory Harris and Harris+Harris LLP
Per: Peter Wardle, Singleton Urquhart
Reynolds Vogel LLP

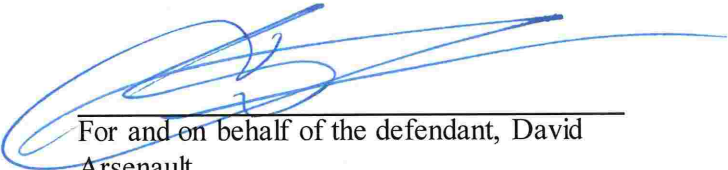
Date: _____

For and on behalf of the defendants, Nancy
Elliot and Elliot Law Professional
Corporation
Per: Michael Kestenberg, Kestenberg
Siegal Lipkus LLP

Date: _____

For and on behalf of the defendants, Bruce
Stewart and The Traditions Development
Company Ltd.
Per: Andrea M. Habas, Bresver
Grossman Chapman & Habas LLP

Date: August 28, 2020



For and on behalf of the defendant, David
Arsenault
Per: Christopher A. L. Caruana, Wilson
Vukelich LLP

Date: _____

For and on behalf of the defendants, Judy
Cassimy and First Commonwealth
Mortgage Corporation
Per: Sheldon Benjamin, The Law Office
of Sheldon Benjamin LLP

Date: August 25, 2020



For and on behalf of the defendant,
Michael Cane
Per: Murray Stieber, Stieber Berlach LLP

July 20, 2020

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

Sean Zweig (LSO # 573071)
Tel: (416) 777-6254
Fax: (416) 863-1716
Email: zweigs@bennettjones.com

Jonathan Bell (LSO # 55457P)
Tel: (416) 777-6511
Fax: (416) 863-1716
Email: bellj@bennettjones.com

Joseph N. Blinick (LSO # 64325B)
Tel: (416) 777-4828
Fax: (416) 863-1716
Email: blinickj@bennettjones.com

Lawyers for KSV Kofman Inc., in its capacity as
court-appointed Receiver

AIRD & BERLIS LLP

Barristers & Solicitors

Brookfield Place

181 Bay Street, Suite 1800

Toronto, Ontario M5J 2T9

Steven L. Graff (LSO # 31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa (LSO # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Jeremy Nemers (LSO # 66410Q)

Tel: (416) 865-7724

Fax: (416) 863-1515

Email: jnemers@airdberlis.com

Lawyers for Grant Thornton Limited, in its
capacity as court-appointed Trustee

TO:

DENTONS CANADA LLP

77 King Street West

Suite 400

Toronto, ON M5K 0A1

Michael Beeforth

Email: michael.beeforth@dentons.com

Tel: (416) 367-6779

Fax: (416) 863-4592

Lawyers for Aeolian Investments Ltd, John Davies in his Personal Capacity and
in his Capacity as Trustee of both The Davies Arizona Trust and The Davies
Family Trust, and Judith Davies in her Personal Capacity and in her Capacity as
Trustee of The Davies Family Trust

AND TO: MILLER THOMSON LLP
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON M5H 3S1

James Zibarras
Email: jzibarras@millerthomson.com
Tel: (416) 595-2998
Fax: (416) 595-8695

Lawyers for the defendant, Walter Thompson

AND TO: REAIN LUI STOCK LLP
18 King Street East
Suite 500
Toronto, ON M5C 1C4

Clarence Lui
Email: clarence.lui@rls.law
Tel: 416-304-9333
Fax: 416-304-9340

Lawyers for the defendant, 13281805 Ontario Inc.

AND TO: SINGLETON URQUHART REYNOLDS VOGEL LLP
150 King Street West
Suite 2512
Toronto ON M5H 1J9

Peter Wardle
Email: pwardle@singleton.com
Tel: (416) 585-8604
Fax: (416) 585-9458

Lawyers for Gregory Harris and Harris+Harris LLP

AND TO: KESTENBERG SIEGAL LIPKUS LLP
65 Granby Street
Toronto ON M5B 1H8

Michael Kestenberg
Email: mrk@ksllaw.com
Tel: (416) 342-1111
Fax: (416) 597-6567

Lawyers for Nancy Elliot and Elliot Law Professional Corporation

AND TO: BRESVER GROSSMAN CHAPMAN & HABAS LLP
390 Bay Street
Suite 2900
Toronto, ON M5H 2Y2

Andrea M. Habas
Email: ahabas@bgchlaw.com
Tel: (416) 869-0366
Fax: (416) 869-0321

Lawyers for Bruce Stewart and The Traditions Development Company Ltd.

AND TO: WILSON VUKELICH LLP
60 Columbia Way
Suite 710
Markham, ON L3R 0C9

Christopher A. L. Caruana
Email: ccaruana@wvllp.ca
Tel: (905) 944-2952 x 2395
Fax: (905) 940-8785

Lawyers for David Arsenault

AND TO: THE LAW OFFICE OF SHELDON BENJAMIN
6100 Osprey Boulevard
Mississauga, ON L5N 5W5

Sheldon Benjamin
Email: sbenjaminlaw@yahoo.com
Tel: (905) 274-0007

Lawyers for Judy Cassimy and First Commonwealth Mortgage Corporation

AND TO: STIEBER BERLACH LLP
130 Adelaide Street West
18th Floor
Toronto, ON M5H 3P5

Murray Stieber
Email: mstieber@sblegal.ca
Tel: (416) 594-4675
Fax: (416) 366-1466

Lawyers for Michael Cane

APPENDIX 6

Court File Number: CV-18-606314-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Grant Thornton Limited et al
Plaintiff(s)

AND

Aeolian Investments Ltd et al
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
J. Blinick - Receiver		
M. Spence - Trustee		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
- Time Table approved (as follows):

Timetable approved as per schedule A attached, and an Order shall go in this regard.

No one opposes and the vast majority consent

8 March 21
Date

[Signature]
Judge's Signature

Additional Pages _____

Schedule A

Court File No. CV-18-606314-00CL

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

BETWEEN:

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND TEXTBOOK ROSS PARK INC.

Plaintiffs

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, ~~JAMES GRACE, BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC.~~, JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE


Defendants

TM



TIMETABLE FOR EXAMINATIONS FOR DISCOVERY

Party	Dates for Examination
Gregory Harris personally and on behalf of Harris + Harris LLP	June 14, 15, 2021
Bruce Stewart personally and on behalf of The Traditions Development Company Ltd.	June 16, 17, 2021
David Arsenault	June 21, 2021
Nancy Elliott personally and on behalf of Elliott Law Professional Corporation	June 28, 29, 2021
John Davies personally and on behalf of Aeolian Investments Ltd., the Davies Family Trust and the Davies Arizona Trust	July 19, 20, 2021
Judith Davies	July 21, 22, 2021
Michael Cane	July 23, 26, 2021
Jude Cassimy personally and on behalf of First Commonwealth Mortgage Corporation	July 27, 2021
Grant Thornton Limited in its capacity at the Court-Appointed Trustee	August 16, 17, 2021
KSV Kofman Inc. in its capacity at the Court-Appointed Receiver	August 18, 19, 2021
Walter Thompson personally and on behalf of 13281805 Ontario Inc.	August 30, September 1, 3, 2021



APPENDIX 7

PROPERTY AND DAVIES DEVELOPER	TIER 1 TRUSTEE CORPORATION AND SMI¹	STATUS
<i>Davies Developers Subjected to the Expanded Receivership²</i>		
“Boathaus Property” Whitby, ON; previously owned by the Davies Boathaus Developer	Scollard Trustee Corporation held an SMI in the principal amount of approximately \$13.6 million (“ Boathaus SMI ”) over the Boathaus Property, which was registered on title behind a \$2.35 million mortgage and certain other encumbrances.	The Boathaus Property was sold by the Receiver for approximately \$11.1 million, of which an interim distribution of approximately \$5.9 million was made to the Trustee. The Trustee has distributed approximately \$5.4 million to Investors in the Boathaus SMI. A litigation reserve has also been established.
“Legacy Lane Property” Huntsville, ON; previously owned by the Davies Legacy Lane Developer	2223974 Ontario Limited held an SMI (“ Legacy Lane SMI ”) in the principal amount of approximately \$3.5 million over the Legacy Lane Property.	The Legacy Lane Property was sold by the Receiver for approximately \$650,000, of which no interim distribution has been made to the Trustee. A litigation reserve has also been established.
“MC Burlington Property” Burlington, ON; previously owned by the Davies MC Burlington Developer	2223974 Ontario Limited held an SMI (“ MC Burlington SMI ”) in the principal amount of approximately \$8.3 million over the MC Burlington Property, which was registered on title behind a \$1.25 million mortgage.	The MC Burlington Property was sold by the Receiver for approximately \$3.4 million, of which an interim distribution of approximately \$700,000 was made to the Trustee. The Trustee has distributed approximately \$327,000 to Investors in the MC Burlington SMI. A litigation reserve has also been established.
“MC Kitchener Property” Kitchener ON; previously owned by the Davies MC Kitchener Developer	MC Trustee (Kitchener) Ltd. held an SMI (“ MC Kitchener SMI ”) in the principal amount of approximately \$10.6 million over the MC Kitchener Property, which was registered on title behind a \$950,000 mortgage.	The MC Kitchener Property was sold by the Receiver for approximately \$1.87 million, of which no interim distribution has been made to the Trustee. A litigation reserve has also been established.
“MC Oakville Property” Oakville, ON; previously owned by the Davies MC Oakville Developer	2223947 Ontario Limited held an SMI (“ MC Oakville SMI ”) in the principal amount of approximately \$9 million over the MC Oakville Property, which was registered on title behind a \$1.25 million mortgage.	The MC Oakville Property was sold by the Receiver for approximately \$4.2 million, of which an interim distribution of approximately \$2 million was made to the Trustee. The Trustee has distributed approximately \$1.5 million to Investors in the MC Oakville SMI. A litigation reserve has also been established.
“525 Princess Property” Kingston, ON; previously owned by the Davies 525 Princess Developer	Textbook Student Suites (525 Princess Street) Trustee Corporation held an SMI (“ 525 Princess SMI ”) in the principal amount of approximately \$6.4 million over the 525 Princess Property, subject to a construction lien for approximately \$67,000.	The 525 Princess Property was sold by the Receiver for approximately \$2.1 million, of which an interim distribution of approximately \$1.3 million was made to the Trustee. The Trustee has distributed approximately \$1 million to Investors in the 525 Princess SMI. A litigation reserve has also been established.
“555 Princes Property” Kingston, ON; previously owned by the Davies 555 Princess Developer	Textbook Student Suites (555 Princess Street) Trustee Corporation held an SMI (“ 555 Princess SMI ”) in the principal amount of approximately \$8 million over the 555 Princess Property, subject to a construction lien for approximately \$67,000.	The 555 Princess Property was sold by the Receiver for approximately \$2.1 million, of which an interim distribution of approximately \$1.3 million was made to the Trustee. The Trustee has distributed approximately \$1 million to Investors in the 555 Princess SMI. A litigation reserve has also been established.

¹ All SMIs jointly held with Olympia Trust Company for the benefit of RRSP Investors.

² As noted in the previous reports to Court filed by the Trustee, the Trustee was able to obtain takeout financing in certain cases to prevent private enforcement proceedings where there was a prior-ranking mortgage, thereby enabling the Receiver to run a public sale process. Such takeout financing was also used to finance the administration of the Expanded Receivership Proceedings.

PROPERTY AND DAVIES DEVELOPER	TIER 1 TRUSTEE CORPORATION AND SMI³	STATUS
<i>Davies Developer Subjected to the 445 Princess Receivership</i>		
"445 Princess Property" Kingston, ON; previously owned by the Davies 445 Princess Developer	Textbook Student Suites (445 Princess Street) Trustee Corporation held an SMI in the principal amount of approximately \$8.5 million (" 445 Princess SMI ") over the 445 Princess Property, which was registered on title behind a \$7 million mortgage.	The 445 Princess Property was sold by the 445 Princess Receiver for approximately \$7.55 million. Given the outstanding amount under the first registered mortgage, no distribution is expected to be made from the 445 Princess Receiver to the Trustee. A second piece of real property was also discovered and sold, of which proceeds of approximately \$100,000 are being held by the Receiver.
<i>Davies Developers Subjected to the Residual Receivership</i>		
<i>Real Property Subjected to the Ross Park Receivership</i>		
"Ross Park Property" London, ON; previously owned by the Davies Ross Park Developer	Textbook Student Suites (Ross Park) Trustee Corporation held an SMI in the principal amount of approximately \$11.6 million (" Ross Park SMI ") over the Ross Park Property, which was registered on title behind a conditional \$4 million mortgage and certain other encumbrances.	The Ross Park Property was sold by the Ross Park Receiver for variable consideration depending on the completion of certain milestones, but for which initial cash proceeds to the Ross Park Receiver were approximately \$2.8 million, from which distributions totalling approximately \$1.6 million have been made to the Trustee. A settlement was also reached with the conditional mortgagee. The Trustee has distributed approximately \$1.17 million to Investors in the Ross Park SMI, and certain reserves have also been taken. The purchaser continues to pursue certain zoning approvals, on which results will impact the ultimate recovery.
<i>Real Property Subjected to the Private Sales</i>		
"Bronson Property" Ottawa, ON; previously owned by the Davies Bronson Developer	Textbook Student Suites (774 Bronson Avenue) Trustee Corporation held an SMI in the principal amount of approximately \$10.9 million (" Bronson SMI ") over the Bronson Property, which was registered on title behind a \$5.7 million mortgage.	The Bronson Property was sold by Vector Financial Services Limited by Private Sale for approximately \$7.2 million, of which net proceeds of approximately \$740,000 were distributed to the Trustee (plus approximately \$429,000 already on hand from the Bronson SMI interest reserve) transferred by H+H. The Trustee has distributed approximately \$768,000 to Investors in the Bronson SMI. A litigation reserve has also been established.
"McMurray Property" Bracebridge, ON; previously owned by the Davies McMurray Developer	7743718 Canada Inc. held an SMI in the principal amount of approximately \$3.5 million (" McMurray SMI ") over the McMurray Property, which was registered on title behind certain registered encumbrances, including a \$2 million mortgage.	The McMurray Property was sold by Computershare by Private Sale for approximately \$2.8 million, of which approximately \$2.5 million was required to discharge the first mortgage, tax arrears and selling costs and related expenditures, and the material remaining balance consists of \$60,748 paid to Trisura and \$200,000 paid to the Trustee in accordance with the McMurray Holdback-Release Mechanism. The Trustee has also obtained \$300,000 from a purchaser under an earlier transaction with the Davies McMurray Developer that did not close.

³ All SMIs jointly held with Olympia Trust Company for the benefit of RRSP Investors.

APPENDIX 8

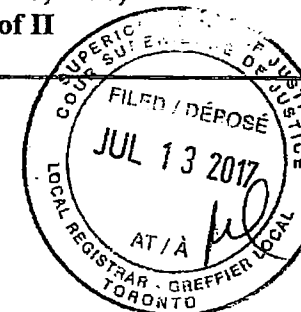
July 17/17

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
(Motion for an Extension of the Mareva Injunction -
Returnable July 17, 2017)
Volume I of II

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



Sean Zweig (LSUC#573071)
Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSUC#55457P)
Phone: (416) 777-6511
Email: bellj@bennettjones.com
Facsimile: (416) 863-1716

Lawyers for the Plaintiff

July 17/17
For Endowment attached, order to go.
Despite the Orders set out in the
attached Endowment Mrs Davies is
authorised and ~~allowed~~ allowed
to access and spend up to an
aggregate amount of \$25,000
to retain counsel and sustain herself
in the interim period.

[Handwritten signature]

Aug 30/17

THE TS HAVE THE BURDEN OF ESTABLISHING
AN ENTITLEMENT TO A MAREVA INJUNCTION.
I AGREE WITH MR KRANT THAT EXECUTION
REPUTE JUDGMENT IS A RARE, EXTRAORDINARY
EXCEPTION TO THE RULE. IT SHOULD NOT
BE AVAILABLE WHEN THE DS HAVE A
PLAUSIBLE, ACCEPTABLE DEFENCE. CONVERSELY

1/2 (YELLOW SHEETS)

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

IT SHOULD ONLY BE AVAILABLE WHERE IT IS CLEARLY
LIKELY TO SUCCEED & THERE IS EVIDENCE OF A REAL RISK
OF DISSIPATION OF ASSETS BY Δ.

ORDER TO GO AS ASKED.

TV, THE RECEIVER OF 7 DEVELOPERS, SUES JOHN
DAVIES AND OTHERS - ~~THE~~ ^A PRINCIPAL MANAGER AND
OWNER OF THE DEVELOPERS OR THEIR PARENT COMPANIES,
FOR FRAUD, BREACH OF FIDUCIARY DUTY, CONVERSION
~~AND~~ ^{AND} OTHER CAUSES OF ACTION. THE ESSENCE OF THE
CLAIMS ~~ARE~~ ^{IS} THAT THE DEVELOPERS RAISED MONEY
FROM THE PUBLIC THROUGH TIER 1 COMPANIES OWNED
OR RUN BY Mr. SINGH. Mr SINGH'S COMPANIES
LEND THE INVESTOR'S FUNDS TO THE DEVELOPERS
OSTENSIBLY ON A SECURED BASIS TO FUND THE
CONSTRUCTION OF 7 SEPARATE PROJECTS. SINGH'S
COMPANIES TOOK A 25% FEE. SINGH IS ALSO
A SHAREHOLDER OF ^{SOME OF THE} PROJECT COMPANIES OR THEIR
PARENT COMPANIES WITH DAVIES AND HIS OTHER
COHORTS.

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Judges Initials _____

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Judges Endorsment Continued

THE MONEY WAS NOT USED TO BUILD ANY BUILDINGS. FOOTINGS HAVE STARTED ON 2 PROJECT AND 3 PROJECT IS SAID TO BE NEAR CONSTRUCTION. INSTEAD OF USING THE FUNDS FOR EACH CORPORATION'S CORPORATE PURPOSE MR DAVIES PAID HIMSELF AND CONTRACTORS FEES ^{AND} ~~AND~~ WORST STILL FUNDS WERE ^{NOT} LENT AMONG THE COMPANIES (AND 5 OTHERS) ON AN UNSECURED BASIS TO MEET INTEREST OBLIGATIONS DUE ON ~~THE~~ THOSE COMPANIES BORROWINGS FROM TIER 1 (FOR THE PUBLIC INVESTORS). MR DAVIES ADMITTED ON X-6X THAT EACH DEVELOPER HAD ~~A~~ SERIOUS CASH FLOW ISSUES AS SOON AS ITS FUNDS WERE RAISED. THAT IS, AFTER FEES, COMPENSATION TO TIER 1, DIVIDENDS = SALARIES & 1 YEAR OF INTEREST HELD IN RESERVE, EACH COMPANY HAD INSUFFICIENT FUNDS TO PAY INTEREST AFTER THE YEAR AND SIGNIFICANTLY TO BUILD A BUILDING. THIS WAS APPARENT ON DAY ONE. TO ANSWER THE SYSTEMIC CASH DRAIN BUILT

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Superior Court of Justice
Commercial List**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

INTO THE COMPANIES BY DESIGN MR DAVIES AND MR SINGH WOULD HAVE TIER 1 CERTAIN FURTHER PUBLIC INVESTMENTS, TIER 1 RAISED FUNDS FROM REAL PEOPLE ON THE BASIS THAT THE FUNDS WOULD BE LENT TO A DEVELOPER ON A SECURED BASIS TO FUND A BUILDING. BUT INSTEAD, SINGH AND DAVIES USED NEW FUNDS TO PAY ACCRUING INTEREST ON EARLIER INVESTMENTS IN OTHER OF THE 11 COMPANIES. THAT IS CALLED A PONZI SCHEME.

THIS IS JUST A MERE EARLY IN THE CASE, SO HOW CAN I SAY THIS SO DEFINITELY? MR DAVIES PREPARED A 2 PAGE EXPLANATION OF HOW HIS FINANCIAL MODEL WORKS. IT IS SHOCKING IN ITS CLARITY OF A DESCRIPTION OF AN ILLICIT, FRAUDENT SCHEME WITHOUT MR DAVIES SEEMINGLY HAVING THE LEAST BIT OF COMPUNCTION ABOUT IT.

MR KRAFT NICELY TRIED ON SEVERAL ANSWERS. FIRST HE ARGUED THAT THE RECEIVER'S

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Superior Court of Justice
Commercial List

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Judges Endorsement Continued

ANALYSIS & ITS FAILURE TO SUE MR SINGH
GIVES AN AIR OF PLAUSIBILITY TO MR
DAVIES' RIGHTFULNESS. THIS CANNOT SURVIVE
THE CLEAR ADMISSIONS IN MR DAVIES OWN
HAND & X-6XAM.

MR KRAFT ARGUES THAT MR SINGH
CONSENTED SO THAT THE DEVELOPERS DID NOT
BREACH THEIR LOAN AGREEMENTS WITH TIER 1
IN MAKING THE VARIOUS DISTRIBUTIONS AND
SUPPORTED LOANS THAT THEY MADE. WHILE NOT
NAMED, SINGH IS NOT ARM'S LENGTH, I DOUBT
HE COULD UNILATERALLY GIVE A VALID CONSENT
GIVEN HIS PERSONAL CONFLICTS OF INTEREST. REGARDLESS,
THE CLAIMS AGAINST DAVIES ARE BROUGHT BY
THE DEVELOPER COMPANIES. DAVIES IS SAID TO
HAVE COMMITTED FRAUD ON THEM AND BREACHED HIS
FIDUCIARY DUTIES TO THEM BY DECLARING DIVIDENDS,
PAYING HIMSELF FRONT-END LOADED FEES, PAYING
HIMSELF ABOVE-MARKET SALARY AND LENDING
FUNDS OF EACH DEVELOPER TO HIS OTHER 10

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Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

INSOLVENT, ~~AND~~ SIMILARLY CASH-STRAPPED
 DEVELOPER COMPANIES. WITH OVER \$100 MILLION
 RAISED ~~AND~~ AND SPENT, THERE ARE NO BUILDINGS!
 MR SINGH AND MR DAVIES WERE 6-MAINS IN
 WHICH THEY PLAINLY KNOW THE COMPANIES ARE
 INSOLVENT AND DESPERATELY LOOK FOR CASH TO
 AVOID AN INTEREST DEFAULT THAT WOULD
 TRIGGER A PSLO REPORT AND WOULD BRING UP
 FUTURE INVESTMENT NEEDS TO SUPPORT THE
 POND SCHEME. IN ADDITION ~~TO~~ THE RECEIVER
 FAIRLY SUBMITS THAT THE INTER-COMPANY
 UNSECURED LOANS FROM ONE CASH-STRAPPED
 INSOLVENT TO ANOTHER WERE NOT REAL LOANS.
 THERE WAS NO EXPECTATION OF REPAYMENT.
 THEY WERE PAYMENTS TO KEEP THE POND ALIVE
 A BIT LONGER.

MR KRAFT SAYS, MR DAVIES MIGHT JUST
 HAVE BEEN A POOR DEVELOPER. PERHAPS MR KRAFT
 HYPOTHESIZED HE SHOULD HAVE STOPPED AFTER
 A FEW BUILDINGS HIT ~~ROCKY~~^{ROCKY} TIMES. BUT HE

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

DIDN'T AND THAT'S THE POINT. AN HONEST
BUT LOUSY DEVELOPER WOULD NOT HAVE GONE ALONG
TO 10 OR 11 PROJECTS WITH EACH CONTRIBUTING
17% NEW INVESTMENT TO OLD DEBT. MR DANIEL
SAID ON X-6344 THAT HE EXPECTED CONSTRUCTION
FINANCING TO FILL THE EVER-INCREASING DEBT
PIT. THAT MAKES NO SENSE AT ALL. CONSTRUCTION
FINANCING IS USED TO BUILD NOT TO RE-PAY
OLD DEBT INCURRED TO FUND FRONT-END LOADED
CASH STRIPPING BY DANIEL & COHORTS.

IN ADDITION DANIEL OFFERS NO INNOCENT
EXPLANATION DESPITE MR KRAFT'S CREATIVE EFFORTS
TO FIND ONE. MR DANIEL DOES NOT SAY HE DID
A POOR JOB OR ^{THAT} ~~A~~ SOME IDENTIFIED CIRCUMSTANCES
IN THE MARKET CAUSED DELAYS OR INCREASED COSTS.
INSTEAD, HE SAYS ^{THAT} ONLY HE UNDERSTANDS HOW
THE DEVELOPMENT INDUSTRY WORKS. HE SAYS HE
WAS DOING WHAT PEOPLE IN THE INDUSTRY DO
TO KEEP COMPANIES GOING DURING DEVELOPMENT.
NOT THE HONEST ONES.

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

MR KRAFT AGREES THAT THERE IS NO RISK OF DISSIPATION AS THE DAVIES HAVE NO ASSETS OF VALUE. THEY HAVE RECENTLY SOLD THE COTTAGE. THEY HAVE LISTED ~~THE~~ THEIR HOUSE FOR SALE DESPITE THE EXISTENCE OF A MARCUA INJUNCTION AGREEMENT. THEY ARE LIVING WELL DESPITE A MARCUA WITH FUNDS BEING ADVANCED FROM THE ARCHITECT ON THE PROJECTS. THERE IS A SUBSTANTIAL HOUSE IN AZ OWNED BY THE TWO TRUSTS THAT THE TRUSTEES UNDERTAKE NOT TO SELL. BUT THEY ARE NOT WILLING TO PUT AN ORDER ON TITLE. THE RECEIVER HAS SHOWN A PRIMA FACIE ABILITY TO TRACE CORPORATE FUNDS INTO BOTH PROPERTIES. THE ARCHITECT'S LARGESSE SUGGESTS THAT THERE MAY WELL BE HIDDEN POOLS OF FUNDS YET UNDISCOVERED. I HAVE NO HESITATION FINDING A PROVEN RISK OF DISSIPATION GIVEN THE LISTING OF THE HOUSE IN FACE OF A MARCUA. I MAKE DISSIPATION AND LIKELY FLIGHT TO AZ IN LIGHT OF THE DEGREE OF OBTUSITY AND THE LIQUIDATION OF

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

THE DAVES' REAL BUSTLE.

IN MY VIEW THIS IS A CASE TO
WANT NOT UNDERTAKING ON DAMAGES IN
ACCORDANCE WITH THE COURT'S DISCRETION. THE
RECEIVER HAS NO SKIN IN THE GAME. TO GO TO
THE GOVERNMENT OR TO INVESTORS TO FUND THESE
PROCEEDINGS IS AN AFFRONT TO ACCESS TO JUSTICE.
PEOPLE INVESTED THEIR SAVINGS AND RETIREMENTS
AND IT SO FAR HAS TAKEN TWO RECEIVERS AND
MULTIPLE COURT PROCEEDINGS TO PEEL BACK
ENOUGH LAYERS OF THE ONION TO LET THE
WEEPING JUST BEGIN. WHEN I ASKED MR
KRAFT ~~WHY~~ WHY THERE ARE NO BUILDINGS BUILT
WITH \$100 MILLION OF INVESTORS MONEY HE
SAID "THE MONEY WAS SPENT." MR DAVES
MADE NO EXPLANATION AT ALL BEYOND BLAMING
ESTO FOR SHUTTING HIS PIPELINE TO GET FURTHER
FUNDING FROM THE PUBLIC AT A TIME WHEN THE
7 ~~DEVELOPERS~~ DEVELOPERS HAD AN AGGREGATE
OF \$17,000 APPROXIMATELY IN THE BANK. WHILE

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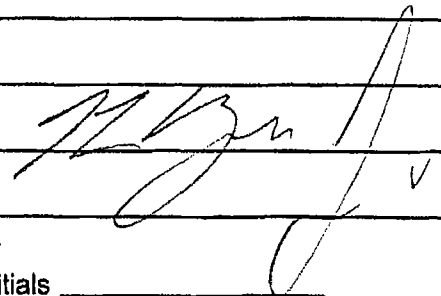
Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

THE AS MAY SUFFER DAMAGE FROM THE CAREVA
IF THEY WERE AT TRIAL, SO FAR IT HAS NOT
DAMPENED THEIR LIFESTYLES. MOREOVER, GIVEN THE
STRENGTH OF THE CASE IN DAVIES OWN VOICE,
ADVANTAGE ACCESS TO JUSTICE CONCERNS LEADS
ME TO THE VIEW THAT THIS IS A RARE AND
UNUSUAL CASE WHERE RECEIVING AN UNOBTAINABLE
WILL DO MORE HARM THAN GOOD.

COSTS TO BE ON A SUBSTANTIAL
INDIGNITY BASIS IN LIGHT OF THE
ADMITTED DICHONIST SCHEME PERPETRATED
BY MR DAVIES FOR THE AS ON THE DEVELOPER
COMPANIES AND THEIR CREDITORS.



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

B E T W E E N:

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

Plaintiff

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, AND GREGORY HARRIS SOLELY IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST

Defendants

ENDORSEMENT OF MYERS J. – AUGUST 30, 2017

(UNOFFICIAL TRANSCRIPT)

The Plaintiffs have the burden of establishing an entitlement to a Mareva Injunction. I agree with Mr. Kraft that execution before judgment is a rare, extraordinary exception to the norm. It should not be available when the Defendants have a plausible, acceptable defence. Conversely it should only be available where the Plaintiff is clearly likely to succeed and there is evidence of a real risk of dissipation of assets by the Defendant.

Order to go as asked.

The Plaintiff, the Receiver of 7 developers, sues John Davies and others, a principal manager and owner of the developers or their parent companies, for fraud, breach of fiduciary duty, conversion and other causes of action. The essence of the claims is that the developers raised money from the public through Tier 1 companies owned or run by Mr. Singh. Mr. Singh's companies lent the investors funds to the developers ostensibly on a secured basis to fund the construction of 7 separate projects. Singh's companies took a 25% fee. Singh is also a shareholder of some of the project companies or their parent companies with Davies and his other cohorts.

The money was not used to build any buildings. Footings have started on 1 project and 1 project is said to be near construction. Instead of using the funds for each corporation's corporate purpose, Mr. Davies paid himself and cohorts fees and dividends. Worst still, funds were lent among the companies (and 5 others) on an unsecured basis to meet interest obligations due on those companies' borrowings from Tier 1 (for the public investors). Mr. Davies admitted on cross-examination that each developer had serious cash flow issues as soon as its funds were raised. That is, after fees, compensation to Tier 1, dividends, salaries and 1 year of interest held in reserve, each company had insufficient funds to pay interest after the year and, significantly, to build a building. This was apparent on day one. To answer the systemic cash drain built into the companies by design, Mr. Davies and Mr. Singh would have Tier 1 obtain further public investments. Tier 1 raised funds from real people on the basis that the funds would be lent to a developer on a secured basis to fund a building. But instead, Singh and Davies used new funds to pay accruing interest on earlier investments in other of the 11 companies. That is called a Ponzi Scheme.

This is just a motion early in the case, so how can I say this so definitely? Mr. Davies prepared a 2 page explanation of how his financing model works. It is shocking in its clarity of a description of an illicit, fraudulent scheme without Mr. Davies seemingly having the least bit of compunction about it.

Mr. Kraft tried on several answers. First he argued that the Receiver's analysis and Plaintiff's failure to sue Mr. Singh give an air of plausibility to Mr. Davies righteousness. This cannot survive the clear admissions in Mr. Davies own hands and cross examination.

Mr. Kraft argues that Mr. Singh consented so that the developers did not breach their loan agreements with Tier 1 in making the various distributions and supposed loans that they made. While not noted, Singh is not arm's length. I doubt he could unilaterally give a valid consent given his personal conflicts of interest. Regardless, the claims against Davies are brought by the developer companies. Davies is said to have committed fraud on them and breached his fiduciary duties to them by declaring dividends, paying himself front-end loaded fees, paying himself above-market salary and lending funds of each developer to his other 10 insolvent, similarly, cash-strapped developer companies. With over \$100 million raised and spent, there are no buildings! Mr. Singh and Mr. Davies have emails in which they plainly know the companies are insolvent and desperately look for cash to avoid an interest default that would trigger a FSCO report and would dry up future investment needed to support the Ponzi Scheme. In addition, the Receiver fairly submits that the inter-company unsecured loans from one cash-strapped insolvent company to another were not real loans. There was no expectation of repayment. There were payments to keep the Ponzi alive a bit longer.

Mr. Kraft says, Mr. Davies might just have been a poor developer. Perhaps, Mr. Kraft hypothesized, he should have stopped after a few buildings hit rocky times. But he didn't and that's the point. An honest but lousy developer would not have gone along to 10 or 11 projects with each contributing its new investment to old debt. Mr. Davies said on cross examination that he expected construction financing to fill the ever-increasing debt. That makes no sense at all. Construction financing is used to build not to re-pay old debt incurred to fund front-end loaded cash stripping by Davies and cohorts.

In addition, Davies offers no innocent explanation despite Mr. Kraft's creative efforts to find one. Mr. Davies does not say he did a poor job or that some identified circumstances in the market caused delays or increased costs. Instead, he says that only he understands how the development industry works. He says he was doing what people in the industry do to keep companies going during development. Not the honest ones.

Mr. Kraft argues that there is no risk of dissipation as the Davies have no assets of value. They have recently sold the cottage. They have listed their house for sale despite the existence of Mareva Injunction already. They are living well despite a Mareva with funds being advanced from the architect on the projects. There is a substantial house in Arizona owned by the two trusts that the trustees undertake not to sell. But they are not willing to put an order on title. The Receiver has shown a *prima facie* ability to trace corporate funds into both properties. The architect's largesse suggests that there may well be hidden pools of funds yet undiscovered. I have no hesitation finding a proven risk of dissipation given the listing of the house in the face of a Mareva. I infer dissipation and likely flight to Arizona in light of the degree of dishonesty and the liquidation of the Davies' real estate.

In my view this is a case to waive undertakings on damages in accordance with the Court's discretion. The receiver has no skin in the game. To go to the government or to investors to fund these proceedings is an affront to access to justice. People invested their savings and retirements and it so far has taken two receivers and multiple court proceedings to peel back enough layers of the onion to let the weeping just begin. When I asked Mr. Kraft why there are no buildings built with \$100 million of investors' money, he said "the money was spent". Mr. Davies made no explanation at all beyond blaming FSCO for shutting his pipeline to yet further funding from the public at a time when the 7 developers had an aggregate of \$17,000 approximately in the bank. While the Defendants may suffer damages from the Mareva if they win at trial, so far it has not dampened their lifestyles. Moreover, given the strength of the case in Davies' own voice, access to justice concerns leads me to the view that this is a rare and unusual case where receiving an undertaking will do more harm than good.

Costs to the Plaintiff on a substantial indemnity basis in light of the admitted dishonest scheme perpetrated by Mr. Davies for the Defendants on the developer companies and their creditors.

- Myers J.

APPENDIX 9

SETTLEMENT AGREEMENT (this "Settlement Agreement")

AMONGST:

KSV KOFMAN INC., SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER 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., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC., AND NOT IN ITS PERSONAL CAPACITY OR ANY OTHER CAPACITY

(in such capacity, the "**Receiver**")

-and-

GRANT THORNTON LIMITED, SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND NOT IN ITS PERSONAL CAPACITY OR ANY OTHER CAPACITY

(in such capacity, the "**Trustee**")

-and-

JOHN DAVIES, IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST (THE "**FAMILY TRUST**") AND THE DAVIES ARIZONA TRUST (THE "**ARIZONA TRUST**")

(in all such capacities, "**Mr. Davies**")

-and-

JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE FAMILY TRUST

(in all such capacities, "**Ms. Davies**")

-and-

AEOLIAN INVESTMENTS LTD.

(**"Aeolian"**, and together with Mr. Davies and Ms. Davies, the "**Mareva Defendants**")

WHEREAS:

- A. Grant Thornton Limited was appointed as the Trustee pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued on October 27, 2016;
- B. KSV Kofman Inc. was appointed as the Receiver pursuant to Orders of the Court issued on February 2, 2017, April 28, 2017, May 2, 2017, January 9, 2018 and May 30, 2018;
- C. The Receiver filed a notice of action in the Court on June 6, 2017, bearing Court File No. CV-17-11822-00CL (the “**Original Action**”), against Mr. Davies (solely in his personal capacity) and Aeolian;
- D. The Receiver filed a statement of claim in the Original Action, which was subsequently amended to name additional defendants, including Mr. Davies (in his additional capacity as trustee of both the Arizona Trust and the Family Trust), Ms. Davies, and Gregory Harris solely in his capacity as trustee of the Family Trust (in such capacity, “**Mr. Harris**”);
- E. On August 30, 2017, the Court granted a Mareva injunction as against the Mareva Defendants and Mr. Harris in the Original Action, which restricts them, including the Arizona Trust, from selling, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with any of their assets, wherever situate worldwide (the “**Mareva Injunction**”);
- F. The Arizona Trust owned real property located at 35411 North 66th Place, Carefree, Arizona, 85377 (the “**Arizona Real Property**”), which, on or about November 7, 2018, was sold by the Arizona Trust for USD\$1,650,000 along with the furnishings situated on the Arizona Real Property for a further USD\$150,000. The net proceeds generated from the sale (after paying realtor commissions and a mortgage and a lien that were registered against the Arizona Real Property) amount to USD\$862,568, which amount has since been reduced by virtue of Mr. Davies accessing living expenses of CDN\$7,500 per month pursuant to a Court-approved exemption to the Mareva Injunction. The total amount of net proceeds currently remaining from the sale amounts to USD\$828,171.71 (the “**Proceeds**”), of which USD\$580,671.71 is currently being held in Dentons Canada LLP’s (“**Dentons**”) trust account, with the balance, being USD\$247,500, currently being held by the United States Internal Revenue Service (the “**IRS**”) in respect of a potential withholding tax obligation. Dentons, counsel for Mr. Davies, has provided the Receiver’s counsel with information from Mr. Davies’ agent in the United States, Mary-Heather Styles of Transatlantic Tax Inc., who has advised that the full amount of USD\$247,500 will ultimately be released by the IRS. The Proceeds represent most of the Mareva Defendants’ assets known to the Trustee and the Receiver;
- G. The Trustee and the Receiver commenced a further action in the Court by the issuance of a statement of claim on October 3, 2018 bearing Court File No. CV-18-606314-00CL (the “**Expanded Action**”) against the Mareva Defendants and the following additional parties: Mr. Harris (in his personal capacity and in his capacity as trustee of the Family Trust), Harris + Harris LLP, Nancy Elliot, Elliot Law Professional Corporation, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, The Traditions

Development Company Ltd., David Arsenault, James Grace, Bhaktraj Singh a.k.a. Raj Singh, RS Consulting Group Inc., Tier 1 Transaction Advisory Services Inc., Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc. and Michael Cane (collectively, in any and all capacities, and together with any and all other parties or potential parties in the Expanded Action and in any other claims and proceedings, the “**Defendants**”);

- H. In the Expanded Action, the Trustee and the Receiver seek an interim, interlocutory and permanent Mareva injunction as against the Mareva Defendants and Mr. Harris in his capacity as trustee of the Family Trust;
- I. The Receiver intends to consolidate the Original Action with the Expanded Action;
- J. On January 19, 2018, the Ontario Superior Court of Justice (Divisional Court) (the “**Divisional Court**”) granted leave to Mr. Davies and Aeolian to appeal the Mareva Injunction;
- K. The appeal of the Mareva Injunction (the “**Appeal of the Mareva Injunction**”) is currently scheduled to be heard on April 17, 2019;
- L. The Trustee and the Receiver, on the one hand, and the Mareva Defendants, on the other hand, wish to resolve solely the Mareva Injunction and the Appeal of the Mareva Injunction (collectively, the “**Mareva Issues**”) in accordance with the terms set out below;

NOW THEREFORE in consideration of the promises set forth herein, the mutual covenants and agreements contained herein, and for further and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The above recitals are true and accurate, and form part of this Settlement Agreement.
2. **Adjournment of Appeal of the Mareva Injunction.** As soon as possible following the execution of this Settlement Agreement, and in any event prior to April 17, 2019, Mr. Davies and Aeolian shall adjourn the Appeal of the Mareva Injunction on the consent of the Receiver to a mutually agreeable date. If necessary, counsel for Mr. Davies and Aeolian and counsel for the Receiver shall attend at Divisional Court to speak to the adjournment.
3. **Court Approval.** Provided that Mr. Davies and Aeolian adjourn the Appeal of the Mareva Injunction in accordance with the terms and timelines provided by paragraph 2 of this Settlement Agreement, then, subject only to paragraph 4 of this Settlement Agreement, the Receiver and the Trustee shall apply forthwith to the Court for and recommend an order approving and giving full effect to this Settlement Agreement (the “**Order**”, and upon such Order being issued by the Court, the “**Effective Time**”).
4. **Asset Disclosure.** Prior to the Receiver and the Trustee seeking the Order from the Court, Mr. Davies, Ms. Davies, Aeolian, the Family Trust (through its designated trustee) and the Arizona Trust (through its designated trustee) shall each first swear

affidavits fully and accurately disclosing all of their assets wherever located (the “**Disclosure Affidavits**”) and deliver such Disclosure Affidavits to the Receiver and the Trustee. If the assets disclosed by Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust in the Disclosure Affidavits are not limited to what each has previously disclosed to the Receiver, the Receiver and/or the Trustee may, in their discretion, decline to perform their obligations otherwise provided by paragraph 3 of this Settlement Agreement.

5. **Disbursement of the Proceeds.** Provided that the Order is granted by the Court, the parties to this Settlement Agreement (the “**Parties**”) shall divide the Proceeds such that the Receiver shall receive 72.5% of the Proceeds and Mr. Davies shall receive 27.5% of the Proceeds. For greater clarity, in monetary terms, the Receiver shall receive USD\$600,424.49 and Mr. Davies shall receive USD\$227,747.22, subject to the Order being granted by the Court and subject to the additional terms set out below:
- (a) **Payment of Proceeds to Mr. Davies.** Mr. Davies shall be paid CAD\$150,000 (the “**Initial Payment**”) from the Proceeds currently in Dentons’ trust account immediately after the Effective Time, with the balance of Mr. Davies’ share of the Proceeds to be paid from the amount currently held back by the IRS upon receipt by Dentons of such amount in compliance with the undertakings previously given to the Receiver regarding payment of this amount directly to Dentons. The exchange rate to be used for calculating the Initial Payment shall be the exchange rate applied by Bank of Montreal on the day the Initial Payment is made;
 - (b) **Payment of the Proceeds to the Receiver.** Following the Initial Payment, the Receiver shall be paid the balance of the Proceeds currently in Dentons’ trust account immediately after the Effective Time, and, in any event, within no more than two business days after the Effective Time. Provided that the funds currently held back by the IRS are released in full, the balance of the Receiver’s share of the Proceeds shall be paid from the released funds forthwith upon receipt by Dentons of such funds in compliance with the undertakings previously given to the Receiver regarding payment of this amount directly to Dentons and, in any event, within no more than two business days following receipt of such amount;
 - (c) **Authorization and Direction for Dentons Canada LLP.** This Settlement Agreement shall serve as Dentons’ formal and irrevocable authorization and direction from Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust to transfer the funds to the Receiver as set out above without any further act, formality or instruction being required from any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust, the Arizona Trust, or any other party;
 - (d) **Pro Rata Distribution.** To the extent the funds currently held back by the IRS are not released in full as expected, the Receiver and Mr. Davies shall divide such proceeds according to their pro rata entitlement, having regard to the amounts already paid to both the Receiver and Mr. Davies on the initial distribution from Dentons’ trust account. For greater certainty, the funds released by the IRS shall be divided so that the Receiver and Mr. Davies receive 72.5% and 27.5% of the total net proceeds of sale of the Arizona Real Property (to the extent possible, having regard to the quantum of funds released by the IRS). For further greater certainty, the quantum of the release of the IRS funds shall in no event entitle

either Mr. Davies or the Receiver to demand repayment of the initial payments made out of the proceeds currently held by Dentons contemplated by paragraphs 5(a) and (b) above; and

- (e) **No Admission of Liability.** The payments to be made hereunder shall be without any admission of liability. All liability is expressly denied by Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust.
6. **Lifting of the Mareva Injunction.** Provided that the Order is granted by the Court, then, following the Effective Time and the Receiver's receipt of all payments contemplated in this Settlement Agreement, the Mareva Injunction will be terminated on consent on a without costs basis, subject to the additional terms set out below:
- (a) If any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust or the Arizona Trust is ever found to have made any misrepresentation in any of the Disclosure Affidavits, the Trustee and/or the Receiver shall be entitled to immediately bring a new motion for a Mareva injunction against the Mareva Defendants on the express consent of all of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust. In that regard, Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust each hereby provides such consent and shall each take any and all additional steps as may be necessary or reasonable to give full effect to this subparagraph;
 - (b) Each of Mr. Davies, Ms. Davies, Aeolian, the Family Trust (through its designated trustee) and the Arizona Trust (through its designated trustee) shall report to the Receiver and the Trustee on a quarterly basis regarding all of their respective direct and indirect earnings for the previous quarter. Should any of their earnings, on an individual basis, exceed CAD\$50,000 for any given quarter, the relevant party or parties shall provide a general accounting to the Receiver and the Trustee describing what they did with all of that quarter's earnings, including, without limitation, details of whether any earnings were sent out of the Province of Ontario or used to acquire assets outside of the Province of Ontario. Failure by any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust (through its designated trustee) and the Arizona Trust (through its designated trustee) to provide a quarterly report within 15 calendar days of the end of each quarter (beginning with respect to the quarter ending on June 30, 2019), and to cure such failure within 7 calendar days' notice provided by the Receiver or the Trustee of the failure to report, shall entitle the Trustee and/or the Receiver to immediately bring a new motion for a Mareva injunction on the express consent of all of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust. In that regard, Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust each hereby provides such consent and shall each take any and all additional steps as may be necessary or reasonable to give full effect to this subparagraph. Notwithstanding the obligations in this paragraph, there is no reporting obligation on: (i) any assets, properties or undertakings disclosed in the Disclosure Affidavits, or (ii) Mr. Davies' share of the Proceeds; and
 - (c) The Receiver, the Trustee or both of them shall be able and entitled to bring a new motion for a new Mareva injunction against any or all of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and/or the Arizona Trust should the information in any of the accounting described above demonstrate that any of Mr. Davies, Ms.

Davies, Aeolian, the Family Trust or the Arizona Trust was or is dissipating assets for the purpose of frustrating a potential judgment in any outstanding litigation by the Receiver or the Trustee against any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and/or the Arizona Trust. The evidence to be used on any such motion brought under this subsection 6(c) of this Settlement Agreement will be restricted only to new information acquired after the Effective Time. For greater clarity, any or all of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and/or the Arizona Trust shall be entitled to fully resist any motion brought under this subsection 6(c) of this Settlement Agreement.

7. **Amendment of statement of claim in the Expanded Action.** Provided that the Order is granted by the Court, then, following the Effective Time and the Receiver's receipt of all payments contemplated in this Settlement Agreement, the Receiver and the Trustee shall amend their statement of claim in the Expanded Action (and, if necessary, the Receiver shall also amend its statement of claim in the Original Action) to no longer seek injunctive relief against Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust (including Mr. Harris solely in his capacity as trustee of the Family Trust), and will also remove the related allegations in paragraphs 263-266 of the Expanded Action. Aside from this amendment to the statement of claim in the Expanded Action (and, if necessary, the Original Action), nothing in this Settlement Agreement shall otherwise affect in any way, or be deemed to affect in any way, the Expanded Action or any related or other proceedings. For greater clarity, and regardless of whether the Order is granted by the Court, nothing in this Settlement Agreement shall be construed or deemed in any way to constitute a release of any kind in respect of any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust, the Arizona Trust, Mr. Harris or any of the Defendants.
8. **Withdrawal of Appeal.** Provided that the Order is granted by the Court, then following the Effective Time, Mr. Davies and Aeolian shall forthwith withdraw the Appeal of the Mareva Injunction on the consent of the Receiver, on a without costs basis. For greater clarity, Mr. Davies and Aeolian shall not forego any of their appeal rights unless and until the Order is granted by the Court..
9. **Further Terms.**
 - (a) The Parties hereby declare, represent and warrant that they have each consulted with and been advised by independent legal counsel with respect to the terms of the settlement set forth herein, that they have read and fully understand all of the terms of this Settlement Agreement, and that they enter into this Settlement Agreement freely and voluntarily, without coercion or duress, and without reliance upon any representation, warranty, condition or agreement, whether written or oral, other than as expressly set out or referred to herein.
 - (b) The Parties shall execute all documents and take all steps as are necessary or reasonable to accomplish the objectives of this Settlement Agreement and give full effect to this Settlement Agreement.
 - (c) This Settlement Agreement may not be altered, amended or modified except by written agreement of the Parties. This Settlement Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws

of Canada applicable therein. Any dispute arising out of or in connection with this Settlement Agreement shall be exclusively and finally determined by the Court.

- (d) The terms of this Settlement Agreement shall enure to the benefit of, and be binding upon, the Parties and their respective heirs, successors and assigns, as applicable.
- (e) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all other prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof.
- (f) The Parties acknowledge that KSV Kofman Inc. and Grant Thornton Limited are entering into this Settlement Agreement solely in their respective capacities as the Receiver and the Trustee and shall have absolutely no personal or corporate liability under or as a result of this Settlement Agreement in any respect.
- (g) This Settlement Agreement may be executed in counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Settlement Agreement:

[Remainder of Page Intentionally Left Blank]

GRANT THORNTON LIMITED,
SOLELY IN ITS CAPACITY AS
THE COURT-APPOINTED
TRUSTEE OF TEXTBOOK
STUDENT SUITES (525
PRINCESS STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (555
PRINCESS STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (ROSS
PARK) TRUSTEE
CORPORATION, 2223947
ONTARIO LIMITED, MC
TRUSTEE (KITCHENER) LTD.,
SCOLLARD TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (774
BRONSON AVENUE) TRUSTEE
CORPORATION, 7743718
CANADA INC., KEELE
MEDICAL TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (445
PRINCESS STREET) TRUSTEE
CORPORATION AND
HAZELTON 4070 DIXIE ROAD
TRUSTEE CORPORATION,
AND NOT IN ITS PERSONAL
CAPACITY OR ANY OTHER
CAPACITY

D. G. Giddens

Witness Name: *Dand Giddens*

J. Kusber

Name: *J. Kusber*
Title: *Sp. Assessor*

KSV KOFMAN INC., SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER 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., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC., AND NOT IN ITS PERSONAL CAPACITY OR ANY OTHER CAPACITY

Witness Name: *Jonathan Joffe*

Name: *Noah Goldstein*
Title: *Managing Director*

Witness Name: _____

JOHN DAVIES, in his personal capacity and in his capacity as trustee of the Davies Family Trust and the Davies Arizona Trust

Witness Name: _____

JUDITH DAVIES, in her personal capacity and in her capacity as trustee of the Davies Arizona Trust

AEOLIAN INVESTMENTS LTD.

Witness Name: _____

Name: _____
Title: _____
I have authority to bind the corporation.

KSV KOFMAN INC., SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER 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., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC., AND NOT IN ITS PERSONAL CAPACITY OR ANY OTHER CAPACITY

Witness Name:

Sam Dawson

Witness Name:

Sam Dawson

Witness Name:

Sam Dawson

Witness Name:

Name:
Title:

John Davies

JOHN DAVIES, in his personal capacity and in his capacity as trustee of the Davies Family Trust and the Davies Arizona Trust

Judith Davies

JUDITH DAVIES, in her personal capacity and in her capacity as trustee of the Davies Arizona Trust

AEOLIAN INVESTMENTS LTD.

John Davies

Name:
Title:

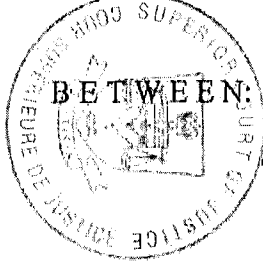
I have authority to bind the corporation.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE
MR. JUSTICE HAINEY

)
)
)

THURSDAY, THE 2nd DAY OF
MAY, 2019



THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

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

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

**IN THE MATTER OF THE RECEIVERSHIP OF
TEXTBOOK (445 PRINCESS STREET) INC.**

**AND IN THE MATTER OF AN APPLICATION UNDER 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)**

BETWEEN:

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

Plaintiff

- and -

**AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL
CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE
DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST,
JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER
CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, AND
GREGORY HARRIS SOLELY IN HIS CAPACITY AS TRUSTEE OF THE
DAVIES FAMILY TRUST**

Defendants

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

BETWEEN:

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND TEXTBOOK ROSS PARK INC.

Plaintiffs

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, JAMES GRACE, BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC., JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE

Defendants

SETTLEMENT APPROVAL ORDER

THIS MOTION, made by KSV Kofman Inc., solely in its capacity as receiver (in such capacity, the “**Receiver**”), 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., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc., and not in its personal capacity or in any other capacity, and Grant Thornton Limited, solely in its capacity as the Court-appointed trustee (in such capacity, the “**Trustee**”) of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation, and not in its personal capacity or in any other capacity, for an Order:

- (a) approving and giving effect to the terms of settlement as set out in the settlement agreement (the “**Settlement Agreement**”) as between the Receiver and the Trustee, on the one hand, and the defendants, John Davies in his personal capacity and in his capacity as trustee of the Davies Family Trust (the “**Family Trust**”) and the Davies Arizona Trust (the “**Arizona Trust**”) (in all such capacities, “**Mr. Davies**”), Judith Davies in her personal capacity and in her capacity as trustee of the Family Trust (in all such capacities, “**Ms. Davies**”), and Aeolian Investments Ltd. (“**Aeolian**”, and together with Mr. Davies and Ms. Davies, the “**Mareva Defendants**”), on the other hand, resolving and settling solely the Mareva injunction granted by the Honourable Justice Myers on August 30, 2017 and the appeal of the decision of the Honourable Justice Myers relating to the Mareva injunction, in accordance with the terms set out in the Settlement Agreement; and
- (b) authorizing and directing the Receiver and the Trustee to take any and all steps necessary to give effect to the Settlement Agreement,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Receiver and the Trustee, the Eighteenth Report of the Receiver dated April 24, 2019, the Factum of the Receiver and the Trustee, and on hearing the submissions of counsel for the Receiver, counsel for the Trustee and counsel for the Mareva Defendants, and such other counsel as were present, and no one appearing for any other party, although duly served, as appears from the affidavit of service of Joseph Blinick sworn April 26, 2019,

SERVICE

1. THIS COURT ORDERS that to the extent necessary, the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE SETTLEMENT AGREEMENT

2. THIS COURT DECLARES that the Settlement Agreement is fair and reasonable in all the circumstances and for the purposes of these proceedings.

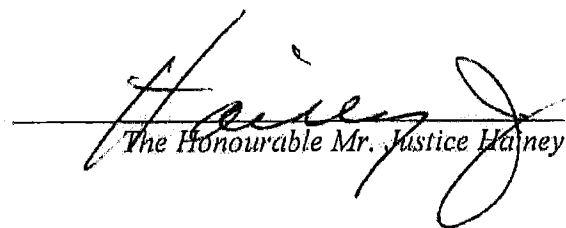
3. THIS COURT ORDERS AND DECLARES that the Settlement Agreement is hereby approved, and the Receiver and the Trustee are hereby authorized and directed to comply with their obligations thereunder and to take such further acts and steps as may be necessary to give effect to the terms of the Settlement Agreement and this Order.

4. THIS COURT ORDERS that the Receiver and the Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers, duties and obligations under the Settlement Agreement and hereunder.

AID AND RECOGNITION OF FOREIGN COURTS

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

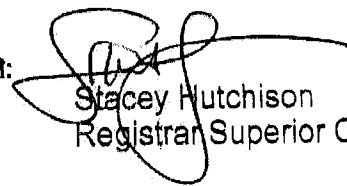
to assist the Receiver, the Trustee and their respective agents in carrying out the terms of this Order.


The Honourable Mr. Justice Hayney

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

MAY 02 2019

PER / PAR:



Stacey Hutchison
Registrar Superior Court of Justice

002

THE SUPERINTENDENT OF FINANCIAL SERVICES
Applicant

- and -

TEXTBOOK STUDENTS SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION et al.
Respondents

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

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

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

IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK (445 PRINCESS STREET) INC.

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

Court File No: CV-17-589078-00CL

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

JOHN DAVIES et al.

Defendants

Court File No: CV-17-11822-00CL

GRANT THORNTON LIMITED, in its capacity as Trustee of Textbook Student Suites (525 Princess Street) Trustee Corporation et al.
Plaintiffs

JOHN DAVIES et al.

Defendants

Court File No: CV-18-606314-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Settlement Approval)

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

Sean Zweig (LSO#573071)
Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSO#55457P)
Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSO#64325B)
Phone: (416) 777-4828
Email: blinickj@bennettjones.com

Facsimile: (416) 863-1716

Lawyers for KSV Kofman Inc., solely in its capacity as the Court-Appointed Receiver 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., Textbook (555 Princess Street) Inc., and Textbook (445 Princess Street) Inc. and in its capacity as Proposed Court-Appointed Receiver of Textbook (Ross Park) Inc., Textbook (774 Bronson Avenue) Inc. and McMurray Street Investments Inc.

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC# 31871V)
Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Ian Aversa (LSUC# 55449N)
Phone: (416) 865-3082
Email: iaversa@airdberlis.com

Jeremy Nemers (LSUC# 66410Q)
Phone: (416) 865-4620
Email: jnemers@airdberlis.com

Fax: (416) 863-1515

Lawyers for Grant Thornton Limited, solely in its capacity as court-appointed Trustee of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation

9:30
COUNSEL SLIP

COURT FILE NO 16-cv-11567-CJ

DATE THURS. May 2nd 2019

NO ON LIST 1

TITLE OF THE SUPERINTENDENT OF FINANCIAL SERVICES
PROCEEDING TEXTBOOK STUDENT SUITES (525 PRINCESS ST.)
TRUSTEE CORP. ET AL

COUNSEL FOR: SONATHAN BELL / SEAN ZWEIF / JOSEPH BLINICK PHONE & FAX NOS.

PLAINTIFF(S): COUNSEL FOR THE RECEIVER

APPLICANT(S): T: 416 777-6511

PETITIONER(S): F: 416 963-1716
Jeremy Nemers
for the Court-appointed Trustee

T 416-863-1500

F 416-863-1515

COUNSEL FOR: _____ PHONE & FAX NOS

DEFENDANT(S): ~~SONATHAN BELL~~

RESPONDENT(S)

John Davies

Michael Beckett

416 367 6779

Dentons Canada LLP

416 863 4592

SEAN DEWART for ANITA VERMA
and BALLOW

416 971 8000

416 971 8001

May 2, 2019

I am satisfied that this
Settlement Approval Order
should issue on the
Terms of the attached
Healey J

APPENDIX 10

PROPERTY AND DEVELOPER	TIER 1 TRUSTEE CORPORATION AND SMI¹	STATUS
<p>“Guildwood Property”</p> <p>Scarborough, ON; owned by the Guildwood Developer</p>	<p>2223947 Ontario Limited held an SMI (“Guildwood SMI”) in the principal amount of approximately \$6 million over the Guildwood Property, which was registered on title behind a \$1.2 million mortgage.</p>	<p>The Trustee negotiated and the Court approved a settlement transaction whereby the Guildwood Developer paid approximately \$4.1 million to the Trustee in exchange for certain releases. The Trustee has distributed approximately \$3.9 million to Investors in the Guildwood SMI.</p>
<p>“Hazelton Property”</p> <p>Mississauga, ON; owned by the Hazelton Developer</p>	<p>Hazelton 4070 Dixie Road Trustee Corporation held an SMI (“Hazelton SMI”) in the principal amount of approximately \$6.3 million over the Hazelton Property, which was registered on title behind a \$2.06 million mortgage.</p>	<p>The Trustee negotiated and the Court approved a settlement transaction whereby the Hazelton Developer paid approximately \$6.6 million to the Trustee in exchange for certain releases. The Trustee has distributed approximately \$6.4 million to Investors in the Hazelton SMI.</p>
<p>“Keele Medical Property”</p> <p>North York, ON; owned by Keele Medical Properties Ltd. (the “Keele Medical Developer”)</p>	<p>Keele Medical Trustee Corporation holds an SMI (“Keele Medical SMI”) in the principal amount of approximately \$4 million over the Keele Medical Property, which is registered on title behind a \$6 million mortgage and in front of a \$1.2 million mortgage.</p>	<p>The Keele Medical Property was sold by the Receiver for approximately \$8.2 million. The Receiver advised that following the repayment of the first mortgage, condo liens, selling costs, and related expenditures, there were no remaining funds, and no distribution was made to the Trustee.</p>
<p>“Silver Seven Property”</p> <p>Kanata, ON; owned by the Silver Seven Developer</p>	<p>Scollard Trustee Corporation held an SMI (“Silver Seven SMI”) in the principal amount of approximately \$6 million over the Silver Seven Property, which was registered on title behind a \$21.5 million mortgage (of which in excess of \$15 million had been advanced) and certain other encumbrances.</p>	<p>The Trustee negotiated and the Court approved a settlement transaction whereby the Silver Seven Developer paid approximately \$2.9 million to the Trustee in exchange for certain conditional releases and an assignment. The Trustee has distributed approximately \$2.6 million to Investors in the Silver Seven SMI.</p>
<p>“Vaughan Crossings Property”</p> <p>Vaughan, ON; previously owned by Vaughan Crossings Inc.</p>	<p>Scollard Trustee Corporation held an SMI (“Vaughan Crossings SMI”) in the principal amount of approximately \$14.8 million over the Vaughan Crossings Property, which was registered on title behind a \$32.5 million mortgage (of which in excess of \$9 million had been advanced) and subject to construction liens.</p>	<p>The Court approved a transaction, such that, in substance, the Vaughan Crossings SMI was deleted from title and the Investors in the Vaughan Crossings SMI became owners (through a numbered company named 2569880 Ontario Limited (“256”)) of the Vaughan Crossings Property. The Court also ordered that the Trustee has no further interests, duties or obligations in respect of 256. The Trustee understands that Dennis Jewitt is 256’s sole director and officer.</p>

¹ All SMIs jointly held with Olympia Trust Company for the benefit of RRSP Investors.

APPENDIX 11

SETTLEMENT AGREEMENT, DECLARATIONS AND FULL AND FINAL RELEASE

THIS AGREEMENT, effective this 8th day of October, 2019,

AMONGST:

KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED 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., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC.

(in such capacity, the "Receiver")

-and-

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

(in such capacity, the "Trustee")

-and-

BHAKTRAJ SINGH A.K.A RAJ SINGH

("Mr. Singh")

-and-

RS CONSULTING GROUP INC.

("RSCG")

-and-

TIER 1 TRANSACTION ADVISORY SERVICES INC.

("Tier 1 Advisory", and together with Mr. Singh and RSCG, the "Settling Defendants")

WHEREAS:

- A. Grant Thornton Limited was appointed as the Trustee pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued on October 27, 2016 (the “**Trustee Proceedings**”);
- B. KSV Kofman Inc. was appointed as the Receiver pursuant to Orders of the Court issued on February 2, 2017, April 28, 2017, May 2, 2017, January 9, 2018 and May 30, 2018 (the “**Receiver Proceedings**”);
- C. The Trustee and the Receiver commenced an action in the Court by the issuance of a Statement of Claim dated October 3, 2018 in Court File No. CV-18-606314-00CL (the “**Action**”) against the Settling Defendants and the following parties: Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Nancy Elliot, Elliot Law Professional Corporation, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, James Grace, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc. and Michael Cane (collectively, in any and all capacities, and together with any and all other parties or potential parties in the Action and in any other claims and proceedings commenced, continued or pursued by the Trustee or the Receiver, but excluding the Settling Defendants in any and all capacities, the “**Non-Settling Defendants**”);
- D. The Trustee and the Receiver intend to continue the Action against the Non-Settling Defendants and potentially commence, continue and pursue other claims and proceedings against the Non-Settling Defendants;
- E. The Trustee and the Receiver, on the one hand, and the Settling Defendants, on the other hand, wish to resolve all of the known and unknown facts and issues in dispute amongst them and all of the known and unknown claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendants, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action;
- F. In that regard, the Settling Defendants have agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto), pay the Trustee and the Receiver, or as they may direct, the all-inclusive sum of two million, one hundred thousand dollars in lawful Canadian currency (CDN \$2,100,000.00) allocated as two million dollars (CDN\$2,000,000.00) to damages and one hundred thousand dollars (CDN\$100,000.00) to costs (the “**Settlement Funds**”), and provide ongoing cooperation to the Trustee and the Receiver in connection with the Action and any of their other claims and proceedings against the Non-Settling Defendants;

- G. In turn, the Trustee and the Receiver have agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto):
- i. accept the Settlement Funds in full and final satisfaction of the Action and any other potential claims and proceedings against the Settling Defendants;
 - ii. discontinue the Action as against the Settling Defendants on a strictly with prejudice, without costs basis;
 - iii. refrain from commencing or continuing claims or proceedings against the Settling Defendants; and
 - iv. fully and finally release the Settling Defendants; and
- L. The Trustee and the Receiver intend to preserve all of their rights and remedies, and all claims they have in the Action or otherwise, against the Non-Settling Defendants, continue the Action against the Non-Settling Defendants and possibly continue, commence and pursue further claims and proceedings against all or some of the Non-Settling Defendants, subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto.

NOW THEREFORE in consideration of the promises set forth herein, the mutual covenants and agreements contained herein, and for further and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The above recitals are true and accurate, and form part of this Agreement together with the Schedules attached hereto.
2. The Trustee and the Receiver shall apply to the Court for, and recommend, an order approving and giving full effect to this Agreement, including all of the Schedules attached hereto (the "**Order**"). The Order shall include language substantially in the form of the draft language attached hereto as **Schedule "E"**. In the event the Court declines to issue the Order, this Agreement, including the Schedules attached hereto, shall be null and void and of no further force or effect.
3. Prior to the issuance of the Order:
 - (a) the Settling Defendants shall each provide the Trustee and the Receiver with a sworn declaration, substantially in the forms attached hereto as **Schedules "A"**, **"B"**, and **"C"**, respectively (the "**Declarations**"), which shall be held in escrow by counsel to the Trustee and counsel to the Receiver, and not released, unless and until the Order is issued by the Court; and
 - (b) the Trustee and the Receiver shall each provide the Settling Defendants with an executed full and final release substantially in the form attached hereto as **Schedule "D"** (the "**Full and Final Release**"), which shall be held in escrow by counsel to the Settling Defendants, and not released, unless and until the Order is issued by the Court.

4. The Trustee and the Receiver each agree to keep the Schedules to the Declarations and the information set out in such Schedules confidential and to not disclose such Schedules or such information except if such disclosure is required by law. To the extent disclosure of any of the Schedules and/or any of the information set out in the Schedules is required of the Trustee and/or the Receiver by law, to the extent possible, the Trustee and Receiver shall redact all personal and financial information set out therein, in which case the Trustee and Receiver shall disclose only the minimum portions of the Schedules and the information set out in such Schedules that is required to be disclosed by law.
5. The Settling Defendants shall pay, or cause to be paid, the Settlement Funds to the Trustee and the Receiver, or as they may direct, on the following schedule, which Settlement Funds shall be held in escrow in a non-interest bearing account by counsel to the Trustee until the Order is issued by the Court, and only returned to the Settling Defendants (without interest) in the event that the Court refuses to issue the Order:
 - (a) \$2,100,000 payable within 24 hours of delivery by the Settling Defendants of a fully executed copy of this Agreement.
6. In the event there is any material failure by the Settling Defendants to pay any of the Settlement Funds in accordance with the terms of this Agreement, the Full and Final Release will be immediately revocable at the option of the Trustee and the Receiver and, upon revocation, of no further force or effect.
7. In the event that the Trustee and the Receiver believe there was a material misrepresentation in the Declarations, the Trustee and the Receiver may seek a determination from the Court regarding whether there was a material misrepresentation in the Declarations. In the event the Court determines that there was a material misrepresentation in the Declarations, the Full and Final Release will be immediately revocable at the option of the Trustee and the Receiver and, upon such revocation, of no further force or effect.
8. As soon as reasonably possible following the issuance of the Order, the Trustee and the Receiver shall discontinue the Action as against the Settling Defendants on a strictly with prejudice and without costs basis, and shall amend their statement of claim in the Action so as to continue the Action against the Non-Settling Defendants only.
9. In accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto, the Receiver and Trustee shall not be entitled to recover from the Non-Settling Defendants any damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief ("**Monetary Relief**") that corresponds to the proportion of any judgment that, had the Settling Defendants not settled, the Court would have apportioned to them. The Receiver and Trustee shall be entitled to recover from the Non-Settling Defendants only such claims for Monetary Relief attributable to the aggregate of the several liability of the Non-Settling Defendants. For greater certainty, if the Court ultimately awards Monetary Relief to the Receiver or the Trustee against the Non-Settling Defendants and finds, holds, orders, or declares that the Non-Settling Defendants have the right or ability to pass any liability for such Monetary Relief or a portion thereof onto the Settling

Defendants, or the right or ability to seek or claim contribution or indemnity for such Monetary Relief or a portion thereof from the Settling Defendants, the Trustee and the Receiver waive their right to recover such Monetary Relief with respect to such portion attributable to the Settling Defendants and this paragraph and Agreement shall act as a complete estoppel of any recovery sought by the Receiver or Trustee against any person on such basis.

10. In accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto, the Receiver and the Trustee shall not be entitled to claim or recover from Camalita Singh, Susanna Solowiej, Prem Singh, Jacqueline Hoysted, Deorani Dyal or Sonita Nauth any relief against such persons to the extent any such claim is based on a claim that the Settling Defendants or any one of them sold, gifted, conveyed or otherwise transferred to such persons any of the Property (as that term is defined in the Settling Defendants' respective Declarations) listed in the Schedules to the Settling Defendants' respective Declarations in an undervalued, non-arm's length, fraudulent, improvident or otherwise wrongful manner. The Receiver and the Trustee acknowledge and agree that such persons are third party beneficiaries of this paragraph and that this paragraph and this Agreement shall, in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto, act as a complete estoppel of any such claim brought by the Receiver or the Trustee against such persons on such basis.
11. The Settling Defendants shall fully and reasonably cooperate with the Trustee and the Receiver in relation to their claims and proceedings against the Non-Settling Defendants, including, but not limited to, in the Action. Such cooperation shall include but not be limited to providing an account of the facts known to the Settling Defendants that are relevant to such claims and proceedings, producing relevant non-privileged documents, records and information over which the Settling Defendants have possession, power or control and using best efforts to make themselves and any entities over which the Settling Defendants exercise control reasonably available to the Trustee and the Receiver at the Trustee's or Receiver's request. The Trustee and the Receiver acknowledge that the Settling Defendants' cooperation will include providing testimony subject to the Settling Defendants being compelled to do so by way of summons or other legal process. The Settling Defendants shall be compensated for their cooperation in accordance with the relevant provisions of the *Rules of Civil Procedure* (Ontario). In no way is this paragraph or this Agreement intended to be, nor is it, a waiver of any privilege that the Settling Defendants have over such information, documents and records, and the Receiver and the Trustee are not entitled to receive any privileged information of the Settling Defendants by virtue of this paragraph or this Agreement. Given the Trustee's and the Receiver's desire to limit costs and maximize recovery for stakeholders, the Settling Defendants' agreement to cooperate is a material factor influencing the Trustee's and the Receiver's respective decisions to enter into and execute this Agreement and compromise their claims against the Settling Defendants.
12. The parties to this Agreement hereby declare, represent and warrant that they have consulted with and been advised by independent legal counsel with respect to the terms of the settlement set forth herein, that they have read and fully understand all of the terms and consequences of this Agreement, including all of the Schedules attached hereto, and that they enter into this Agreement freely and voluntarily, without coercion


or duress, and without reliance upon any representation, warranty, condition or agreement, whether written or oral, other than as expressly set out or referred to herein.

13. The parties to this Agreement shall execute all documents and take all steps as are necessary and reasonable to accomplish the objectives of this Agreement, including its Schedules, and give effect thereto.
14. This Agreement may not be altered, amended or modified except by written agreement of the parties to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Any dispute arising out of or in connection with this Agreement shall be exclusively and finally determined by the Court.
15. The terms of this Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors and assigns, as applicable.
16. This Agreement, including the Schedules attached hereto, constitutes the entire agreement among the parties, and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.
17. This Agreement, including the Schedules attached hereto, may be executed in counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

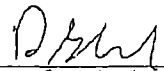
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective this 8th day of October, 2019, notwithstanding the actual date of execution:

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GRANT THORNTON LIMITED,
IN ITS CAPACITY AS THE
COURT-APPOINTED TRUSTEE
OF TEXTBOOK STUDENT
SUITES (525 PRINCESS
STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (555
PRINCESS STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (ROSS
PARK) TRUSTEE
CORPORATION, 2223947
ONTARIO LIMITED, MC
TRUSTEE (KITCHENER) LTD.,
SCOLLARD TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (774
BRONSON AVENUE) TRUSTEE
CORPORATION, 7743718
CANADA INC., KEELE
MEDICAL TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (445
PRINCESS STREET) TRUSTEE
CORPORATION AND
HAZELTON 4070 DIXIE ROAD
TRUSTEE CORPORATION



Witness Name: Rob Stelzer



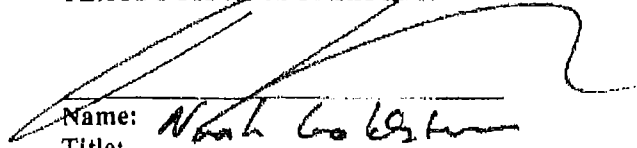
Name: DAVID GOLDBAND
Title: Vice President

KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT-
APPOINTED 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.,
TEXTBOOK (445 PRINCESS STREET)
INC., MCMURRAY STREET
INVESTMENTS INC., TEXTBOOK (774
BRONSON AVENUE) INC., AND
TEXTBOOK ROSS PARK INC.



Witness Name:

David Soerayka



Name:

Title:

Nishu Goel
Managing Director

Witness Name:

BHAKTRAJ SINGH

RS CONSULTING GROUP INC.

Witness Name:

Name:

Title:

I have authority to bind the corporation.

TIER 1 TRANSACTION ADVISORY
SERVICES INC.

Witness Name:

Name:

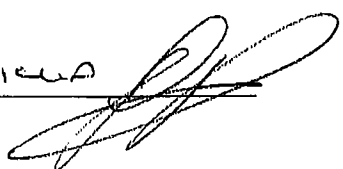
Title:

I have authority to bind the corporation.

KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED 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., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC.

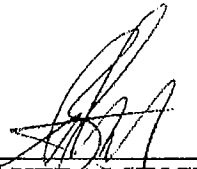
Witness Name:

GUIDO PANICOLA
Witness Name:

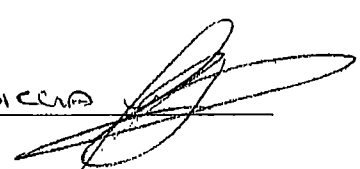


Name:
Title:

BHAKTRAJ SINGH
BHAKTRAJ SINGH



GUIDO PANICOLA
Witness Name:



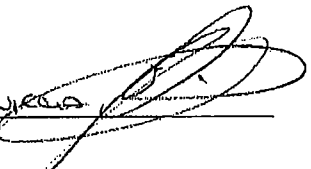
RS CONSULTING GROUP INC.

BHAKTRAJ SINGH
Name: BHAKTRAJ SINGH
Title: President

I have authority to bind the corporation.

TIER 1 TRANSACTION ADVISORY SERVICES INC.

GUIDO PANICOLA
Witness Name:



BHAKTRAJ SINGH
Name: BHAKTRAJ SINGH
Title: President

I have authority to bind the corporation.

SCHEDULE "D"

FORM OF FULL AND FINAL RELEASE

WHEREAS this is a mutual Full and Final Release between:

Grant Thornton Limited, in its capacity as the court-appointed Trustee of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation (the "**Trustee**") and KSV Kofman Inc., in its capacity as the court-appointed 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., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc. (the "**Receiver**")

-and-

Bhaktraj Singh a.k.a. Raj Singh, RS Consulting Group Inc. and Tier 1 Transaction Advisory Services Inc. (collectively, the "**Settling Defendants**"), together with the Receiver and the Trustee, the "**Parties**" and, individually, a "**Party**")

relating to: (1) the proceedings in the Ontario Superior Court of Justice (Commercial List) in Toronto bearing Court File No. CV-18-606314-00CL (the "**Action**"); (2) all of the known and unknown facts and issues in dispute amongst the Parties and all of the known and unknown claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendants, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action, and (3) facts and issues arising from or relating to: (i) the syndicated mortgage investments with 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 (collectively, the "**Trustee Companies**"); and (ii) the real estate development projects 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., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc. (collectively, the "**Development Companies**") (collectively, the "**Released Matters**");

AND WHEREAS the Trustee and the Receiver, on the one hand, and the Settling Defendants, on the other hand, wish to fully and finally resolve and settle the Released Matters and have

agreed to release each other from any and all manners of Claims (as defined below) relating to the Released Matters, subject to the terms and conditions of the Settlement Agreement to which this Full and Final Release is attached as **Schedule "D"**,

NOW THEREFORE in consideration of the mutual covenants contained in this Full and Final Release and the terms set out in the Settlement Agreement to which this Full and Final Release is attached as **Schedule "D"**, and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged by the Parties:

1. The recitals set out above are true and accurate, and form part of this Full and Final Release.
2. The Receiver and the Trustee, on the one hand, and the Settling Defendants, on the other, hereby fully and forever release, remise, acquit and discharge each other and, as applicable, their respective predecessors, successors and heirs (collectively, the "**Released Parties**"), from any and all manners of action, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues, damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief, losses, injuries and liabilities of any and every nature whatsoever, whether in law or in equity (each a "**Claim**", and collectively, the "**Claims**") arising out of or in any way relating to the Released Matters (the "**Released Claims**"), provided, however, that nothing in this Full and Final Release shall in any way release or affect, or shall be considered, construed or deemed to release or affect any of the Parties' rights or obligations under the Settlement Agreement, including but not limited to the Trustee's and the Receiver's rights to revoke this Full and Final Release in accordance with the terms of the Settlement Agreement.
3. Without limiting the generality of the foregoing, the Parties declare that the intent of this Full and Final Release is to conclude all issues in respect of, relating to or arising out of the Released Claims and it is understood and agreed that this Full and Final Release is intended to cover, and does cover, not only all known injuries, losses and damages in respect of the Released Claims, but also injuries, losses and damages in respect of the Released Claims not now known or anticipated but which may later be discovered, including all the effects and consequences thereof. For greater clarity, the releases provided in paragraph 2 hereof shall in no way be considered, construed or deemed in any way to release or affect any claim arising from future events, or any claim based on past events that the Trustee or the Receiver have against any persons, corporations, or entities other than the Released Parties.
4. The Parties each covenant and agree that this Full and Final Release shall be binding upon and shall enure to the benefit of the respective successors, assigns and legal or personal representatives of the Parties, as applicable.
5. The Parties understand, acknowledge and agree that this Full and Final Release shall be immediately, unconditionally, and irrevocably effective upon the issuance of a court order approving the settlement as contemplated under the terms of the Settlement Agreement.
6. The Parties agree that this Full and Final Release shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of

Canada as applicable therein. Any dispute arising from or relating to the interpretation, application or enforcement of this Full and Final Release shall be exclusively within the jurisdiction of the Ontario Superior Court of Justice (Commercial List), and the Parties hereby irrevocably attorn to the exclusive jurisdiction of such Court with respect to any and all matters covered by, or in any way relating to, this Full and Final Release.

7. The Parties each covenant and agree that each part and provision of this Full and Final Release is distinct and severable and if, in any jurisdiction, any part or provision of this Full and Final Release or its application to any Party or circumstance is restricted, prohibited or unenforceable, for public policy reasons or otherwise, that that part or provision shall be interpreted in a manner so as to not make it unenforceable at law, but if such interpretation is not possible, the Parties agree that the part or provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining parts and provisions hereof and without affecting the validity or enforceability of such part or provision in any other jurisdiction or its application to other parties or circumstances.
8. The Parties each hereby expressly acknowledge, declare and agree that they have had an opportunity to fully review this Full and Final Release and they have consulted with independent legal counsel. The Parties each acknowledge, declare and agree that they fully understand the meaning and effect of each paragraph of this Full and Final Release and freely and voluntarily agree to its terms for the purpose of making full and final compromise, adjustment and settlement of the Released Matters. The Parties each further expressly acknowledge, declare and agree that there is no condition, express or implied, or collateral agreement affecting their respective abilities to enter into this Full and Final Release, other than those set out in the Settlement Agreement to which this Full and Final Release is attached. The Parties further acknowledge and agree that any statute, case law, or rule of interpretation or construction that would or might cause any part or provision of this Full and Final Release to be construed against the drafters of this Full and Final Release shall be of no force or effect.
9. The Parties each agree that this Full and Final Release may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

The parties hereto have duly executed this Full and Final Release effective this 8th day of October, 2019, notwithstanding the actual date of execution:

[Remainder of Page Intentionally Left Blank]

GRANT THORNTON LIMITED,
IN ITS CAPACITY AS THE
COURT-APPOINTED TRUSTEE
OF TEXTBOOK STUDENT
SUITES (525 PRINCESS
STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (555
PRINCESS STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (ROSS
PARK) TRUSTEE
CORPORATION, 2223947
ONTARIO LIMITED, MC
TRUSTEE (KITCHENER) LTD.,
SCOLLARD TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (774
BRONSON AVENUE) TRUSTEE
CORPORATION, 7743718
CANADA INC., KEELE
MEDICAL TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (445
PRINCESS STREET) TRUSTEE
CORPORATION AND
HAZELTON 4070 DIXIE ROAD
TRUSTEE CORPORATION

Witness Name:

Name:

Title:

**KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT-
APPOINTED 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.,
TEXTBOOK (445 PRINCESS STREET)
INC., MCMURRAY STREET
INVESTMENTS INC., TEXTBOOK (774
BRONSON AVENUE) INC., AND
TEXTBOOK ROSS PARK INC.**

Witness Name:

Name:
Title:

Witness Name:

BHAKTRAJ SINGH

RS CONSULTING GROUP INC.

Witness Name:

Name:
Title:
I have authority to bind the corporation.

**TIER 1 TRANSACTION ADVISORY
SERVICES INC.**

Witness Name:

Name:
Title:
I have authority to bind the corporation.

SCHEDULE "E"

FORM OF DRAFT LANGUAGE TO BE INCORPORATED INTO DRAFT ORDER

1. **THIS COURT ORDERS AND DECLARES** that Bhaktraj Singh a.k.a. Raj Singh, RS Consulting Group Inc. and Tier 1 Transaction Advisory Services Inc. (the "**Settling Defendants**") and their respective predecessors, successors and heirs (collectively, the "**Released Parties**") are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Settlement Agreement, Declarations and Full and Final Release dated May ■, 2019, including the schedules attached thereto (the "**Agreement**") from any and all manners of action, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues, damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief, losses, injuries and liabilities of any and every nature whatsoever, whether in law or in equity (each a "**Claim**", and collectively, the "**Claims**") that the Trustee (as defined in the Agreement) and/or the Receiver (as defined in the Agreement) has or may have against them arising out of or in any way relating to the Released Matters (as defined below).

2. **THIS COURT ORDERS AND DECLARES** that the Released Parties are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) from any Claim or Claims that the Non-Settling Defendants (as defined in the Agreement) or any one of them, including Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Nancy Elliot, Elliot Law Professional Corporation, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, James Grace, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc., and/or Michael Cane, has or may have against them for contribution or indemnity in the Action or in a separate claim or proceeding commenced by the Trustee or the Receiver, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action or which in any way relate to the Released Matters (as defined below).

3. **THIS COURT ORDERS AND DECLARES** that the Receiver and the Trustee shall not be entitled to recover from the Non-Settling Defendants (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) any damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief ("**Monetary Relief**") that corresponds to the proportion of any judgment that, had the Settling Defendants not settled, the Court would have apportioned to the Settling Defendants. The Receiver and the Trustee shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) only be entitled to recover from the Non-Settling Defendants such claims for Monetary Relief attributable to the aggregate of the several liability of the Non-Settling Defendants. For greater certainty, if the Court ultimately awards Monetary Relief to the Receiver or the Trustee against the Non-Settling Defendants, the Trustee and the Receiver shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) have no right to recover any such portion of such Monetary Relief attributable to the Settling Defendants.

4. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the "**Released Matters**" means: (1) the proceedings in the Ontario Superior Court of Justice (Commercial List) in Toronto bearing Court File No. CV-18-606314-00CL (the "**Action**"); (2) all of the known and unknown facts and issues in dispute amongst the Trustee (as defined in the Agreement) and the Receiver (as defined in the Agreement), on the one hand, and the Released Parties, on the other hand, and all of the known and unknown Claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendants, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action; and (3) facts and issues arising from or relating to: (i) the syndicated mortgage investments with 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 (collectively, the "**Trustee Companies**"); and (ii) the real estate development projects 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., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc. (collectively, the “**Development Companies**”) (collectively, the “**Released Matters**”).

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

- (a) the pendency of the Trustee Proceedings (as defined in the Agreement);
- (b) the pendency of the Receiver Proceedings (as defined in the Agreement);
- (c) the pendency of the Action;
- (d) any applications for any bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of one or more of any of the Settling Defendants, the Non-Settling Defendants, the Trustee Companies, the Development Companies or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
- (e) any assignment in bankruptcy made in respect of any of the Identified Parties.

the payment to the Trustee and the Receiver, or as they may direct, of the Settlement Funds (as defined in the Agreement) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) at any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE **MR.**)
)
JUSTICE **HAINEX**)
)
) MONDAY, THE 18TH
) DAY OF NOVEMBER, 2019



THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

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

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

**IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK (445 PRINCESS
STREET) INC.**

**AND IN THE MATTER OF AN APPLICATION UNDER 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)**

BETWEEN:

**GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED
TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE
CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE
CORPORATION AND 7743718 CANADA INC.**

Applicant

- and -

**TEXTBOOK (774 BRONSON AVENUE) INC., TEXTBOOK ROSS PARK INC. and
MCMURRAY STREET INVESTMENTS INC.**

Respondents

**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)**

BETWEEN:

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND TEXTBOOK ROSS PARK INC.

Plaintiffs

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, JAMES GRACE, BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC., JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE

Defendants

SETTLEMENT APPROVAL ORDER

THIS MOTION, made by Grant Thornton Limited (“**GTL**”), solely in its capacity as the Court-appointed trustee (in such capacity, the “**Trustee**”) of each of the Trustee Companies (as defined below), and not in its personal capacity or in any other capacity, and by KSV Kofman Inc., solely in its capacity as receiver (in such capacity, the “**Receiver**” and, together with the Trustee, the “**Moving Parties**”) of certain property of the Development Companies (as defined below), and not in its personal capacity or in any other capacity, for an Order, *inter alia*: (i) approving and giving effect to the Settlement Agreement, Declarations and Full and Final Release dated October 8, 2019, including the schedules attached thereto (the “**Agreement**”) as between the Trustee and the Receiver, on the one hand, and the defendants, Bhaktraj Singh a.k.a. Raj Singh (“**Mr. Singh**”), RS Consulting Group Inc. (“**RSCG**”) and Tier 1 Transaction Advisory Services Inc. (“**Tier 1 Advisory**” and, together with Mr. Singh and RSCG, the “**Settling Defendants**”), on the other hand, subject in all cases to the terms, conditions and exceptions provided in the Agreement; and (ii) authorizing and directing the Moving Parties to take any and all steps necessary to give effect to the Agreement, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Twelfth Report of the Trustee dated November 1, 2019, the Nineteenth Report of the Receiver dated November 1, 2019 and the Factum and Brief of Authorities of the Moving Parties dated November 5, 2019, and on hearing the submissions of counsel for the Trustee, counsel for the Receiver, counsel for the Settling Defendants and such other counsel as were present, no one appearing for any other person on the service lists although duly served as appears from the affidavit of service of Eunice Baltkois sworn November 1, 2019, the two affidavits of service of Susy Moniz sworn November 5, 2019 and the affidavit of service of Madison Van Doorn sworn November 6, 2019,

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

2. **THIS COURT DECLARES** that the Agreement is fair and reasonable in all the circumstances and for the purposes of these proceedings.

3. **THIS COURT ORDERS AND DECLARES** that the Agreement is hereby approved, that the Moving Parties and the Settling Defendants are hereby authorized and directed to comply with their obligations thereunder and that the Moving Parties are hereby authorized to take such further acts and steps as may be necessary to give effect to the terms of the Agreement and this Order.

4. **THIS COURT ORDERS AND DECLARES** that the Settling Defendants and their respective predecessors, successors and heirs (collectively, the “**Released Parties**”) are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all manners of action, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues, damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief, losses, injuries and liabilities of any and every nature whatsoever, whether in law or in equity (each a “**Claim**”, and collectively, the “**Claims**”) that the Trustee and/or the Receiver has or may have against them arising out of or in any way relating to the Released Matters (as defined below).

5. **THIS COURT ORDERS AND DECLARES** that the Released Parties are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any Claim or Claims that the Non-Settling Defendants (as defined in the Agreement) or any one of them, including Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Nancy Elliot, Elliot Law Professional Corporation, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, James Grace, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc., and/or Michael Cane, has or may have against them for

contribution or indemnity in the Action (as defined below) or in a separate claim or proceeding commenced by the Trustee or the Receiver, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action or which in any way relate to the Released Matters (as defined below).

6. **THIS COURT ORDERS AND DECLARES** that the Receiver and the Trustee shall not be entitled to recover from the Non-Settling Defendants (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) any damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief (“**Monetary Relief**”) that corresponds to the proportion of any judgment that, had the Settling Defendants not settled, the Court would have apportioned to the Settling Defendants. The Receiver and the Trustee shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) only be entitled to recover from the Non-Settling Defendants such claims for Monetary Relief attributable to the aggregate of the several liability of the Non-Settling Defendants. For greater certainty, if the Court ultimately awards Monetary Relief to the Receiver or the Trustee against the Non-Settling Defendants, the Trustee and the Receiver shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) have no right to recover any such portion of such Monetary Relief attributable to the Settling Defendants.

7. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the “**Released Matters**” means: (1) the proceedings in the Ontario Superior Court of Justice (Commercial List) in Toronto bearing Court File No. CV-18-606314-00CL (the “**Action**”); (2) all of the known and unknown facts and issues in dispute amongst the Trustee and the Receiver, on the one hand, and the Released Parties, on the other hand, and all of the known and unknown Claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendants, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action; and (3) facts and issues arising from or relating to: (i) the syndicated mortgage investments with 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 (collectively, the “**Trustee Companies**”); and (ii) the real estate development projects 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., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc. (collectively, the “**Development Companies**”) (collectively, the “**Released Matters**”).

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

- (a) the pendency of the Trustee Proceedings (as defined in the Agreement);
- (b) the pendency of the Receiver Proceedings (as defined in the Agreement);
- (c) the pendency of the Action;
- (d) any applications for any bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of one or more of any of the Settling Defendants, the Non-Settling Defendants, the Trustee Companies, the Development Companies or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
- (e) any assignment in bankruptcy made in respect of any of the Identified Parties,

the payment to the Trustee and the Receiver, or as they may direct, of the Settlement Funds (as defined in the Agreement) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS** that the Trustee and the Receiver may from time to time apply to this Court for advice and directions in the discharge of their powers, duties and obligations under the Agreement and hereunder.

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



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

NOV 18 2019

PER / PAR:



THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

**TEXTBOOK STUDENTS SUITES (525 PRINCESS STREET)
TRUSTEE CORPORATION ET AL.**

Respondents

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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, ET AL.

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

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

Court File No. CV-17-589078-00CL

GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, ET AL.

Applicant

- and -

TEXTBOOK (774 BRONSON AVENUE) INC., ET AL.

Respondents

Court File No. CV-18-598788-00CL

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, ET AL, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, ET AL.

Plaintiffs

- and -

AEOLIAN INVESTMENTS LTD., ET AL.

Defendants

Court File No. CV-18-606314-00CL

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

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

BENNETT JONES LLP

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

Sean Zweig (LSO# 57307I)

Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSO# 55457P)

Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSO# 64325B)

Phone: (416) 777-4828
Email: blinickj@bennettjones.com

Fax: (416) 863-1716

Lawyers for KSV Kofman Inc., solely in its capacity as the Court-Appointed Receiver 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., Textbook (555 Princess Street) Inc., and Textbook (445 Princess Street) Inc. and in its capacity as Proposed Court-Appointed Receiver of Textbook (Ross Park) Inc., Textbook (774 Bronson Avenue) Inc. and McMurray Street Investments Inc.

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSO# 31871V)

Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Ian Aversa (LSO# 55449N)

Phone: (416) 865-3082
Email: iaversa@airdberlis.com

Jeremy Nemers (LSO# 66410Q)

Phone: (416) 865-7724
Email: jnemers@airdberlis.com

Fax: (416) 863-1515

Lawyers for Grant Thornton Limited, solely in its capacity as court-appointed Trustee of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation

APPENDIX 12

SETTLEMENT AGREEMENT, DECLARATIONS AND FULL AND FINAL RELEASE

THIS AGREEMENT, effective this 18th day of June, 2020

AMONGST:

KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED 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., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC.

(in such capacity, the “**Receiver**”)

-and-

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

(in such capacity, the “**Trustee**”)

-and-

JAMES GRACE

(“**Mr. Grace**” and the “**Settling Defendant**”)

WHEREAS:

- A. Grant Thornton Limited was appointed as the Trustee pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued on October 27, 2016 (the “**Trustee Proceedings**”);
- B. KSV Kofman Inc. was appointed as the Receiver pursuant to Orders of the Court issued on February 2, 2017, April 28, 2017, May 2, 2017, January 9, 2018 and May 30, 2018 (the “**Receiver Proceedings**”);
- C. The Trustee and the Receiver commenced an action in the Court by the issuance of a Statement of Claim dated October 3, 2018 in Court File No. CV-18-606314-00CL (the “**Action**”) against the Settling Defendant and the following parties: Bhaktraj Singh a.k.a. Raj Singh, RS Consulting Group Inc., Tier 1 Transaction Advisory Services Inc., Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Nancy Elliot, Elliot Law Professional Corporation, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc. and Michael Cane;
- D. The Trustee and the Receiver previously entered into a settlement with Bhaktraj Singh a.k.a. Raj Singh, RS Consulting Group Inc. and Tier 1 Transaction Advisory Services Inc., which was approved by the Court pursuant to the Order of Justice Hainey dated November 18, 2019;
- E. The Trustee and the Receiver intend to continue the Action and potentially commence, continue and pursue other claims and proceedings against the following parties: Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Nancy Elliot, Elliot Law Professional Corporation, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc. and Michael Cane (collectively, in any and all capacities, and together with any and all other parties or potential parties in the Action and in any other claims and proceedings commenced, continued or pursued by the Trustee or the Receiver, but excluding Mr. Grace in any and all capacities, the “**Non-Settling Defendants**”);
- F. The Trustee and the Receiver, on the one hand, and the Settling Defendant, on the other hand, wish to resolve all of the known and unknown facts and issues in dispute amongst them and all of the known and unknown claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendant, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action;

- G. In that regard, the Settling Defendant has agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto), pay the Trustee and the Receiver, or as they may direct, the all-inclusive sum of four hundred and fifty thousand dollars in lawful Canadian currency (CDN \$450,000.00), including all costs and applicable taxes (the “**Settlement Funds**”), and provide cooperation to the Trustee and the Receiver in connection with the Action and any of their other claims and proceedings against the Non-Settling Defendants;
- H. In turn, the Trustee and the Receiver have agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto):
- i. accept the Settlement Funds in full and final satisfaction of the Action and any other potential claims and proceedings against the Settling Defendant;
 - ii. discontinue the Action as against the Settling Defendant on a strictly with prejudice, without costs basis;
 - iii. refrain from commencing or continuing claims or proceedings against the Settling Defendant; and
 - iv. fully and finally release the Settling Defendant; and
- L. The Trustee and the Receiver intend to preserve all of their rights and remedies, and all claims they have in the Action or otherwise, against the Non-Settling Defendants, continue the Action against the Non-Settling Defendants and possibly continue, commence and pursue further claims and proceedings against all or some of the Non-Settling Defendants, subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto.

NOW THEREFORE in consideration of the promises set forth herein, the mutual covenants and agreements contained herein, and for further and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The above recitals are true and accurate, and form part of this Agreement together with the Schedules attached hereto.
2. The Trustee and the Receiver shall apply to the Court for, and recommend, an order approving and giving full effect to this Agreement, including all of the Schedules attached hereto (the “**Order**”). The Order shall include language substantially in the form of the draft language attached hereto as **Schedule “B”**. In the event the Court declines to issue the Order, this Agreement, including the Schedules attached hereto, shall be null and void and of no further force or effect.
3. Prior to the issuance of the Order, the Trustee and the Receiver shall each provide the Settling Defendant with an executed full and final release substantially in the form attached hereto as Schedule “A” (the “**Full and Final Release**”), which shall be held in escrow by counsel to Mr. Grace, and not released, unless and until the Order is issued by the Court.

4. The Settling Defendant shall pay, or cause to be paid, the Settlement Funds to the Trustee and the Receiver, or as they may direct, within three (3) weeks of the Order being issued by the Court.
5. In the event there is any material failure by the Settling Defendant to pay any of the Settlement Funds in accordance with the terms of this Agreement, the Full and Final Release will be immediately revocable at the option of the Trustee and the Receiver and, upon revocation, of no further force or effect.
6. As soon as reasonably possible following both the issuance of the Order and the payment of the Settlement Funds in accordance with paragraph 4 hereof, the Trustee and the Receiver shall discontinue the Action as against the Settling Defendant on a strictly with prejudice and without costs basis, and shall amend their statement of claim in the Action so as to continue the Action against the Non-Settling Defendants only.
7. In accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto, the Receiver and Trustee shall not be entitled to recover from the Non-Settling Defendants any damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief (“**Monetary Relief**”) that corresponds to the proportion of any judgment that, had the Settling Defendant not settled, the Court would have apportioned to him. The Receiver and Trustee shall be entitled to recover from the Non-Settling Defendants only such claims for Monetary Relief attributable to the aggregate of the several liability of the Non-Settling Defendants. For greater certainty, if the Court ultimately awards Monetary Relief to the Receiver or the Trustee against the Non-Settling Defendants and finds, holds, orders, or declares that the Non-Settling Defendants have the right or ability to pass any liability for such Monetary Relief or a portion thereof onto the Settling Defendant, or the right or ability to seek or claim contribution or indemnity for such Monetary Relief or a portion thereof from the Settling Defendant, the Trustee and the Receiver waive their rights to recover such Monetary Relief with respect to such portion attributable to the Settling Defendant and this paragraph and Agreement shall act as a complete estoppel of any recovery sought by the Receiver or Trustee against any person on such basis.
8. The Settling Defendant shall provide the following cooperation to the Trustee and the Receiver in relation to their claims and proceedings against the Non-Settling Defendants, including, but not limited to, in the Action:
 - (a) Two (2) 4-hour sessions with the Receiver and the Trustee at which the Settling Defendant will, in a question and answer format, provide an account of the facts known to him that are relevant to such claims and proceedings; and
 - (b) Produce relevant non-privileged documents, records and information over which the Settling Defendant has possession, power or control.

In no way is this paragraph or this Agreement intended to be, nor is it, a waiver of any privilege that the Settling Defendant has over such information, documents and records, and the Receiver and the Trustee are not entitled to receive any privileged information of the Settling Defendant by virtue of this paragraph or this Agreement. Given the Trustee’s and the Receiver’s desire to limit costs and maximize recovery for stakeholders, the Settling Defendant’s agreement to cooperate is a material factor influencing the Trustee’s and the Receiver’s respective decisions to enter into and execute this Agreement and compromise their claims against the Settling Defendant.

9. In respect of the policy of insurance issued by Travelers Insurance Company of Canada (“**Travelers**”) bearing Policy #10383958 and effective July 28, 2016 to July 28, 2017 (the “**Policy**”), the Parties agree that it is a material term of this settlement that the Order approving this settlement provide for the following declarations:
- (a) The payment made on behalf of Mr. Grace does not violate the interests of any person or entity potentially covered under the Policy;
 - (b) The payment constitutes covered Loss as defined in the Policy;
 - (c) The payment reduces the Liability Coverage Limit of Liability (as defined in the Policy) under the Policy for all purposes, regardless of any subsequent finding by any court, tribunal, administrative body or arbitrator, in any proceeding or action, that Mr. Grace engaged in conduct that triggered or may have triggered any exclusion, term or condition of the Policy, or any of them, so as to disentitle him to coverage under the Policy;
 - (d) The payment is without prejudice to any coverage position or reservations of rights taken by Travelers in relation to any other matter advised to Travelers or any other Claim (as defined in the Policy) made or yet to be made against the Insured, provided that neither coverage nor payment in respect of the settlement of this action will be voided or impacted by any such coverage position or reservation of rights;
 - (e) The payment fully and finally releases Travelers from any further obligation, and from any and all claims against it under or in relation to the Policy, in respect of the portion of the Liability Coverage Limit of Liability that were expended to fund the payment; and
 - (f) Travelers is directed to pay the settlement amount on behalf of Mr. Grace in full satisfaction of the settlement agreement.
10. This Agreement is entered into for purposes of settlement and compromise only. This Agreement will not in any way be construed as an admission by any party, and the parties hereto each specifically disclaim any liability in connection with the Action.
11. The parties to this Agreement hereby declare, represent and warrant that they have consulted with and been advised by independent legal counsel with respect to the terms of the settlement set forth herein, that they have read and fully understand all of the terms and consequences of this Agreement, including all of the Schedules attached hereto, and that they enter into this Agreement freely and voluntarily, without coercion or duress, and without reliance upon any representation, warranty, condition or agreement, whether written or oral, other than as expressly set out or referred to herein.
12. The parties to this Agreement shall execute all documents and take all steps as are necessary and reasonable to accomplish the objectives of this Agreement, including its Schedules, and give effect thereto.
13. This Agreement may not be altered, amended or modified except by written agreement of the parties to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable

therein. Any dispute arising out of or in connection with this Agreement shall be exclusively and finally determined by the Court.

14. The terms of this Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors and assigns, as applicable.
15. This Agreement, including the Schedules attached hereto, constitutes the entire agreement among the parties, and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.
16. This Agreement, including the Schedules attached hereto, may be executed in counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective this 18th day of June, 2020, notwithstanding the actual date of execution:

[Remainder of Page Intentionally Left Blank]

GRANT THORNTON LIMITED,
IN ITS CAPACITY AS THE
COURT-APPOINTED TRUSTEE
OF TEXTBOOK STUDENT
SUITES (525 PRINCESS
STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (555
PRINCESS STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (ROSS PARK)
TRUSTEE CORPORATION,
2223947 ONTARIO LIMITED,
MC TRUSTEE (KITCHENER)
LTD., SCOLLARD TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (774
BRONSON AVENUE) TRUSTEE
CORPORATION, 7743718
CANADA INC., KEELE
MEDICAL TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (445
PRINCESS STREET) TRUSTEE
CORPORATION AND
HAZELTON 4070 DIXIE ROAD
TRUSTEE CORPORATION

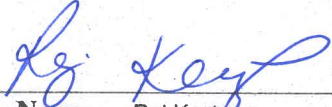
Rania Erian

Witness Name:




Name: Jonathan Krieger, CPA, CA, CIRP, LIT
Title: Senior Vice President

**KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT-
APPOINTED 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.,
TEXTBOOK (445 PRINCESS STREET)
INC., MCMURRAY STREET
INVESTMENTS INC., TEXTBOOK (774
BRONSON AVENUE) INC., AND
TEXTBOOK ROSS PARK INC.**



Witness Name: Raj Kashyap



Name: Bobby Kofman
Title: President and Managing Director

Witness Name:

JAMES GRACE

**KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT-
APPOINTED 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.,
TEXTBOOK (445 PRINCESS STREET)
INC., MCMURRAY STREET
INVESTMENTS INC., TEXTBOOK (774
BRONSON AVENUE) INC., AND
TEXTBOOK ROSS PARK INC.**

Witness Name:

Emily [Signature]

Witness Name:

Name:

Title:

[Signature]

JAMES GRACE

SCHEDULE “A”

FORM OF FULL AND FINAL RELEASE

WHEREAS this is a mutual Full and Final Release between:

Grant Thornton Limited, in its capacity as the court-appointed Trustee of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation (the “**Trustee**”) and KSV Kofman Inc., in its capacity as the court-appointed 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., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc. (the “**Receiver**”)

-and-

James Grace (“**Mr. Grace**” and the “**Settling Defendant**”) together with the Receiver and the Trustee, the “**Parties**” and, individually, a “**Party**”)

relating to: (1) the proceedings in the Ontario Superior Court of Justice (Commercial List) in Toronto bearing Court File No. CV-18-606314-00CL (the “**Action**”); (2) all of the known and unknown facts and issues in dispute amongst the Parties and all of the known and unknown claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendant, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action, and (3) facts and issues arising from or relating to: (i) the syndicated mortgage investments with 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 (collectively, the “**Trustee Companies**”); and (ii) the real estate development projects 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., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc. (collectively, the “**Development Companies**”) (collectively, the “**Released Matters**”);

AND WHEREAS the Trustee and the Receiver, on the one hand, and the Settling Defendant, on the other hand, wish to fully and finally resolve and settle the Released Matters and have agreed to release each other from any and all manners of Claims (as defined below) relating to the Released Matters, subject to the terms and conditions of the Settlement Agreement to which this Full and Final Release is attached as **Schedule “A”**,

NOW THEREFORE in consideration of the mutual covenants contained in this Full and Final Release and the terms set out in the Settlement Agreement to which this Full and Final Release is attached as **Schedule “A”**, and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged by the Parties:

1. The recitals set out above are true and accurate, and form part of this Full and Final Release.
2. The Receiver and the Trustee, on the one hand, and the Settling Defendant, on the other, hereby fully and forever release, remise, acquit and discharge each other and, as applicable, their respective predecessors, successors, heirs and insurers (collectively, the “**Released Parties**”), from any and all manners of action, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues, damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief, losses, injuries and liabilities of any and every nature whatsoever, whether in law or in equity (each a “**Claim**”, and collectively, the “**Claims**”) arising out of or in any way relating to the Released Matters (the “**Released Claims**”), provided, however, that nothing in this Full and Final Release shall in any way release or affect, or shall be considered, construed or deemed to release or affect any of the Parties’ rights or obligations under the Settlement Agreement, including but not limited to the Trustee’s and the Receiver’s rights to revoke this Full and Final Release in accordance with the terms of the Settlement Agreement.
3. Without limiting the generality of the foregoing, the Parties declare that the intent of this Full and Final Release is to conclude all issues in respect of, relating to or arising out of the Released Claims and it is understood and agreed that this Full and Final Release is intended to cover, and does cover, not only all known injuries, losses and damages in respect of the Released Claims, but also injuries, losses and damages in respect of the Released Claims not now known or anticipated but which may later be discovered, including all the effects and consequences thereof. For greater clarity, the releases provided in paragraph 2 hereof shall in no way be considered, construed or deemed in any way to release or affect any claim arising from future events, or any claim based on past events that the Trustee or the Receiver have against any persons, corporations, or entities other than the Released Parties.
4. The Parties each covenant and agree that this Full and Final Release shall be binding upon and shall enure to the benefit of the respective successors, assigns and legal or personal representatives of the Parties, as applicable.
5. The Parties understand, acknowledge and agree that this Full and Final Release shall be immediately, unconditionally, and irrevocably effective upon the issuance of a court order approving the settlement as contemplated under the terms of the Settlement Agreement.
6. The Parties agree that this Full and Final Release shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada as applicable therein. Any dispute arising from or relating to the interpretation, application or enforcement of this Full and Final Release shall be exclusively within the jurisdiction of the Ontario Superior Court of Justice (Commercial List), and the Parties hereby irrevocably attorn to the exclusive jurisdiction of such Court with respect to any and all matters covered by, or in any way relating to, this Full and Final Release.
7. The Parties each covenant and agree that each part and provision of this Full and Final Release is distinct and severable and if, in any jurisdiction, any part or provision of this

Full and Final Release or its application to any Party or circumstance is restricted, prohibited or unenforceable, for public policy reasons or otherwise, that that part or provision shall be interpreted in a manner so as to not make it unenforceable at law, but if such interpretation is not possible, the Parties agree that the part or provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining parts and provisions hereof and without affecting the validity or enforceability of such part or provision in any other jurisdiction or its application to other parties or circumstances.

8. The Parties each hereby expressly acknowledge, declare and agree that they have had an opportunity to fully review this Full and Final Release and they have consulted with independent legal counsel. The Parties each acknowledge, declare and agree that they fully understand the meaning and effect of each paragraph of this Full and Final Release and freely and voluntarily agree to its terms for the purpose of making full and final compromise, adjustment and settlement of the Released Matters. The Parties each further expressly acknowledge, declare and agree that there is no condition, express or implied, or collateral agreement affecting their respective abilities to enter into this Full and Final Release, other than those set out in the Settlement Agreement to which this Full and Final Release is attached. The Parties further acknowledge and agree that any statute, case law, or rule of interpretation or construction that would or might cause any part or provision of this Full and Final Release to be construed against the drafters of this Full and Final Release shall be of no force or effect.
9. The Parties each agree that this Full and Final Release may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

The parties hereto have duly executed this Full and Final Release effective this 18th day of June, 2020, notwithstanding the actual date of execution:

[Remainder of Page Intentionally Left Blank]

GRANT THORNTON LIMITED,
IN ITS CAPACITY AS THE
COURT-APPOINTED TRUSTEE
OF TEXTBOOK STUDENT
SUITES (525 PRINCESS
STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (555
PRINCESS STREET) TRUSTEE
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STUDENT SUITES (ROSS PARK)
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2223947 ONTARIO LIMITED,
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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

Rania Erian

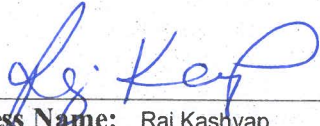
Witness Name:



Name:

Title:

**KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT-
APPOINTED 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.,
TEXTBOOK (445 PRINCESS STREET)
INC., MCMURRAY STREET
INVESTMENTS INC., TEXTBOOK (774
BRONSON AVENUE) INC., AND
TEXTBOOK ROSS PARK INC.**



Witness Name: Raj Kashyap



Name: Bobby Kofman
Title: President and Managing Director

Witness Name:

JAMES GRACE

**KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT-
APPOINTED 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.,
TEXTBOOK (445 PRINCESS STREET)
INC., MCMURRAY STREET
INVESTMENTS INC., TEXTBOOK (774
BRONSON AVENUE) INC., AND
TEXTBOOK ROSS PARK INC.**

Witness Name:

Emily [Signature]

Witness Name:

Name:

Title:

[Signature]

JAMES GRACE

SCHEDULE “B”

FORM OF DRAFT LANGUAGE TO BE INCORPORATED INTO DRAFT ORDER

1. **THIS COURT ORDERS AND DECLARES** that James Grace (the “**Settling Defendant**”) and his predecessors, successors, heirs and insurers (collectively, the “**Released Parties**”) are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Settlement Agreement, Declarations and Full and Final Release dated June 18, 2020, including the schedules attached thereto (the “**Agreement**”) from any and all manners of action, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues, damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief, losses, injuries and liabilities of any and every nature whatsoever, whether in law or in equity (each a “**Claim**”, and collectively, the “**Claims**”) that the Trustee (as defined in the Agreement) and/or the Receiver (as defined in the Agreement) has or may have against them arising out of or in any way relating to the Released Matters (as defined below).

2. **THIS COURT ORDERS AND DECLARES** that the Released Parties are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) from any Claim or Claims that the Non-Settling Defendants (as defined in the Agreement) or any one of them, including Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Nancy Elliot, Elliot Law Professional Corporation, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc., and/or Michael Cane, has or may have against them for contribution or indemnity in the Action or in a separate claim or proceeding commenced by the Trustee or the Receiver, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action or which in any way relate to the Released Matters (as defined below).

3. **THIS COURT ORDERS AND DECLARES** that the Receiver and the Trustee shall not be entitled to recover from the Non-Settling Defendants (subject to and in accordance with the

terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) any damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief (“**Monetary Relief**”) that corresponds to the proportion of any judgment that, had the Settling Defendant not settled, the Court would have apportioned to the Settling Defendant. The Receiver and the Trustee shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) only be entitled to recover from the Non-Settling Defendants such claims for Monetary Relief attributable to the aggregate of the several liability of the Non-Settling Defendants. For greater certainty, if the Court ultimately awards Monetary Relief to the Receiver or the Trustee against the Non-Settling Defendants, the Trustee and the Receiver shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) have no right to recover any such portion of such Monetary Relief attributable to the Settling Defendant.

4. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the “**Released Matters**” means: (1) the proceedings in the Ontario Superior Court of Justice (Commercial List) in Toronto bearing Court File No. CV-18-606314-00CL (the “**Action**”); (2) all of the known and unknown facts and issues in dispute amongst the Trustee (as defined in the Agreement) and the Receiver (as defined in the Agreement), on the one hand, and the Released Parties, on the other hand, and all of the known and unknown Claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendant, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action; and (3) facts and issues arising from or relating to: (i) the syndicated mortgage investments with 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 (collectively, the “**Trustee Companies**”); and (ii) the real estate development projects 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., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street

Investments Inc. (collectively, the “**Development Companies**”) (collectively, the “**Released Matters**”).

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

- (a) the pendency of the Trustee Proceedings (as defined in the Agreement);
- (b) the pendency of the Receiver Proceedings (as defined in the Agreement);
- (c) the pendency of the Action;
- (d) any applications for any bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of one or more of any of the Settling Defendant, the Non-Settling Defendants, the Trustee Companies, the Development Companies or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
- (e) any assignment in bankruptcy made in respect of any of the Identified Parties.

the payment to the Trustee and the Receiver, or as they may direct, of the Settlement Funds (as defined in the Agreement) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) at any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. **THIS COURT ORDERS** that, in respect of the policy of insurance issued by Travelers Insurance Company of Canada (“**Travelers**”) bearing Policy #10383958 and effective July 28, 2016 to July 28, 2017 (the “**Policy**”):

- (a) the payment made on behalf of Mr. Grace does not violate the interests of any person or entity potentially covered under the Policy;
- (b) The payment constitutes covered Loss as defined in the Policy;
- (c) The payment reduces the Liability Coverage Limit of Liability (as defined in the Policy) under the Policy for all purposes, regardless of any subsequent finding by any court, tribunal, administrative body or arbitrator, in any proceeding or action, that Mr. Grace engaged in conduct that triggered or may have triggered any exclusion, term or condition of the Policy, or any of them, so as to disentitle him to coverage under the Policy;

- (d) The payment is without prejudice to any coverage position or reservations of rights taken by Travelers in relation to any other matter advised to Travelers or any other Claim (as defined in the Policy) made or yet to be made against the Insured, provided that neither coverage nor payment in respect of the settlement of this action will be voided or impacted by any such coverage position or reservation of rights;
- (e) The payment fully and finally releases Travelers from any further obligation, and from any and all claims against it under or in relation to the Policy, in respect of the portion of the Liability Coverage Limit of Liability that were expended to fund the payment; and
- (f) Travelers is directed to pay the settlement amount on behalf of Mr. Grace in full satisfaction of the settlement agreement.

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

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

THE HONOURABLE MR.) TUESDAY, THE 14TH
JUSTICE HAINEY) DAY OF JULY, 2020

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

**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**

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

**IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK (445 PRINCESS
STREET) INC.**

**AND IN THE MATTER OF AN APPLICATION UNDER 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)**

BETWEEN:

**GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED
TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE
CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE
CORPORATION AND 7743718 CANADA INC.**

Applicant

- and -

**TEXTBOOK (774 BRONSON AVENUE) INC., TEXTBOOK ROSS PARK INC. and
MCMURRAY STREET INVESTMENTS INC.**

Respondents

**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)**

BETWEEN:

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND TEXTBOOK ROSS PARK INC.

Plaintiffs

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, JAMES GRACE, BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC., JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE

Defendants

SETTLEMENT APPROVAL ORDER

THIS MOTION, made by Grant Thornton Limited (“**GTL**”), solely in its capacity as the Court-appointed trustee (in such capacity, the “**Trustee**”) of each of the Trustee Companies (as defined below), and not in its personal capacity or in any other capacity, and by KSV Kofman Inc., solely in its capacity as receiver (in such capacity, the “**Receiver**” and, together with the Trustee, the “**Moving Parties**”) of certain property of the Development Companies (as defined below), and not in its personal capacity or in any other capacity, for an Order, *inter alia*: (i) approving and giving effect to the Settlement Agreement dated June 18, 2020 and all schedules attached thereto, including the Full and Final Release (collectively, the “**Agreement**”) as between the Trustee and the Receiver, on the one hand, and the defendant, James Grace (“**Mr. Grace**”), on the other hand, subject in all cases to the terms, conditions and exceptions provided in the Agreement; and (ii) authorizing and directing the Moving Parties to take any and all steps necessary to give effect to the Agreement, was heard this day via video conference,

ON READING the Thirteenth Report of the Trustee dated June 25, 2020, the Twentieth Report of the Receiver dated July 2, 2020 and the Factum and Brief of Authorities of the Moving Parties dated July 2, 2020, and on hearing the submissions of counsel for the Trustee, counsel for the Receiver, counsel for Mr. Grace and such other counsel as were present, no one appearing for any other person on the service lists although duly served as appears from the affidavits of service of Madison Van Doorn and Matthew Patterson, sworn July 10, 2020 and July 2, 2020, respectively,

1. **THIS COURT ORDERS** that, to the extent necessary, the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT DECLARES** that the Agreement is fair and reasonable in all the circumstances and for the purposes of these proceedings.
3. **THIS COURT ORDERS AND DECLARES** that the Agreement is hereby approved, that the Moving Parties and Mr. Grace are hereby authorized and directed to comply with their obligations thereunder and that the Moving Parties are hereby authorized to take such further acts and steps as may be necessary to give effect to the terms of the Agreement and this Order.

4. **THIS COURT ORDERS AND DECLARES** that Mr. Grace and his predecessors, successors, heirs and insurers (collectively, the “**Released Parties**”) are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all manners of action, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues, damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief, losses, injuries and liabilities of any and every nature whatsoever, whether in law or in equity (each a “**Claim**”, and collectively, the “**Claims**”) that the Trustee and/or the Receiver has or may have against them arising out of or in any way relating to the Released Matters (as defined below).

5. **THIS COURT ORDERS AND DECLARES** that the Released Parties are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any Claim or Claims that the Non-Settling Defendants (as defined in the Agreement) or any one of them, including Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Nancy Elliot, Elliot Law Professional Corporation, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc., and/or Michael Cane, has or may have against them for contribution or indemnity in the Action or in a separate claim or proceeding commenced by the Trustee or the Receiver, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action or which in any way relate to the Released Matters (as defined below).

6. **THIS COURT ORDERS AND DECLARES** that the Receiver and the Trustee shall not be entitled to recover from the Non-Settling Defendants (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) any damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief (“**Monetary Relief**”) that corresponds to the proportion of any judgment that, had the Released Parties not settled, the Court would have apportioned to the Released Parties. The Receiver and the Trustee shall

(subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) only be entitled to recover from the Non-Settling Defendants such claims for Monetary Relief attributable to the aggregate of the several liability of the Non-Settling Defendants. For greater certainty, if the Court ultimately awards Monetary Relief to the Receiver or the Trustee against the Non-Settling Defendants, the Trustee and the Receiver shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) have no right to recover any such portion of such Monetary Relief attributable to the Released Parties.

7. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the “**Released Matters**” means: (1) the proceedings in the Ontario Superior Court of Justice (Commercial List) in Toronto bearing Court File No. CV-18-606314-00CL (the “**Action**”); (2) all of the known and unknown facts and issues in dispute amongst the Trustee and the Receiver, on the one hand, and the Released Parties, on the other hand, and all of the known and unknown Claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Released Parties, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action; and (3) facts and issues arising from or relating to: (i) the syndicated mortgage investments with 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 (collectively, the “**Trustee Companies**”); and (ii) the real estate development projects 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., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc. (collectively, the “**Development Companies**”).

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

- (a) the pendency of the Trustee Proceedings (as defined in the Agreement);
- (b) the pendency of the Receiver Proceedings (as defined in the Agreement);
- (c) the pendency of the Action;
- (d) any applications for any bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Mr. Grace, the Non-Settling Defendants, the Trustee Companies, the Development Companies or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
- (e) any assignment in bankruptcy made in respect of any of the Identified Parties;

the payment to the Trustee and the Receiver, or as they may direct, of the Settlement Funds (as defined in the Agreement) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS** that, in respect of the policy of insurance issued by Travelers Insurance Company of Canada (“**Travelers**”) bearing Policy #10383958 and effective July 28, 2016 to July 28, 2017 (the “**Policy**”):

- (a) The payment made on behalf of Mr. Grace does not violate the interests of any person or entity potentially covered under the Policy;
- (b) The payment constitutes a covered Loss as defined in the Policy;
- (c) The payment reduces the Liability Coverage Limit of Liability (as defined in the Policy) under the Policy for all purposes, regardless of any subsequent finding by any court, tribunal, administrative body or arbitrator, in any proceeding or action,

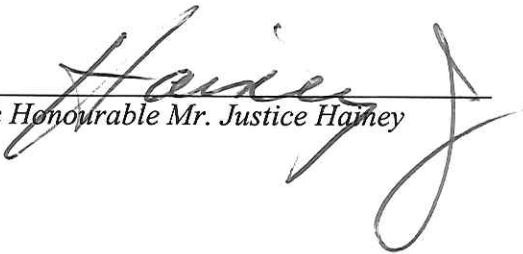
that Mr. Grace engaged in conduct that triggered or may have triggered any exclusion, term or condition of the Policy, or any of them, so as to disentitle him to coverage under the Policy;

- (d) The payment is without prejudice to any coverage position or reservations of rights taken by Travelers in relation to any other matter advised to Travelers or any other Claim (as defined in the Policy) made or yet to be made against Mr. Grace, provided that neither coverage nor payment in respect of the settlement of this action will be voided or impacted by any such coverage position or reservation of rights;
- (e) The payment fully and finally releases Travelers from any further obligation, and from any and all claims against it under or in relation to the Policy, in respect of the portion of the Liability Coverage Limit of Liability that were expended to fund the payment; and
- (f) Travelers is directed to pay the settlement amount on behalf of Mr. Grace in full satisfaction of the settlement agreement.

10. **THIS COURT ORDERS** that leave be and is hereby granted to amend the Amended Amended Statement of Claim in the form attached hereto as Schedule "A".

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

12. **THIS COURT ORDERS** that the Trustee and the Receiver may from time to time apply to this Court for advice and directions in the discharge of their powers, duties and obligations under the Agreement and hereunder.


The Honourable Mr. Justice Hayney

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and - **TEXTBOOK STUDENTS SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION ET AL.**

Respondents

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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, ET AL.

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

KINGSETT MORTGAGE CORPORATION

Applicant

- and - **TEXTBOOK (445 PRINCESS STREET) INC.**

Respondent

Court File No. CV-17-589078-00CL

GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, ET AL.

Applicant

- and - **TEXTBOOK (774 BRONSON AVENUE) INC., ET AL.**

Respondents

Court File No. CV-18-598788-00CL

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, ET AL, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, ET AL.

Plaintiffs

- and - **AEOLIAN INVESTMENTS LTD., ET AL.**

Defendants

Court File No. CV-18-606314-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO**

SETTLEMENT APPROVAL ORDER

BENNETT JONES LLP

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

Sean Zweig (LSO# 57307I)

Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSO# 55457P)

Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSO# 64325B)

Phone: (416) 777-4828
Email: blinickj@bennettjones.com

Fax: (416) 863-1716

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSO# 31871V)

Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Ian Aversa (LSO# 55449N)

Phone: (416) 865-3082
Email: iaversa@airdberlis.com

Jeremy Nemers (LSO# 66410Q)

Phone: (416) 865-7724
Email: jnemers@airdberlis.com

Fax: (416) 863-1515

Lawyers for KSV Kofman Inc., solely in its capacity as the Court-Appointed Receiver 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., Textbook (555 Princess Street) Inc., and Textbook (445 Princess Street) Inc. and in its capacity as Proposed Court-Appointed Receiver of Textbook (Ross Park) Inc., Textbook (774 Bronson Avenue) Inc. and McMurray Street Investments Inc.

Lawyers for Grant Thornton Limited, solely in its capacity as Court-Appointed Trustee of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation

APPENDIX 13

PREVIOUS REPORTS ISSUED BY THE TRUSTEE

Report	Primary Purpose(s)
First report dated November 10, 2016 (the " First Report ")	To advise of the various degrees to which each of Mr. Davies, Mr. Singh and H+H were cooperating with the Trustee. Filed in the context of the Stay Motion.
Second report dated November 28, 2016 (the " Second Report ")	To advise of the challenges encountered by the Trustee in performing its mandate as a result of the actions of certain parties, including the lack of information provided by the Davies Developers.
Third report dated December 13, 2016 (the " Third Report ")	To respond to the CCAA Application.
Fourth report dated January 20, 2017 and supplement dated January 26, 2017 (the " Fourth Report ")	To move for the Original Receivership.
Fifth report dated January 23, 2017 and supplement dated April 4, 2017 (the " Fifth Report ")	To respond to the receivership application brought against Vaughan Crossings Developer and a transaction in respect of same.
Sixth report dated April 18, 2017 and supplement dated April 21, 2017 (the " Sixth Report ")	To move for the Expanded Receivership.
Seventh report dated August 23, 2017 (the " Seventh Report ")	To move for the Claims Procedure Order and approval of a settlement with the Hazelton Developer.
Eighth report dated November 3, 2017 (the " Eighth Report ")	To move for: (i) the authority to make distributions to the Investors without further Order of the Court and to provide certain information to the RCMP and the OPP; and (ii) approval of settlements with the Guildwood Developer and the Silver Seven Developer.
Ninth report dated February 26, 2018 (the " Ninth Report ")	To move for the Ross Park Receivership.
Tenth report dated August 13, 2018 and supplements dated August 20, 2018 and October 19, 2018 (the " Tenth Report ")	To move for the scheduling and adjudication of the disputed claims that arose from the Trustee's implementation of the Claims Procedure Order.
Eleventh report dated January 15, 2019 (the " Eleventh Report ")	To advise of the Purported Notice of Action and the Website and Video.

Twelfth report dated November 1, 2019 (the " Twelfth Report ")	To move for the Singh Settlement.
Thirteenth report dated June 25, 2020 (the " Thirteenth Report ")	To move for the Grace Settlement.

APPENDIX 14

SETTLEMENT AGREEMENT

THIS AGREEMENT, effective this 19th day of April, 2021

AMONGST:

KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED 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., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC.

(in such capacity, the “**Receiver**”)

-and-

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

(in such capacity, the “**Trustee**”)

-and-

NANCY ELLIOTT and ELLIOTT LAW PROFESSIONAL CORPORATION

(respectively, “**Ms. Elliott**” and “**ELPC**”, referred to collectively as the “**Settling Defendants**”)

WHEREAS:

- A. Grant Thornton Limited was appointed as the Trustee pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued on October 27, 2016 (the “**Trustee Proceedings**”);
- B. KSV Kofman Inc. was appointed as the Receiver pursuant to Orders of the Court issued on February 2, 2017, April 28, 2017, May 2, 2017, January 9, 2018 and May 30, 2018 (the “**Receiver Proceedings**”);
- C. The Trustee and the Receiver commenced an action in the Court by the issuance of a Statement of Claim dated October 3, 2018 in Court File No. CV-18-606314-00CL (the “**Action**”) against the Settling Defendants and the following parties: Bhaktraj Singh a.k.a. Raj Singh, RS Consulting Group Inc., Tier 1 Transaction Advisory Services Inc., Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, James Grace, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc. and Michael Cane;
- D. The Trustee and the Receiver previously entered into a settlement with Bhaktraj Singh a.k.a. Raj Singh, RS Consulting Group Inc. and Tier 1 Transaction Advisory Services Inc., which was approved by the Court pursuant to the Order of Justice Hainey dated November 18, 2019;
- E. The Trustee and the Receiver previously entered into a settlement with James Grace, which was approved by the Court pursuant to the Order of Justice Hainey dated July 14, 2020;
- F. The Trustee and the Receiver intend to continue the Action and potentially commence, continue and pursue other claims and proceedings against the following parties: Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc. and Michael Cane (collectively, in any and all capacities, and together with any and all other parties or potential parties in the Action and in any other claims and proceedings commenced, continued or pursued by the Trustee or the Receiver, but excluding the Settling Defendants in any and all capacities, the “**Non-Settling Defendants**”);
- G. The Trustee and the Receiver, on the one hand, and the Settling Defendants, on the other hand, wish to resolve all of the known and unknown facts and issues in dispute amongst them and all of the known and unknown claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendants, whether in

the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action;

- H. Ms. Elliott is the named insured under a LAWPRO policy of insurance (the “**Policy**”). As of March 5, 2021 the sum available under the Policy was \$851,722.86, to be confirmed by way of a letter delivered contemporaneously with the execution of this Settlement Agreement.
- I. In that regard, the Settling Defendants have agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto):
- i. pay the Trustee and the Receiver, or as they may direct, the sum of six hundred and eighty thousand dollars in lawful Canadian currency (CDN \$680,000.00), including all costs and applicable taxes (the “**Guaranteed Settlement Funds**”);
 - ii. undertake as a condition subsequent to this Agreement to pay the Trustee and the Receiver, or as they may direct, fifty percent (50%) of any sum remaining under the Policy (the “**Contingent Settlement Funds**”) after the resolution of the two ongoing investor actions against the Settling Defendants (the “**Investor Actions**”), which Investor Actions shall be identified by way of a letter delivered contemporaneously with the execution of this Settlement Agreement; and
 - iii. provide cooperation to the Trustee and the Receiver in connection with the Action and any of their other claims and proceedings against the Non-Settling Defendants;
- J. In turn, the Trustee and the Receiver have agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto):
- i. accept the Guaranteed Settlement Funds and the Contingent Settlement Funds in full and final satisfaction of the Action and any other potential claims and proceedings against the Settling Defendants;
 - ii. discontinue the Action as against the Settling Defendants on a strictly with prejudice, without costs basis;
 - iii. refrain from commencing or continuing claims or proceedings against the Settling Defendants; and
 - iv. fully and finally release the Settling Defendants.
- L. The Trustee and the Receiver intend to preserve all of their rights and remedies, and all claims they have in the Action or otherwise, against the Non-Settling Defendants, continue the Action against the Non-Settling Defendants and possibly continue, commence and pursue further claims and proceedings against all or some of the Non-Settling Defendants, subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto.

NOW THEREFORE in consideration of the promises set forth herein, the mutual covenants and agreements contained herein, and for further and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The above recitals are true and accurate, and form part of this Agreement together with the Schedules attached hereto.
2. The Trustee and the Receiver shall apply to the Court for, and recommend, an order approving and giving full effect to this Agreement, including all of the Schedules attached hereto (the “**Order**”). The Order shall include language substantially in the form of the draft language attached hereto as **Schedule “B”**. In the event the Court declines to issue the Order, this Agreement, including the Schedules attached hereto, shall be null and void and of no further force or effect.
3. Prior to the issuance of the Order:
 - (a) Ms. Elliott shall provide the Trustee and the Receiver with a declaration in the form of an affidavit or a statutory declaration (the “**Declaration**”) confirming that her personal assets, outside of her personal residence, are less than CAD\$1 million, in the form attached hereto as **Schedule “C”**; and
 - (b) the Trustee and the Receiver shall each provide the Settling Defendants with an executed full and final release substantially in the form attached hereto as **Schedule “A”** (the “**Full and Final Release**”), which shall be held in escrow by counsel to the Settling Defendants, and not released, unless and until the Guaranteed Settlement Funds are paid in accordance with paragraphs 5 and 6 hereof.
4. The Trustee and the Receiver each agree to keep the Declaration confidential and to not disclose the Declaration or information therein except if such disclosure is required by law.
5. The Settling Defendants shall pay, or cause to be paid, the Guaranteed Settlement Funds to the Trustee and the Receiver, or as they may direct, within thirty (30) days of the Order being issued by the Court.
6. Within thirty (30) days of the date on which the last of the Investor Actions is resolved, the Settling Defendants shall pay, or cause to be paid, the Contingent Settlement Funds to the Trustee and the Receiver, or as they may direct. The Settling Defendants undertake to provide the Trustee and the Receiver with a letter setting out the total sum incurred to resolve the Investor Actions, including the settlement amount, if any, and the fees and disbursements incurred by the Settling Defendants in relation to the Investor Actions, in support of the calculation of the Contingent Settlement Funds. For clarity, the Settling Defendants will not set out the settlement amount separately due to confidentiality concerns.
7. As soon as reasonably possible following the payment of the Guaranteed Settlement Funds in accordance with paragraph 5, the Trustee and the Receiver shall dismiss the Action as against the Settling Defendants on a strictly with prejudice and without costs basis, and shall amend their statement of claim in the Action so as to continue the Action against the Non-Settling Defendants only.

8. In accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto, the Receiver and Trustee shall not be entitled to recover from the Non-Settling Defendants any damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief (“**Monetary Relief**”) that corresponds to the proportion of any judgment that, had the Settling Defendants not settled, the Court would have apportioned to them. The Receiver and Trustee shall be entitled to recover from the Non-Settling Defendants only such claims for Monetary Relief attributable to the aggregate of the several liability of the Non-Settling Defendants. For greater certainty, if the Court ultimately awards Monetary Relief to the Receiver or the Trustee against the Non-Settling Defendants and finds, holds, orders, or declares that the Non-Settling Defendants have the right or ability to pass any liability for such Monetary Relief or a portion thereof onto the Settling Defendants, or the right or ability to seek or claim contribution or indemnity for such Monetary Relief or a portion thereof from the Settling Defendants, the Trustee and the Receiver waive their right to recover such Monetary Relief with respect to such portion attributable to the Settling Defendants and this paragraph and Agreement shall act as a complete estoppel of any recovery sought by the Receiver or Trustee against any person on such basis.
9. The Settling Defendants shall provide the following limited cooperation to the Trustee and the Receiver in relation to their claims and proceedings against the Non-Settling Defendants, including, but not limited to, in the Action:
 - (a) Two (2) 2-hour sessions with the Receiver and the Trustee, at which the Settling Defendants’ counsel shall be entitled to be present, at which the Settling Defendants will, in a question and answer format, provide an account of the facts known to them that are relevant to such claims and proceedings; and
 - (b) Swear to the veracity of a statement setting out the relevant matters in respect of which the Settling Defendants have knowledge, information and belief (the “**Statement**”). The Statement shall be prepared by counsel to the Trustee and the Receiver, and its contents must be approved by Ms. Elliot prior to her swearing to its veracity.
10. Given the Trustee’s and the Receiver’s desire to limit costs and maximize recovery for stakeholders, the Settling Defendants’ agreement to cooperate is a material factor influencing the Trustee’s and the Receiver’s respective decisions to enter into and execute this Agreement and compromise their claims against the Settling Defendants.
11. This Agreement is entered into for purposes of settlement and compromise only. This Agreement will not in any way be construed as an admission by any party, and the parties hereto each specifically disclaim any liability in connection with the Action.
12. The parties to this Agreement hereby declare, represent and warrant that they have consulted with and been advised by independent legal counsel with respect to the terms of the settlement set forth herein, that they have read and fully understand all of the terms and consequences of this Agreement, including all of the Schedules attached hereto, and that they enter into this Agreement freely and voluntarily, without coercion or duress, and without reliance upon any representation, warranty, condition or agreement, whether written or oral, other than as expressly set out or referred to herein.

13. The parties to this Agreement shall execute all documents and take all steps as are necessary and reasonable to accomplish the objectives of this Agreement, including its Schedules, and give effect thereto.
14. This Agreement may not be altered, amended or modified except by written agreement of the parties to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Any dispute arising out of or in connection with this Agreement shall be exclusively and finally determined by the Court.
15. The terms of this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors and assigns, as applicable.
16. This Agreement, including the Schedules attached hereto, constitutes the entire agreement among the parties, and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.
17. This Agreement, including the Schedules attached hereto, may be executed in counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective this 19th day of April, 2021, notwithstanding the actual date of execution:

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GRANT THORNTON LIMITED,
IN ITS CAPACITY AS THE
COURT-APPOINTED TRUSTEE
OF TEXTBOOK STUDENT
SUITES (525 PRINCESS
STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (555
PRINCESS STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (ROSS PARK)
TRUSTEE CORPORATION,
2223947 ONTARIO LIMITED,
MC TRUSTEE (KITCHENER)
LTD., SCOLLARD TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (774
BRONSON AVENUE) TRUSTEE
CORPORATION, 7743718
CANADA INC., KEELE
MEDICAL TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (445
PRINCESS STREET) TRUSTEE
CORPORATION AND
HAZELTON 4070 DIXIE ROAD
TRUSTEE CORPORATION



Witness Name: Miranda Spence



Name: Jonathan Krieger
Title: Senior Vice President

**KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT-
APPOINTED 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.,
TEXTBOOK (445 PRINCESS STREET)
INC., MCMURRAY STREET
INVESTMENTS INC., TEXTBOOK (774
BRONSON AVENUE) INC., AND
TEXTBOOK ROSS PARK INC.**



Witness Name: Lynne Quintos



Name: Bobby Kofman
Title: President

Witness Name:

NANCY ELLIOTT

Witness Name:

**ELLIOTT LAW PROFESSIONAL
CORPORATION**

KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED 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., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC.

Witness Name:

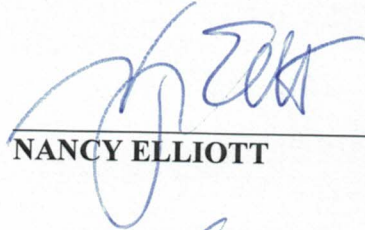
Aaron Hershtal

Witness Name:

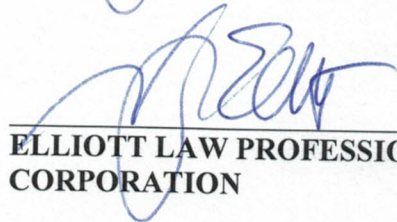
Aaron Hershtal

Witness Name:

Name:
Title:



NANCY ELLIOTT



ELLIOTT LAW PROFESSIONAL CORPORATION

SCHEDULE “A”

FORM OF FULL AND FINAL RELEASE

WHEREAS this is a mutual Full and Final Release between:

Grant Thornton Limited, in its capacity as the court-appointed Trustee of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation (the “**Trustee**”) and KSV Kofman Inc., in its capacity as the court-appointed 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., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc. (the “**Receiver**”)

-and-

Nancy Elliott (“**Ms. Elliott**”) and Elliott Law Professional Corporation (“**ELPC**” and, together with Ms. Elliott, the “**Settling Defendants**”, and the Settling Defendants together with the Receiver and the Trustee, the “**Parties**” and, individually, a “**Party**”)

relating to: (1) the proceedings in the Ontario Superior Court of Justice (Commercial List) in Toronto bearing Court File No. CV-18-606314-00CL (the “**Action**”); (2) all of the known and unknown facts and issues in dispute amongst the Parties and all of the known and unknown claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendants, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action, and (3) facts and issues arising from or relating to: (i) the syndicated mortgage investments with 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 (collectively, the “**Trustee Companies**”); and (ii) the real estate development projects 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., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc. (collectively, the “**Development Companies**”) (collectively, the “**Released Matters**”);

AND WHEREAS the Trustee and the Receiver, on the one hand, and the Settling Defendants, on the other hand, wish to fully and finally resolve and settle the Released Matters and have agreed to release each other from any and all manners of Claims (as defined below) relating to the

Released Matters, subject to the terms and conditions of the Settlement Agreement to which this Full and Final Release is attached as **Schedule “A”**;

NOW THEREFORE in consideration of the mutual covenants contained in this Full and Final Release and the terms set out in the Settlement Agreement to which this Full and Final Release is attached as **Schedule “A”**, and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged by the Parties:

1. The recitals set out above are true and accurate, and form part of this Full and Final Release.

The Receiver and the Trustee, on the one hand, and the Settling Defendants, on the other, hereby fully and forever release, remise, acquit and discharge each other and, as applicable, their respective predecessors, successors, heirs and insurers (collectively, the “**Released Parties**”), from any and all manners of action, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues, damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief, losses, injuries and liabilities of any and every nature whatsoever, whether in law or in equity (each a “**Claim**”, and collectively, the “**Claims**”) arising out of or in any way relating to the Released Matters (the “**Released Claims**”), provided, however, that nothing in this Full and Final Release shall in any way release or affect, or shall be considered, construed or deemed to release or affect any of the Parties’ rights or obligations under the Settlement Agreement, including but not limited to the Trustee’s and the Receiver’s rights to revoke this Full and Final Release in accordance with the terms of the Settlement Agreement.

2. Without limiting the generality of the foregoing, the Parties declare that the intent of this Full and Final Release is to conclude all issues in respect of, relating to or arising out of the Released Claims and it is understood and agreed that this Full and Final Release is intended to cover, and does cover, not only all known injuries, losses and damages in respect of the Released Claims, but also injuries, losses and damages in respect of the Released Claims not now known or anticipated but which may later be discovered, including all the effects and consequences thereof. For greater clarity, the releases provided in paragraph 2 hereof shall in no way be considered, construed or deemed in any way to release or affect any claim arising from future events, or any claim based on past events that the Trustee or the Receiver have against any persons, corporations, or entities other than the Released Parties.
3. The Parties each covenant and agree that this Full and Final Release shall be binding upon and shall inure to the benefit of the respective successors, assigns and legal or personal representatives of the Parties, as applicable.
4. The Parties understand, acknowledge and agree that this Full and Final Release shall be immediately, unconditionally, and irrevocably effective upon the issuance of a court order approving the settlement as contemplated under the terms of the Settlement Agreement.
5. The Parties agree that this Full and Final Release shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada as applicable therein. Any dispute arising from or relating to the interpretation, application or enforcement of this Full and Final Release shall be exclusively within the jurisdiction of the Ontario Superior Court of Justice (Commercial List), and the Parties hereby irrevocably attorn to the exclusive jurisdiction of such Court with respect to any and all matters covered by, or in any way relating to, this Full and Final Release.

6. The Parties each covenant and agree that each part and provision of this Full and Final Release is distinct and severable and if, in any jurisdiction, any part or provision of this Full and Final Release or its application to any Party or circumstance is restricted, prohibited or unenforceable, for public policy reasons or otherwise, that that part or provision shall be interpreted in a manner so as to not make it unenforceable at law, but if such interpretation is not possible, the Parties agree that the part or provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining parts and provisions hereof and without affecting the validity or enforceability of such part or provision in any other jurisdiction or its application to other parties or circumstances.
7. The Parties each hereby expressly acknowledge, declare and agree that they have had an opportunity to fully review this Full and Final Release and they have consulted with independent legal counsel. The Parties each acknowledge, declare and agree that they fully understand the meaning and effect of each paragraph of this Full and Final Release and freely and voluntarily agree to its terms for the purpose of making full and final compromise, adjustment and settlement of the Released Matters. The Parties each further expressly acknowledge, declare and agree that there is no condition, express or implied, or collateral agreement affecting their respective abilities to enter into this Full and Final Release, other than those set out in the Settlement Agreement to which this Full and Final Release is attached. The Parties further acknowledge and agree that any statute, case law, or rule of interpretation or construction that would or might cause any part or provision of this Full and Final Release to be construed against the drafters of this Full and Final Release shall be of no force or effect.
8. The Parties each agree that this Full and Final Release may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

The parties hereto have duly executed this Full and Final Release effective this 19th day of April, 2021, notwithstanding the actual date of execution:

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GRANT THORNTON LIMITED,
IN ITS CAPACITY AS THE
COURT-APPOINTED TRUSTEE
OF TEXTBOOK STUDENT
SUITES (525 PRINCESS
STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (555
PRINCESS STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (ROSS PARK)
TRUSTEE CORPORATION,
2223947 ONTARIO LIMITED,
MC TRUSTEE (KITCHENER)
LTD., SCOLLARD TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (774
BRONSON AVENUE) TRUSTEE
CORPORATION, 7743718
CANADA INC., KEELE
MEDICAL TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (445
PRINCESS STREET) TRUSTEE
CORPORATION AND
HAZELTON 4070 DIXIE ROAD
TRUSTEE CORPORATION




Witness Name: Miranda Spence



Name: Jonathan Krieger
Title: Senior Vice President

KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED 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., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC.



Witness Name: Lynne Quintos



Name: Bobby Kofman
Title: President

Witness Name:

NANCY ELLIOTT

Witness Name:

ELLIOTT LAW PROFESSIONAL CORPORATION

KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED 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., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC.

Witness Name:

Aaron Hershtal

Witness Name:

Aaron Hershtal

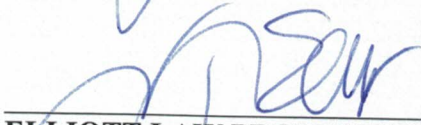
Witness Name:

Name:

Title:



NANCY ELLIOTT



ELLIOTT LAW PROFESSIONAL CORPORATION

FORM OF DRAFT LANGUAGE TO BE INCORPORATED INTO DRAFT ORDER

1. **THIS COURT ORDERS AND DECLARES** that Nancy Elliott and Elliott Law Professional Corporation (respectively, “**Ms. Elliott**” and “**ELPC,**” collectively, the “**Settling Defendants**”) and, as applicable, their predecessors, successors, heirs and insurers (collectively, the “**Released Parties**”) are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Settlement Agreement, Declaration and Full and Final Release dated ■, 2021, including the schedules attached thereto (the “**Agreement**”) from any and all manners of action, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues, damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief, losses, injuries and liabilities of any and every nature whatsoever, whether in law or in equity (each a “**Claim**”, and collectively, the “**Claims**”) that the Trustee (as defined in the Agreement) and/or the Receiver (as defined in the Agreement) has or may have against them arising out of or in any way relating to the Released Matters (as defined below).

2. **THIS COURT ORDERS AND DECLARES** that the Released Parties are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) from any Claim or Claims that the Non-Settling Defendants (as defined in the Agreement) or any one of them, including Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc., and/or Michael Cane, has or may have against them for contribution or indemnity in the Action or in a separate claim or proceeding commenced by the Trustee or the Receiver, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action or which in any way relate to the Released Matters (as defined below).

3. **THIS COURT ORDERS AND DECLARES** that the Receiver and the Trustee shall not be entitled to recover from the Non-Settling Defendants (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) any damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief (“**Monetary Relief**”) that corresponds to the proportion of any judgment that, had the Settling Defendants not settled, the Court would have apportioned to the Settling Defendants. The Receiver and the Trustee shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) only be entitled to recover from the Non-Settling Defendants such claims for Monetary Relief attributable to the aggregate of the several liability of the Non-Settling Defendants. For greater certainty, if the Court ultimately awards Monetary Relief to the Receiver or the Trustee against the Non-Settling Defendants, the Trustee and the Receiver shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) have no right to recover any such portion of such Monetary Relief attributable to the Settling Defendants.

4. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the “**Released Matters**” means: (1) the proceedings in the Ontario Superior Court of Justice (Commercial List) in Toronto bearing Court File No. CV-18-606314-00CL (the “**Action**”); (2) all of the known and unknown facts and issues in dispute amongst the Trustee (as defined in the Agreement) and the Receiver (as defined in the Agreement), on the one hand, and the Released Parties, on the other hand, and all of the known and unknown Claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendants, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action; and (3) facts and issues arising from or relating to: (i) the syndicated mortgage investments with 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 (collectively, the “**Trustee Companies**”); and (ii) the real estate development projects 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., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc. (collectively, the “**Development Companies**”) (collectively, the “**Released Matters**”).

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

- (a) the pendency of the Trustee Proceedings (as defined in the Agreement);
- (b) the pendency of the Receiver Proceedings (as defined in the Agreement);
- (c) the pendency of the Action;
- (d) any applications for any bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of one or more of any of the Settling Defendants, the Non-Settling Defendants, the Trustee Companies, the Development Companies or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
- (e) any assignment in bankruptcy made in respect of any of the Identified Parties.

the payment to the Trustee and the Receiver, or as they may direct, of the Settlement Funds (as defined in the Agreement) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) at any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. **THIS COURT ORDERS** that, in respect of the policy of insurance issued by LAWPRO bearing Policy #2021-001 and effective January 1, 2018 (the “**Policy**”):

- (a) The payment made on behalf of Ms. Elliott and ELPC does not violate the interests of any person or entity potentially covered under the Policy;
- (b) The payment constitutes covered Loss as defined in the Policy;
- (c) The payment reduces the Liability Coverage Limit of Liability (as defined in the Policy) under the Policy for all purposes, regardless of any subsequent finding by any court, tribunal, administrative body or arbitrator, in any proceeding or action, that Ms. Elliott and ELPC engaged in conduct that triggered or may have triggered

any exclusion, term or condition of the Policy, or any of them, so as to disentitle them to coverage under the Policy;

- (d) The payment is without prejudice to any coverage position or reservations of rights taken by LAWPRO in relation to any other matter advised to LAWPRO or any other Claim (as defined in the Policy) made or yet to be made against the Insured, provided that neither coverage nor payment in respect of the settlement of this action will be voided or impacted by any such coverage position or reservation of rights;
- (e) The payment fully and finally releases LAWPRO from any further obligation, and from any and all claims against it under or in relation to the Policy, in respect of the portion of the Liability Coverage Limit of Liability that were expended to fund the payment; and
- (f) LAWPRO is directed to pay the settlement amount on behalf of Ms. Elliott and ELPC in full satisfaction of the settlement agreement.

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

APPENDIX 15

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

**TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947
ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE
CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE
CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION
and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION**

Respondents

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

AFFIDAVIT OF JONATHAN KRIEGER

I, **JONATHAN KRIEGER**, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY as follows:

1. I am a Senior Vice President of Grant Thornton Limited, ("GTL") which was appointed as Trustee ("Trustee") without security, of all the assets, undertakings and properties of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee

(Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trust Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation (collectively, the “**Respondents**”). As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and whereso stated I verily believe such to be true.

2. All of the Trustee’s work as reflected in this Affidavit has been of a general nature related to the Tier1 Projects, generally, and not specifically allocable to a specific property. The Trustee has carefully reviewed its dockets, including the nature of the work expended and the proportionate amount of time expended on each of the Properties. The invoice included in this Affidavit provides for an allocation of costs by Property.

3. Attached and marked as Exhibit “**A**” to this my affidavit is a detailed bill setting out the fees and disbursements of GTL incurred in its role as Trustee of the Respondents from June 1, 2020 to March 31, 2021, in the amount of \$85,653.75, and HST of \$11,134.99 for a total of \$96,788.74. The average hourly rate is \$361.94. Attached and marked as Appendix “**B**” to this my affidavit are detailed billings by individual and date of services rendered.

4. Given the complexity of this insolvency matter, I believe the hourly rates and the total amount of fees are reasonable and comparable for insolvency services of this nature rendered by other firms in the City of Toronto.

5. This affidavit is sworn in connection with the approval of the fees and disbursements of GTL and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 3rd day of May 2021.



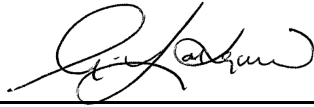
Commissioner for Taking Affidavits,
etc.

Faddie-Ann Lakeram,
a Commissioner, etc., Province of Ontario,
For Grant Thornton Limited
Expires March 30, 2023



JONATHAN KRIEGER

Exhibit "A" to the Affidavit of Jonathan Krieger,
sworn before me this 3rd of May 2021.



Commissioner for Taking Affidavits, etc.

Faddie-Ann Lakeram,
a Commissioner, etc., Province of Ontario,
For Grant Thornton Limited
Expires March 30, 2023

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

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

**TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO
LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK
STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA
INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445
PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE
CORPORATION**

Respondents

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

BILL OF COSTS

**BN 12738 4717 RT0001
Client #218172
Invoice #LSON-7054**

To professional services rendered as Court-Appointed Trustee of the Respondents for the period from June 1, 2020 to December 31, 2020.

Date	Full Name	Hours	Detail
June 1, 2020	William Benwood	0.50	Respond to investor inquiries.
June 2, 2020	David Goldband	0.50	Draft court report; Correspondence with counsel re: litigation matters.
June 3, 2020	David Goldband	2.80	Draft 13th report to Court.
June 3, 2020	Valerie Naccarato	0.20	General administration,
June 4, 2020	David Goldband	2.00	Correspondence with representative counsel; Review settlement agreement; Review counsel's blackline to report; Update report; Provide internal instructions re: R&D.
June 4, 2020	Jonathan Krieger	0.70	Review of correspondence from investor; Correspondence re: matters related to Ross Park; Correspondence with team re: review of legal documents.
June 4, 2020	Rania Erian	1.00	Prepare Affidavit of fees and send to D. Goldband.

Date	Full Name	Hours	Detail
June 4, 2020	Valerie Naccarato	0.10	General banking administration.
June 4, 2020	William Benwood	0.50	Internal discussion re: Receipts & Disbursements allocation, Update Receipts & Disbursements document as of June 3, 2020.
June 5, 2020	David Goldband	2.00	Call with counsel; Review and update report; Review settlement agreement; Update appendices for report.
June 5, 2020	William Benwood	2.70	Update Receipts & Disbursements document as of June 3, 2020.
June 8, 2020	David Goldband	2.40	Review affidavit; Review and update R&D; Review update re: Keele Medical; Correspondence with Keele Medical Receiver; Internal discussions re: R&D.
June 8, 2020	William Benwood	0.70	Update summary of invoices and payments; Internal discussion re: same.
June 9, 2020	David Goldband	0.70	Review R&D; Review appendix; Prepare allocation analysis; Email with OPP.
June 10, 2020	David Goldband	0.50	Call with Receiver's counsel re: Keele Medical; Call with counsel re: same.
June 10, 2020	Jonathan Krieger	0.70	Review of materials re: litigation; Correspondence with investor;
June 11, 2020	David Goldband	0.20	Email with representative counsel re: Keele Medical.
June 15, 2020	Rosa Wilford	1.30	On-line banking; Print various statements; Review estate bank accounts; Post eft entries and reconcile May statements.
June 15, 2020	William Benwood	0.20	Respond to investor inquiry.
June 19, 2020	David Goldband	0.40	Review emails from counsel re: litigation matters; Internal email re: report, appendices.
June 19, 2020	Jonathan Krieger	1.00	Review of litigation settlement doc re: sign off; Correspondence with team re: reconciliation.
June 21, 2020	Jonathan Krieger	1.10	Review materials for Court report; Correspondence with team thereto.
June 22, 2020	David Goldband	0.50	Internal discussions and call with counsel re: court report and appendices.
June 22, 2020	Jonathan Krieger	1.10	Review of draft Court materials; Correspondence re: matters related to Court report.
June 22, 2020	William Benwood	0.10	Respond to investor inquiry.
June 23, 2020	David Goldband	0.50	Update court report.

Date	Full Name	Hours	Detail
June 23, 2020	William Benwood	0.40	Respond to investor inquiries.
June 24, 2020	David Goldband	1.00	Correspondence with counsel; Review and update report; Internal discussions.
June 24, 2020	Jonathan Krieger	0.90	Matters related to Court materials; Correspondence with team and counsel.
June 24, 2020	Rosa Wilford	2.50	Review and reconcile various May GIC term deposits and approve multiple estate balances.
June 24, 2020	William Benwood	0.80	Respond to investor inquiries; Review of trustees' report.
June 25, 2020	David Goldband	1.30	Finalize report and appendices; Internal discussions re: report, Grace settlement; Correspondence with counsel re: report; Correspondence with KSV re: Grace settlement.
June 25, 2020	Jonathan Krieger	1.30	Matters related to report finalization; Correspondence with team; Correspondence with counsel.
June 29, 2020	David Goldband	0.90	Call with advisory; Email with investor; Draft email update to investors.
June 29, 2020	William Benwood	0.20	Respond to investor inquiries.
June 30, 2020	David Goldband	0.40	Internal discussions and correspondence with Receiver's counsel re: Keele Medical; Correspondence with counsel re: litigation matters.
July 2, 2020	Jonathan Krieger	0.70	Review of Court materials; Correspondence from counsel; Correspondence with team;
July 3, 2020	David Goldband	0.70	Website maintenance; Internal discussions; Review service of documents.
July 6, 2020	David Goldband	0.50	Call with counsel to the Receiver re: Keele Medical; Website maintenance; Review of email to send re: Grace Settlement.
July 6, 2020	Jonathan Krieger	0.50	Review of materials and correspondence re: Court motion.
July 6, 2020	Rania Erian	0.20	Case website maintenance.
July 6, 2020	William Benwood	5.30	Email update re: Grace Settlement; Respond to investor inquiries.
July 7, 2020	David Goldband	0.90	Internal discussions re: investor questions; Email with investor.
July 7, 2020	Valerie Naccarato	0.10	General banking administration.
July 7, 2020	William Benwood	5.80	Respond to investor inquiries.

Date	Full Name	Hours	Detail
July 8, 2020	David Goldband	0.80	Review motion record of Keele Medical Receiver; Draft update to investors re: same; Website maintenance.
July 8, 2020	Jonathan Krieger	0.80	Review of materials related to Keele Medical property; Correspondence with counsel; Discussion with team thereto.
July 8, 2020	Valerie Naccarato	0.20	Return investor call and forward information to Team.
July 8, 2020	William Benwood	1.40	Respond to investor inquiries; Review motion re: Keele Medical Properties.
July 9, 2020	David Goldband	0.60	Finalize Keele Medical email; Correspondence with representative counsel; Internal discussions re: investor emails.
July 9, 2020	William Benwood	0.60	Email update re: Keele Medical Properties; Respond to investor inquiries.
July 10, 2020	David Goldband	0.20	Internal discussions re: investor emails.
July 10, 2020	William Benwood	0.40	Respond to investor inquiries.
July 13, 2020	David Goldband	0.40	Correspondence with counsel re: court; Correspondence with KSV re: Davies reporting.
July 14, 2020	David Goldband	1.40	Prepare for and attend Court re: Grace Settlement; Internal discussions re: payment of invoices, website maintenance, 246(2) reports; Email with investor; Review and provide comments on email to creditor.
July 14, 2020	Jonathan Krieger	0.70	Correspondence with team re: matters related to court relief, matters related to Keele property, responses to investors;
July 14, 2020	William Benwood	3.80	Respond to investor inquiries; Complete 246(2)'s; Update Website.
July 15, 2020	David Goldband	0.20	Website maintenance; Internal discussions.
July 15, 2020	Jonathan Krieger	0.60	Correspondence with team re: litigation matters; Review of information thereto.
July 15, 2020	William Benwood	0.90	Respond to investor inquiries; General banking administration.
July 16, 2020	David Goldband	0.50	Review and provide comments on email re: payment of invoices; Internal banking matters; Correspondence with counsel.
July 16, 2020	Jonathan Krieger	1.00	Review of matters re: Court relief; Correspondence with team re: banking matters; Correspondence with team re: litigation considerations.

Date	Full Name	Hours	Detail
July 16, 2020	Rania Erian	1.00	Case website maintenance; Retrieve and send to R. Wilford all GTL invoices from Jan 2016 to Sep 2019; Retrieve and send R. Wilford all A&B invoices from Jan 2016 to Sep 2019.
July 16, 2020	Rosa Wilford	4.50	Review internal instructions from team re Banking/GIC Investments; Review various payment requests; Review account ledger: Notify authorized signing officers for approvals; Provide supporting documentation; Emails; Draft letter to Bank for redemption of GIC; Prepare receipt requisition forms; Email correspondences to and from Bank; Post entries; Review and print reports; Prepare disbursement requisitions forms; Post payment entries; Issue cheques; Setup accrual payments; Prepare wire transfer: General banking administration.
July 16, 2020	William Benwood	1.10	Processing invoices for payment; Correspondence re above; Coordinate posting of materials to case website.
July 20, 2020	David Goldband	0.80	Review 246(2) notices.
July 20, 2020	Jonathan Krieger	1.00	Review of statutory reporting; Correspondence with team thereto re: queries.
July 20, 2020	Rania Erian	0.10	Case website maintenance.
July 20, 2020	Rosa Wilford	2.50	Review and reconcile various June GIC term deposits and approve multiple estate balances.
July 21, 2020	David Goldband	0.80	Internal discussions re: banking matters, R&D.
July 21, 2020	Rania Erian	2.25	Finalize 246(2) notices for December and June for all jobs; Combine each notice with the SRD.
July 21, 2020	William Benwood	2.80	Internal discussion re: reporting; Review of outstanding disbursements; Respond to investor inquiries.
July 22, 2020	David Goldband	1.00	Internal discussions re: outstanding matters, status update, R&D; Correspondence with representative counsel.
July 22, 2020	William Benwood	1.50	Internal discussions, status update, R&D matters; Respond to investor inquiries.
July 23, 2020	David Goldband	0.40	Internal discussions; Correspondence with counsel and KSV re: Grace settlement.
July 23, 2020	Jonathan Krieger	0.80	Call with investor re: matters related to litigation, settlements; Correspondence with team re: case website; Correspondence re: matters related to settlements.
July 23, 2020	William Benwood	1.20	Calls with investors; General banking administration.

Date	Full Name	Hours	Detail
July 27, 2020	David Goldband	1.00	Internal discussions and call with advisor re: tax matters and OTC; Correspondence with representative counsel; Website maintenance re: Keele Medical.
July 27, 2020	William Benwood	1.80	Processing invoices for payment; Calls with investors.
July 28, 2020	Jonathan Krieger	0.30	Review of materials re: rep counsel; Correspondence with team thereto.
July 29, 2020	Jonathan Krieger	0.50	Review of litigation matters with team.
July 29, 2020	Valerie Naccarato	0.20	Administration matters re: banking.
July 30, 2020	Jonathan Krieger	0.60	Correspondence re: matters related to rep counsel; Correspondence re: considerations re: litigation.
July 31, 2020	David Goldband	0.50	Call with counsel; Review litigation matters.
July 31, 2020	Jonathan Krieger	0.70	Review of materials re: Ross Park; Correspondence with counsel.
August 4, 2020	Rosa Wilford	0.60	Review internal instructions from team re Banking; On-line banking; Review print screens for expecting wire; Prepare receipt and disbursement requisition forms; Post entries; Email team notification of wire. General banking administration.
August 5, 2020	David Goldband	1.00	Call with counsel re: Ross Park; Review document plan and litigation matters.
August 5, 2020	Valerie Naccarato	0.60	General banking administration.
August 10, 2020	David Goldband	1.50	Review documents for litigation.
August 10, 2020	Jonathan Krieger	0.60	Review of matters re: litigation; Correspondence with team thereto.
August 10, 2020	William Benwood	0.80	Respond to investor inquiries.
August 11, 2020	William Benwood	0.40	Respond to investor inquiries.
August 12, 2020	David Goldband	2.00	Review updated discovery plan and prepare comments for call with counsel; Review documents for discovery.

Date	Full Name	Hours	Detail
August 12, 2020	Jonathan Krieger	1.10	Review of matters related to Ross Park, review of offer and circumstances with development; Correspondence with team thereto; Correspondence from counsel.
August 12, 2020	Valerie Naccarato	0.60	General banking administration.
August 12, 2020	William Benwood	0.40	Call with investor re: expanded claim.
August 13, 2020	David Goldband	2.50	Internal discussions re: Ross Park; Call with counsel re: Ross Park, litigation matters; Review discovery plan.
August 13, 2020	Jonathan Krieger	1.30	Call with counsel re: review of Ross Park matters; Correspondence re: litigation matters and discussion of go forward plan.
August 16, 2020	Rosa Wilford	2.50	On-line banking; Review multiple estate bank accounts; Post EFT entries; Reconcile July statements; Review and reconcile multiple July GIC term deposits and approve various estate balances.
August 18, 2020	David Goldband	0.90	Correspondence with counsel re: Ross Park; Call with Olympia Trust; Review correspondence to advisor; Emails with advisor.
August 18, 2020	Jonathan Krieger	0.50	Correspondence re: matters related to Ross Park; Correspondence with team and counsel.
August 18, 2020	Valerie Naccarato	0.30	General banking administration.
August 18, 2020	William Benwood	1.10	Call with Olympia Trust re: RRIF withdrawals; Correspondence with investor re: Same.
August 19, 2020	David Goldband	1.80	Document production re: discovery plan.
August 19, 2020	Jonathan Krieger	1.10	Correspondence with counsel re: matters related to Ross Park; Correspondence re: matters related to litigation; Correspondence re: matters related to communications from Singh counsel.
August 19, 2020	Rosa Wilford	2.00	Review internal instructions from team re Banking; Review accounts/payment requests; Prepare various disbursement requisition forms; Notify authorized signing officers for approvals; Provide supporting documentation; Post invoice entries; Issue cheques from various accounts; Email: General banking administration.
August 19, 2020	William Benwood	0.20	Respond to investor inquiry.
August 20, 2020	Valerie Naccarato	0.40	General administration.
August 20, 2020	William Benwood	0.10	Respond to investor inquiry.
August 24, 2020	William Benwood	1.10	Processing invoices for payment; Respond to investor inquiry.

Date	Full Name	Hours	Detail
August 25, 2020	David Goldband	3.00	Correspondence with investor re: Ross Park; Review emails and documents re: litigation discovery; Internal discussions re: same; Amend draft email to Keele Medical investors; Correspondence with counsel re: same.
August 25, 2020	Jonathan Krieger	2.40	Litigation review meeting; Correspondence with team re: document production process; Correspondence and call with counsel re: inquiries from Singh counsel; Correspondence with team re: required communications.
August 25, 2020	Rosa Wilford	3.50	Review internal instructions from team re Banking; Review accounts/payment requests; Prepare various disbursement requisition forms; Notify authorized signing officers for approvals; Provide supporting documentation; Setup accrual payments; Prepare multiple transfers from various accounts; Bank letters; Email: General banking administration.
August 25, 2020	William Benwood	1.30	Correspondence re: retrieval of Tier 1 emails; Internal discussion.
August 26, 2020	David Goldband	0.80	Draft email to OPP; Internal discussions re: same; Review and provide comments to email from Keele Medical investor.
August 26, 2020	Jonathan Krieger	0.50	Review of proposed correspondence with OPP; Correspondence with team re: litigation matters; Correspondence with counsel re: call re: litigation matters.
August 26, 2020	William Benwood	1.70	Send email update to Keele Medical Investors; Correspondence re: document production for litigation; Respond to investor inquiries.
August 27, 2020	David Goldband	0.20	Review and provide comments on website wording.
August 27, 2020	Rania Erian	0.10	Website updates.
August 27, 2020	Rosa Wilford	3.00	Correspondences to and from Bank for authorization of multiple wire transfers/confirmations; Faxes; Emails; Post various disbursement and payment entries for multiple bank accounts; Provide team with wire confirmations; General banking administration.
August 27, 2020	William Benwood	0.20	Correspondence re: updating of case website.
August 28, 2020	David Goldband	0.20	Internal discussions; Email to the OPP; Correspondence with counsel.
August 28, 2020	Jonathan Krieger	0.60	Call to A&B re: matters related to litigation; Correspondence with team re: review of draft correspondence; Discussion with team re: document productions.

Date	Full Name	Hours	Detail
August 28, 2020	William Benwood	0.20	Call with Investor re: Keele Medical and OTC fees.
August 31, 2020	Jonathan Krieger	0.50	Review of correspondence re: litigation matters;
August 31, 2020	William Benwood	0.80	Compilation of emails for document production; Correspondence with IT team re: Same; Respond to investor inquiries.
September 1, 2020	William Benwood	0.20	Correspondence re: document production; Review correspondence relating to litigation, and Ross Park.
September 2, 2020	Jonathan Krieger	0.50	Review of matters re: Ross Park; Correspondence with team thereto; Correspondence from counsel.
September 3, 2020	Valerie Naccarato	0.30	General banking administration.
September 3, 2020	William Benwood	0.20	Respond to investor inquiry.
September 4, 2020	Valerie Naccarato	0.20	General banking administration.
September 8, 2020	Jonathan Krieger	0.70	Correspondence with counsel; Review of matters re: document production; Correspondence with team.
September 9, 2020	Jonathan Krieger	0.70	Correspondence with team re: matters related to litigation.
September 9, 2020	Rosa Wilford	2.50	On-line banking; Print various statements; Review estate bank accounts; Post eft entries and reconcile August statements.
September 9, 2020	Valerie Naccarato	0.30	General banking administration.
September 10, 2020	Jonathan Krieger	1.10	Call with team re: litigation matters; Correspondence from counsel; Review of documents.
September 10, 2020	William Benwood	0.20	Review information provided by company to date and draft questions re: Same.
September 14, 2020	Rosa Wilford	3.00	Review and reconcile various August GIC term deposits and approve multiple estate balances.
September 15, 2020	Jonathan Krieger	0.60	Call with counsel re: discovery plan; Correspondence with team thereto; Correspondence re: access to documents;
September 15, 2020	William Benwood	0.30	Conference call with A&B re: Document production.
September 16, 2020	Jonathan Krieger	2.20	Correspondence and review of materials re: litigation matters; Review of correspondence from counsel; Call with team thereto.

Date	Full Name	Hours	Detail
September 21, 2020	Jonathan Krieger	0.70	Review of correspondence from counsel; Review of draft letter re: settlement discussions.
September 21, 2020	William Benwood	2.80	Review documents re: Litigation
September 23, 2020	Jonathan Krieger	5.20	Correspondence and discussions re: litigation support; Correspondence with team; Meeting with team.
September 23, 2020	William Benwood	5.20	Review documents re Litigation matters.
September 24, 2020	Jonathan Krieger	1.20	Correspondence and discussions re: litigation matters.
September 30, 2020	William Benwood	0.10	Respond to investor inquiry.
October 16, 2020	Rosa Wilford	2.50	On-line banking; Print various statements; Review estate bank accounts; Post eft entries and reconcile September statements.
October 18, 2020	Rosa Wilford	2.50	Review and reconcile various September GIC term deposits and approve multiple estate balances.
October 20, 2020	Jonathan Krieger	0.90	Correspondence with team; Review of MFDA inquiry and respond thereto; Correspondence re: information and review thereto.
October 20, 2020	William Benwood	0.40	Respond to investor inquiries.
October 22, 2020	William Benwood	0.20	Respond to investor inquiry.
October 23, 2020	William Benwood	0.10	Respond to investor inquiry.
October 27, 2020	Valerie Naccarato	0.30	General file administration.
October 29, 2020	Jonathan Krieger	2.40	Correspondence with counsel re: matters related to productions; Review of information.
October 30, 2020	Jonathan Krieger	1.10	Correspondence re: matters related to document production; Matters re: affidavit of documents; Correspondence re: litigation proposal.
November 1, 2020	William Benwood	0.80	Update Receipts and Disbursements ledger for trustee accounts as at October 31st.
November 3, 2020	Jonathan Krieger	0.80	Review of litigation matters; Correspondence with counsel; Review of updated R&D.
November 4, 2020	Jonathan Krieger	0.90	Review of worksheet for R&D; Correspondence with team thereto.
November 4, 2020	William Benwood	0.30	Call with investor re status of project and litigation.
November 5, 2020	Rosa Wilford	2.50	On-line banking; Print various statements; Review estate bank accounts; Post eft entries and reconcile October statements.

Date	Full Name	Hours	Detail
November 6, 2020	Jonathan Krieger	0.30	Review and comment on letter from counsel; Correspondence thereto.
November 12, 2020	Rosa Wilford	2.50	Review and reconcile various October GIC term deposits and approve multiple estate balances reports for review and approval by Trustee.
November 12, 2020	Valerie Naccarato	0.10	Review mail/couriers; Notify team.
November 23, 2020	William Benwood	0.20	Respond to investor inquiries.
November 24, 2020	William Benwood	0.30	Respond to investor inquiries.
November 25, 2020	Jonathan Krieger	0.60	Correspondence from KSV; Follow up on query of investor; Correspondence with team thereto.
November 25, 2020	William Benwood	0.30	Investigate status of distribution made to investor; Correspondence with investor re: same.
November 30, 2020	Jonathan Krieger	0.30	Correspondence with counsel re: matters related to Tarion claims.
November 30, 2020	William Benwood	0.20	Review correspondence from counsel; Respond to investor inquiries.
December 3, 2020	Jonathan Krieger	1.20	Respond to specific investor inquiries; Correspondence with team thereto; Review of correspondence from counsel.
December 4, 2020	Jonathan Krieger	0.50	Review of matters re: creditor queries; Correspondence thereto.
December 14, 2020	William Benwood	0.10	Respond to inquiry from investor re: transfer of account.
December 15, 2020	Jonathan Krieger	0.30	Correspondence with counsel re: tax matters; Review of materials thereto;
December 18, 2020	Jonathan Krieger	0.50	Review of matters re: litigation; Correspondence with team thereto.
December 18, 2020	Rosa Wilford	1.50	Review and reconcile various November GIC term deposits and approve multiple estate balances reports for review and approval by Trustee.
December 22, 2020	William Benwood	0.10	Respond to investor inquiry re: status of Ross Park project.

Time Summary

J. Krieger, Sr. Vice President	46.30 hours @	\$ 595.00	\$	27,548.50
D. Goldband, Vice President	40.70 hours @	\$ 475.00	\$	19,332.50
R. Wilford, Manager	39.40 hours @	\$ 275.00	\$	10,835.00
W. Benwood, Sr. Associate	53.00 hours @	\$ 175.00	\$	9,275.00
V. Naccarato, Analyst	3.90 hours @	\$ 145.00	\$	565.50
R. Erian, Analyst	4.65 hours @	\$ 145.00	\$	674.25
				<hr/>
	187.95		\$	68,230.75
HST (13%)			\$	8,870.00
				<hr/>
Total			\$	<u>77,100.75</u>

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

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

**TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO
LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK
STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA
INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445
PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE
CORPORATION**

Respondents

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

BILL OF COSTS

**BN 12738 4717 RT0001
Client #218172
Invoice #LSON-7347**

To professional services rendered as Court-Appointed Trustee of the Respondents for the period from January 1, 2021 to March 31, 2021.

Date	Full Name	Time	Detail
January 4, 2021	William Benwood	0.20	Call with investor re: registered account, and status of litigation.
January 5, 2021	William Benwood	0.30	Call with investor re: status of investments and confirmed dates and amounts of prior distributions; Provide update re: status of Keele Medical project and status of ongoing litigation.
January 18, 2021	Rosa Wilford	2.50	On-line banking; Print various statements; Review estate bank accounts; Post eft entries and reconcile December statements.
January 18, 2021	Jonathan Krieger	0.50	Correspondence with counsel re: litigation timetable; Correspondence with team thereto.
January 19, 2021	Rosa Wilford	2.50	Review and reconcile various December GIC term deposits and approve multiple estate balances report for review and approval by Trustee.

Date	Full Name	Time	Detail
January 19, 2021	Jonathan Krieger	1.10	Correspondence with team re: litigation matters; Correspondence with counsel re; litigation timetable; Review of materials.
January 20, 2021	William Benwood	0.20	Respond to investor emails re: status of litigation and Ross Park.
January 20, 2021	Rosa Wilford	1.00	Review account ledger; Correspondences to and from team for review and direction on purchasing GIC investments; Review email; Review various account ledgers and provide team with list of GIC Term Deposits invested to today. Respond to email with supporting documentations. Prepare Bank letters; Prepare disbursement requisition forms; Prepare supporting documentations for authorized officers for review and signing.
January 20, 2021	Jonathan Krieger	0.70	Call re: litigation matters; Correspondence re: statutory reporting; Correspondence re: banking matters.
January 21, 2021	William Benwood	0.70	Prepare interim R&D schedule as at December 31, 2020.
January 21, 2021	Rosa Wilford	0.40	Correspondence with Bank; Faxes; Follow-up emails: General banking administration.
January 22, 2021	Valerie Naccarato	0.10	Review mail re: Tier 1; Correspondence with team.
January 22, 2021	Rosa Wilford	0.60	Review confirmation emails and attachments from banking institution; re New GIC Investments: Create and post term deposit entries; Match to report; Update GIC Monthly Schedule; Respond to emails; Notify team completion.
January 22, 2021	Jonathan Krieger	0.60	Respond to litigation inquiries; Correspondence with investor; Correspondence with team re: documents.
January 25, 2021	Jonathan Krieger	0.50	Inquiries re; tax matters.
January 26, 2021	William Benwood	0.10	Respond to investor inquiry re: change of address and update on litigation.
January 26, 2021	Jonathan Krieger	0.60	Correspondence and inquiries re: matters related to Tarion matter.
January 27, 2021	Rania Erian	1.20	Administration matters re; Court reporting.
January 28, 2021	William Benwood	1.00	Draft 246(2) reports for all entities; Respond to investor inquiries; Call with investor re: ongoing litigation.

Date	Full Name	Time	Detail
January 28, 2021	Rosa Wilford	0.20	Review internal email instructions from team; Review bank accounts/ledgers; Respond to team with requested supporting documentation: Emails.
January 28, 2021	Jonathan Krieger	1.40	Preparation of materials re: next court motion; Correspondence with team thereto.
January 29, 2021	William Benwood	1.20	Review and update R&D statement; Respond to investor inquiries.
January 29, 2021	Rosa Wilford	0.50	Review account ledgers to December 31, 2020; Print ETB's; Match to R&D schedule; Respond to email with supporting documentation.
January 29, 2021	Jonathan Krieger	2.90	Review of materials for court report; Correspondence and comments; Review of statutory reporting.
February 1, 2021	Valerie Naccarato	0.20	File administration.re: Banking.
February 1, 2021	Rosa Wilford	0.50	Review account ledger for maturing GIC's; Correspondence with Bank to provide copy of investment certificate (re Ross Park-Litigation); Review document; Prepare receipt and disbursement requisitions forms for matured GIC's principal and interest; Post entries; Update schedule. Email; General banking administration.
February 3, 2021	Rosa Wilford	1.00	Review internal email instructions from team re Banking; Review payment requests; Review account ledger; Notify team insufficient funds; Review further instructions from team re GIC Investments; Prepare receipt and disbursement requisition forms; Setup accrual payments; Prepare Bank letter re GIC's partial redemption; Correspondences with banks; Post GIC entries; Issue cheque; Emails; Attach supporting documentation/reports for review and signing by authorized officers; Update GIC schedule; General banking administration.
February 4, 2021	William Benwood	0.30	Call with investor re: tax inquiries and status of ongoing litigation.
February 5, 2021	William Benwood	0.50	Correspondence re: processing of payment; Respond to investor inquiry.
February 5, 2021	Rosa Wilford	2.00	On-line banking; Print various statements; Review estate bank accounts; Post eft entries and reconcile multiple January statements.
February 5, 2021	Jonathan Krieger	0.90	Correspondence re: matters related to McMurray; Correspondence re: litigation matters.

Date	Full Name	Time	Detail
February 8, 2021	William Benwood	0.70	Call with investor and compile relevant information to email investor on history of the matter; Correspondence re: receipt of holdback on McMurray project.
February 8, 2021	Rosa Wilford	0.50	Review internal email instructions from team re Banking - 7743718 Canada Inc.; On-line banking; Review and print screens for expecting incoming wire; Notify team; Prepare receipt and disbursement requisition forms with supporting documentation for signing; Post deposits and eft entries, print slip and stamp date for signing; Email; General banking administration.
February 8, 2021	Jonathan Krieger	0.50	Review of matters related to McMurray; Review of reporting.
February 9, 2021	William Benwood	0.10	Respond to investor email.
February 10, 2021	William Benwood	0.30	Review Ross Park disbursements to respond to investor inquiry.
February 11, 2021	William Benwood	0.20	Review correspondence from counsel re: expanded litigation.
February 11, 2021	Valerie Naccarato	0.20	File administration re: banking.
February 11, 2021	Jonathan Krieger	0.60	Review of proposal re; litigation; Correspondence to counsel thereto.
February 16, 2021	Jonathan Krieger	0.40	Correspondence with counsel re: litigation timetable; Review of materials thereto.
February 17, 2021	William Benwood	0.40	Correspondence with Keele Medical receiver re: discharge; Draft email to Tier 1 investors; Respond to inquiry from investor.
February 17, 2021	Jonathan Krieger	0.60	Corr with team re: matters related to Keele Medical; Review of information from Receiver.
February 22, 2021	Rosa Wilford	2.50	Review and reconcile various January GIC term deposits and approve multiple estate balances reports for review and approval by Trustee.
February 24, 2021	Rosa Wilford	0.50	Review account ledger for maturing GIC's; Correspondence with Bank to provide copies of investment certificate; re TEXT-445; Review document; Prepare receipt and disbursement requisitions forms for matured GIC's principal and interest; Post entries; Update schedule. Email; General banking administration.
February 26, 2021	Valerie Naccarato	0.20	File administration re: banking.
March 2, 2021	William Benwood	0.40	Call with investor and follow up email with distributions to date.
March 2, 2021	Rania Erian	0.10	Case website update maintenance.

Date	Full Name	Time	Detail
March 2, 2021	Jonathan Krieger	0.50	Review of matters re: Keele Medical completion; Correspondence with counsel thereto.
March 5, 2021	Rosa Wilford	2.30	On-line banking; Print various statements; Review estate bank accounts; Post eft entries and reconcile multiple February statements.
March 5, 2021	Jonathan Krieger	0.30	Correspondence with counsel re: examination timetable; Correspondence with team thereto.
March 8, 2021	William Benwood	0.20	Phone and email correspondence with investors re: status of litigation.
March 9, 2021	William Benwood	0.10	Correspondence with investor; Update email distribution list.
March 10, 2021	William Benwood	0.40	Respond to investor inquiry re: claim; Review MNP court materials for any reference to claim against RBC; Review correspondence from counsel.
March 10, 2021	Rosa Wilford	2.70	Review and reconcile various February GIC term deposits and approve multiple estate balances reports for review and approval by Trustee.
March 10, 2021	Rania Erian	1.80	Combine the 246(2) reports with the SRD for all properties and file with the OSB; Correspondence with team re; reporting.
March 10, 2021	Jonathan Krieger	0.60	Correspondence re: matters related to settlements; Correspondence with counsel; Review of materials thereto.
March 15, 2021	William Benwood	0.30	Respond to investor inquiries.
March 17, 2021	Jonathan Krieger	0.90	Review of litigation matters and information; Correspondence with team.
March 19, 2021	William Benwood	1.00	Call with Keele Medical investor who was unaware of Trustee's appointment, provided overview; Call with investor re: Oakville project.
March 22, 2021	Valerie Naccarato	0.30	General file administration re: banking.
March 24, 2021	William Benwood	0.50	Call with investors lawyer re: status of Keele Medical; Review relevant documents in advance of call.
March 24, 2021	Jonathan Krieger	0.30	Review of matters related to McMurray; Correspondence with counsel; Correspondence with team.
March 25, 2021	William Benwood	0.40	Correspondence with investors regarding status of ross park and litigation; Update email address for investor.

Date	Full Name	Time	Detail
March 25, 2021	Rosa Wilford	0.50	Review internal email instructions from team re Banking - 7743718 Canada Inc.; On-line banking; Review and print screens for expecting incoming wire; Notify team; Prepare receipt and disbursement requisition forms with supporting documentation for signing; Post deposits and eft entries, print slip and stamp date for signing; Email; General banking administration.
March 25, 2021	Jonathan Krieger	0.90	Review of litigation matters; Review of correspondence thereto.
March 30, 2021	William Benwood	0.10	Respond to investor inquiry.

Time Summary

J. Krieger, Sr. Vice President	14.80 hours @	\$ 640.00	\$	9,472.00
R. Wilford, Manager	20.20 hours @	\$ 280.00	\$	5,656.00
W. Benwood, Sr. Associate	9.60 hours @	\$ 175.00	\$	1,680.00
V. Naccarato, Analyst	1.00 hours @	\$ 150.00	\$	150.00
R. Erian, Analyst	3.10 hours @	\$ 150.00	\$	465.00
	<u>48.70</u>		\$	<u>17,423.00</u>
HST (13%)			\$	<u>2,264.99</u>
Total			\$	<u>19,687.99</u>

Exhibit "B" to the Affidavit of Jonathan Krieger,
sworn before me this 3rd day of May 2021.



Commissioner for Taking Affidavits, etc.

Faddie-Ann Lakeram,
a Commissioner, etc., Province of Ontario,
For Grant Thornton Limited
Expires March 30, 2023

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.

Summary of Fees of the Trustee

For the period from June 1, 2020 to March 31, 2021

Period	Hours	Fees	Disbursements	Subtotal	HST	Total
June 1, 2020 to December 31, 2020	187.95	\$ 68,230.75	-	\$ 68,230.75	\$ 8,870.00	\$ 77,100.75
January 1, 2021 to March 31, 2021	48.70	\$ 17,423.00	-	\$ 17,423.00	\$ 2,264.99	\$ 19,687.99
	236.65	\$ 85,653.75	\$ -	\$ 85,653.75	\$ 11,134.99	\$ 96,788.74

Hourly Rate: 361.94

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at [Toronto](#)

AFFIDAVIT OF JONATHAN KRIEGER

AIRD & BERLIS LLP

Barristers and Solicitors
Brookfield Place
Suite 1800, 181 Bay Street
Toronto, ON M5J 2T9

Steven L. Graff

Tel: (416) 865-7726
Email: sgraff@airdberlis.com

Ian Aversa

Tel: (416) 865-3082
Email: laversa@airdberlis.com

Jeremy Nemers

Tel. (416) 865-7724
Email: inemers@airdberlis.com

Fax: 863-1515

Lawyers for the Trustee

APPENDIX 16

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

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

**TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947
ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE
CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE
CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and
HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION**

Respondents

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

**AFFIDAVIT OF STEVEN L. GRAFF
(sworn April 29, 2021)**

I, **STEVEN L. GRAFF**, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY AS FOLLOWS:**

1. I am a lawyer at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP is acting as counsel for Grant Thornton Limited, in its capacity as the Court-appointed trustee (in such capacity, the "**Trustee**"), without security, of all of the assets, undertakings and properties of each of the 11 above-named Respondents.
2. Aird & Berlis LLP has prepared statements of account in connection with its mandate as counsel to the Trustee, detailing its services rendered and disbursements incurred, namely:

- (a) an account dated July 13, 2020 in the amount of \$24,575.81 in respect of the period from June 1, 2020 to June 30, 2020;
- (b) an account dated August 18, 2020 in the amount of \$26,828.53 in respect of the period from July 2, 2020 to August 5, 2020;
- (c) an account dated September 9, 2020 in the amount of \$18,430.59 in respect of the period from August 4, 2019 to August 31, 2020;
- (d) an account dated September 30, 2020 in the amount of \$8,341.95 in respect of the period from September 1, 2020 to September 30, 2020;
- (e) an account dated October 31, 2020 in the amount of \$51,828.58 in respect of the period from October 1, 2020 to October 31, 2020;
- (f) an account dated December 31, 2020 in the amount of \$43,037.75 in respect of the period from November 1, 2020 to December 31, 2020;
- (g) an account dated February 28, 2021 in the amount of \$60,776.49 in respect of the period from January 1, 2021 to January 31, 2021;
- (h) an account dated March 31, 2021 in the amount of \$71,367.69 in respect of the period from February 1, 2021 to February 27, 2021; and
- (i) an account dated April 23, 2021 in the amount of \$27,071.14 in respect of the period from March 1, 2021 to March 31, 2021,

(collectively, the “**Statements of Account**”). Attached hereto and marked as **Exhibit “A”** to this Affidavit are copies of the Statements of Account. The average hourly rate of Aird & Berlis LLP is \$402.83.

3. Attached hereto and marked as **Exhibit “B”** to this Affidavit is a chart detailing the lawyers, law clerks and articling students who have worked on this matter.

4. This Affidavit is made in support of a motion to, *inter alia*, approve the attached accounts of Aird & Berlis LLP and the fees and disbursements detailed therein, and for no improper purpose whatsoever.

SWORN before me by video conference)
by Steven L. Graff at the City of Toronto,)
in the Province of Ontario, before me on)
this 29th day of April, 2021, in accordance)
with O. Reg. 431/20, Administering Oath)
or Declaration Remotely)

Damian Lu
A commissioner, etc.

Steven L. Graff
STEVEN L. GRAFF

Attached is Exhibit "A"

Referred to in the
AFFIDAVIT OF STEVEN L. GRAFF

Sworn before me

this 29th day of April, 2021

_____ *Damian Lu* _____

Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Grant Thornton Limited
11-200 King Street West
Toronto, ON
M5H 3T4

Attention: Mr. Jonathan Krieger

Invoice No.: 675950

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 49097/134747
Client No.: 49097
Matter No.: 134747

July 13, 2020

Re: Tier 1 Transaction Advisory Services Inc. and Tier 1 Mortgage Corp

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended June 30, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	01/06/20	\$625.00	1.50	\$937.50	Engaged with reviewing the draft report of KSV and emails and discussions with counsel, clients, M. Spence and J. Nemers regarding potential settlement
IEA	02/06/20	\$625.00	1.00	\$625.00	Emails and discussions with counsel, clients, M. Spence and J. Nemers re litigation efforts and next steps re same
IEA	03/06/20	\$625.00	1.00	\$625.00	Emails and discussions with counsel, M. Spence and J. Nemers re litigation efforts
IEA	04/06/20	\$625.00	2.50	\$1,562.50	Emails and discussions with counsel, clients, M. Spence and J. Nemers re litigation efforts; Engaged with reviewing draft report and providing comments; Engaged with reviewing draft settlement agreement and providing comments
IEA	05/06/20	\$625.00	1.00	\$625.00	Engaged with reviewing revised version of draft report and emails and discussions regarding same

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	10/06/20	\$625.00	0.50	\$312.50	Telephone call, emails and discussions with client and J. Nemers re Keele Medical
IEA	11/06/20	\$625.00	0.80	\$500.00	Telephone call, emails and discussions with counsel, client and J. Nemers re Keele Medical
IEA	12/06/20	\$625.00	0.50	\$312.50	Emails and discussions with counsel, clients, J. Nemers and M. Spence
IEA	17/06/20	\$625.00	1.00	\$625.00	Emails and discussions with counsel, clients, M. Spence and J. Nemers
IEA	18/06/20	\$625.00	1.50	\$937.50	Engaged with reviewing draft documents and emails and discussions with counsel, clients, J. Nemers and M. Spence
IEA	19/06/20	\$625.00	1.00	\$625.00	Telephone calls, emails and discussions with clients, counsel, M. Spence and J. Nemers
IEA	21/06/20	\$625.00	1.00	\$625.00	Emails and discussions with J. Nemers, M. Spence and M. Patterson
IEA	22/06/20	\$625.00	1.50	\$937.50	Telephone call, emails and discussions with clients, counsel, J. Nemers and M. Spence
IEA	23/06/20	\$625.00	3.00	\$1,875.00	Telephone calls, emails and discussions with counsel, clients, J. Nemers and M. Spence; Engaged with preparing the court materials for the upcoming hearing
IEA	24/06/20	\$625.00	2.50	\$1,562.50	Telephone calls, emails and discussions with counsel, clients and J. Nemers re the court materials and the upcoming hearing; Engaged with preparing the court materials
IEA	25/06/20	\$625.00	2.00	\$1,250.00	Emails and discussions with counsel, clients, J. Nemers and M. Spence re the draft court materials and the upcoming hearing; Engaged with reviewing and revising the court material

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	26/06/20	\$625.00	1.50	\$937.50	Emails and discussions with counsel, clients and M. Spence and J. Nemers
IEA	29/06/20	\$625.00	1.00	\$625.00	Emails and discussions with counsel, clients, M. Spence and J. Nemers regarding upcoming hearing; Emails and discussions regarding Keele Medical
IEA	30/06/20	\$625.00	1.20	\$750.00	Telephone call, emails and discussions with clients, counsel, J. Nemers and M. Spence
SLG	04/06/20	\$850.00	0.20	\$170.00	Emails re litigation plan
JTN	01/06/20	\$435.00	0.10	\$43.50	Receipt and review of emails from BJ re J. Grace
JTN	02/06/20	\$435.00	0.40	\$174.00	Receipt and review of email from J. Blinick re J. Grace; Receipt and review of and comment regarding draft rider re same
JTN	03/06/20	\$435.00	1.40	\$609.00	Email exchanges with working group re J. Grace; Engaged with review of, revisions to and further drafting of 13th Report
JTN	04/06/20	\$435.00	1.00	\$435.00	Engaged with review of, revisions to and further drafting of draft settlement agreement and schedules thereto re J. Grace; Email exchanges with working group re litigation
JTN	05/06/20	\$435.00	0.80	\$348.00	Telephone call and email exchanges with D. Goldband re draft 13th Report; Engaged with review and revisions re same; Email exchanges with J. Blinick re same and matters related to J. Grace
JTN	10/06/20	\$435.00	0.10	\$43.50	Email exchange with D. Goldband re Keele Medical
JTN	11/06/20	\$435.00	0.40	\$174.00	Email exchange and telephone call with D. Goldband and G. Phoenix re Keele Medical; Telephone call with G. Phoenix re same; Telephone call with I. Aversa re same

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	12/06/20	\$435.00	0.20	\$87.00	Receipt and review of revisions to draft Grace settlement agreement; Email exchanges with BJ re same and Singh
JTN	17/06/20	\$435.00	0.10	\$43.50	Receipt and review of email from J. Blinick re J. Grace
JTN	18/06/20	\$435.00	0.70	\$304.50	Engaged with review of and provide comments regarding draft joint notice of motion, factum and order re J. Grace; Email exchanges with working group re same and related matters
JTN	19/06/20	\$435.00	0.20	\$87.00	Email exchanges with working group re J. Grace settlement
JTN	21/06/20	\$435.00	0.10	\$43.50	Email to M. Patterson re draft 13th report and matters relating thereto
JTN	22/06/20	\$435.00	0.40	\$174.00	Telephone call and email exchange with D. Goldband re 13th Report; Telephone call with I. Aversa re same; Email to client re same; Instruct M. Patterson re draft factum
JTN	23/06/20	\$435.00	0.40	\$174.00	Email exchange with client; Receipt and review of further changes re draft 13th report; Consider and revise same; Email exchange with I. Aversa and client re same
JTN	24/06/20	\$435.00	0.50	\$217.50	Receipt and review of blacklined-draft factum re Grace settlement; Email to working group re same; Receipt and review of blacklined ancillary order and blacklined ancillary notice of motion; Email to working group re same and related matters
JTN	25/06/20	\$435.00	0.10	\$43.50	Email exchanges with client re finalization and service of 13th report
JTN	26/06/20	\$435.00	0.20	\$87.00	Email exchanges with J. Blinick and G. Phoenix

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	29/06/20	\$435.00	0.30	\$130.50	Receipt and review of draft email to investors re Grace Settlement; Engaged with revisions to same; Email to client re same
JTN	30/06/20	\$435.00	0.20	\$87.00	Telephone call with J. Blinick and I. Aversa to coordinate service of materials
MAP	22/06/20	\$295.00	1.00	\$295.00	Reviewed and revised joint factum to reflect the 13th report of the trustee
MES	01/06/20	\$525.00	0.50	\$262.50	Revise Discovery Plan to address James Grace settlement, and receive and review further emails re: finalizing James Grace settlement
MES	02/06/20	\$525.00	0.30	\$157.50	Review emails re: James Grace settlement and Trustee's report
MES	03/06/20	\$525.00	0.20	\$105.00	Review emails re: James Grace settlement and Trustee's report
MES	04/06/20	\$525.00	0.20	\$105.00	Review emails re draft report
MES	19/06/20	\$525.00	0.30	\$157.50	Review emails re: motion to approve settlement
MES	23/06/20	\$525.00	0.50	\$262.50	Review emails re: finalizing settlement with James Grace, Trustee's report
MES	24/06/20	\$525.00	0.50	\$262.50	Review emails re: motion date and finalizing materials for same
MES	25/06/20	\$525.00	0.30	\$157.50	Review emails re: finalizing Trustee's materials and motion to approve settlement
MES	26/06/20	\$525.00	0.30	\$157.50	Review emails re: finalizing Trustee's report and service of materials and allocation of funds
TOTAL:			<hr/> 37.90	\$21,648.50	

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	26.00	\$625.00	\$16,250.00
Steven L. Graff (SLG)	0.20	\$850.00	\$170.00
Jeremy T. Nemers (JTN)	7.60	\$435.00	\$3,306.00
Matthew A. Patterson (MAP)	1.00	\$295.00	\$295.00
Miranda E. Spence (MES)	3.10	\$525.00	\$1,627.50

OUR FEE \$21,648.50
HST at 13% \$2,814.31

DISBURSEMENTS

Subject to HST

ACL - Litigation \$100.00
HST at 13% \$13.00

AMOUNT NOW DUE \$24,575.81

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Grant Thornton Limited
11-200 King Street West
Toronto, ON
M5H 3T4

Attention: Mr. Jonathan Krieger

Invoice No.: 678544

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 49097/134747
Client No.: 49097
Matter No.: 134747

August 18, 2020

Re: Tier 1 Transaction Advisory Services Inc. and Tier 1 Mortgage Corp

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended August 5, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	02/07/20	\$625.00	2.00	\$1,250.00	Telephone calls, emails and discussions with clients, counsel, M. Spence and J. Nemers regarding the motion materials and upcoming hearing; Engaged with coordinating service and filing of the materials
MG	02/07/20	\$295.00	0.10	\$29.50	Witness M. Patterson sign affidavit of service
JTN	02/07/20	\$435.00	1.50	\$652.50	Engaged with tasks re finalization and service of motion record; Engaged with coordination of same with J. Blinick
MAP	02/07/20	\$295.00	3.10	\$914.50	Finalized notice of motion and served on all parties
JWVY	02/07/20	\$325.00	0.20	\$65.00	Prepare DocuSign package and attend to virtual commissioning of affidavit of M. Paterson
JTN	03/07/20	\$435.00	0.20	\$87.00	Email exchange and telephone call with M. Patterson re residual service matters; Email exchange with D. Goldband

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MAP	03/07/20	\$295.00	0.40	\$118.00	Finalized and confirmed with Ricoh details for service
IEA	06/07/20	\$625.00	1.50	\$937.50	Emails and discussions with clients, counsel, M. Spence and J. Nemers regarding the settlement; Emails and discussions regarding the discovery plan
JTN	06/07/20	\$435.00	0.20	\$87.00	Email exchanges with working group re litigation and settlement approval hearing
MES	06/07/20	\$525.00	0.20	\$105.00	Review emails re: Discovery Plan
IEA	07/07/20	\$625.00	0.40	\$250.00	Emails and discussions with counsel re litigation proceedings and discovery plan
IEA	08/07/20	\$625.00	2.00	\$1,250.00	Emails and discussions with counsel, M. Spence and J. Nemers re litigation; Engaged with reviewing motion materials re Keele Medical and emails and discussions re same
JTN	08/07/20	\$435.00	1.00	\$435.00	Receipt and review of motion record of MNP receiver; Engaged with review of and revisions to draft email to investors re same; Telephone call with I. Aversa re same
IEA	09/07/20	\$625.00	1.00	\$625.00	Telephone call, emails and discussions with counsel, clients, M. Spence and J. Nemers
JTN	09/07/20	\$435.00	0.50	\$217.50	Receipt and review of notice of change of lawyer for W. Thompson; Engaged with review of Receiver's report; Receipt and review of email from M. Beeforth re discovery plan
MES	09/07/20	\$525.00	0.40	\$210.00	Review emails from M. Beeforth re: comments on discovery plan, notice of change of lawyers; Review emails re: court scheduling
IEA	10/07/20	\$625.00	1.50	\$937.50	Emails and discussions with client, counsel, M. Spence and J. Nemers

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	10/07/20	\$435.00	0.80	\$348.00	Email exchanges with J. Blinick; Receipt and review of email from J. Bunting and revised draft affidavit re R. Singh; Follow-up email exchanges with J. Blinick re same
MES	10/07/20	\$525.00	0.20	\$105.00	Exchange emails with J. Blinick re discovery plan issues
IEA	12/07/20	\$625.00	0.20	\$125.00	Emails and discussions with counsel, client, M. Spence and J. Nemers
IEA	13/07/20	\$625.00	2.50	\$1,562.50	Telephone call, emails and discussions with counsel, clients, M. Spence and J. Nemers re the litigation and next steps re same; Engaged with preparing for court and emails and discussions re same
JTN	13/07/20	\$435.00	1.00	\$435.00	Email exchanges with J. Blinick and D. Goldband re tomorrow's hearing and related matters; Prepare for same; Email exchanges with I. Aversa re same
MES	13/07/20	\$525.00	0.60	\$315.00	Draft response to counsel re: comments on Discovery Plan, and exchange emails with BJ and GT re scheduling considerations
IEA	14/07/20	\$625.00	2.50	\$1,562.50	Attend court; Telephone call, emails and discussions with counsel, clients, M. Spence and J. Nemers
JTN	14/07/20	\$435.00	0.70	\$304.50	Prepare for and attend at hearing; Attend to related matters; Receipt and review of emails re discovery plan; Consider same
MES	14/07/20	\$525.00	0.50	\$262.50	Exchange emails with J. Krieger, J. Blinick re: timeline for discoveries; Review further emails re: comments on discovery plan
IEA	15/07/20	\$625.00	1.00	\$625.00	Telephone calls, emails and discussions with counsel, clients, M. Spence and J. Nemers
JTN	15/07/20	\$435.00	0.70	\$304.50	Email exchanges and telephone call internally re updating of service list;

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					Receipt and review of MNP receiver's factum re Friday's hearing; Instruct E. Baltkois re service of issued and entered orders from yesterday's hearing; Receipt and review of email from A. Habas re discovery plan
MES	15/07/20	\$525.00	0.30	\$157.50	Review emails from counsel re: further negotiations of discovery plan
IEA	16/07/20	\$625.00	1.40	\$875.00	Telephone call, emails and discussions with counsel, clients, M. Spence and J. Nemers; Emails and discussions re Keele Medical
JTN	16/07/20	\$435.00	0.10	\$43.50	Email exchanges with client
IEA	17/07/20	\$625.00	1.10	\$687.50	Telephone call, emails and discussions with client, counsel and J. Nemers re Keele Medical; Emails and discussions re Ross Park
JTN	17/07/20	\$435.00	0.60	\$261.00	Receipt and review of last-minute email communication from third mortgagee re today's hearing; Consider same; Email exchange with S. Graff; Attend at hearing; Email exchange with client re same; Receipt and review of His Honour's endorsement; Email to client re same
IEA	20/07/20	\$625.00	1.00	\$625.00	Emails and discussions with counsel, M. Spence and J. Nemers re the litigation proceedings and the discovery plan; Emails and discussions re Keele Medical
JTN	20/07/20	\$435.00	0.20	\$87.00	Email exchange with client; Receipt and review of email from J. Blinick; Receipt and review of email from J. Zibarras
MES	20/07/20	\$525.00	0.20	\$105.00	Review emails from J. Blinick, J. Zibarras re: discovery plan

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	21/07/20	\$625.00	1.00	\$625.00	Telephone call, emails and discussions with counsel, S. Graff and J. Nemers re Ross Park and next steps re same
JTN	21/07/20	\$435.00	0.20	\$87.00	Email exchanges with I. Aversa re Ross Park
IEA	22/07/20	\$625.00	0.50	\$312.50	Telephone call, emails and discussions with J. Nemers and S. Graff re Ross Park and next steps re same
IEA	23/07/20	\$625.00	1.50	\$937.50	Emails and discussions with counsel, client, M. Spence and J. Nemers re litigation proceedings; Telephone call, emails and discussions re Ross Park
JTN	23/07/20	\$435.00	0.50	\$217.50	Telephone call with I. Aversa; Attend on conference call with I. Aversa and A. Waxman re Ross Park; Email exchanges with J. Blinick
IEA	24/07/20	\$625.00	0.50	\$312.50	Emails and discussions with counsel, client, J. Nemers and M. Spence re the litigation proceedings; Emails and discussions re Keele Medical
JTN	24/07/20	\$435.00	0.10	\$43.50	Email exchange with client
IEA	27/07/20	\$625.00	0.80	\$500.00	Emails and discussions with counsel, M. Spence and J. Nemers
JTN	27/07/20	\$435.00	0.20	\$87.00	Email exchanges with J. Blinick; Receipt and review of email from M. Wine
MES	27/07/20	\$525.00	0.20	\$105.00	Exchange emails re: settlement strategy
IEA	28/07/20	\$625.00	0.80	\$500.00	Emails and discussions with counsel, M. Spence and J. Nemers
JTN	28/07/20	\$435.00	0.10	\$43.50	Email exchange with I. Aversa
MES	28/07/20	\$525.00	0.30	\$157.50	Exchange emails re: calls with M. Vine, Bennett Jones

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	29/07/20	\$625.00	0.40	\$250.00	Telephone call, emails and discussions with counsel, clients, M. Spence and J. Nemers
JTN	29/07/20	\$435.00	0.10	\$43.50	Receipt and review of email from J. Blinick re next steps
IEA	30/07/20	\$625.00	0.50	\$312.50	Telephone call, emails and discussions with counsel, clients, M. Spence and J. Nemers
IEA	31/07/20	\$625.00	1.00	\$625.00	Telephone call, emails and discussions with counsel, client, M. Spence and J. Nemers re litigation proceedings; Emails and discussions re Ross Park; Emails and discussions with M. Vine and M. Spence
JTN	31/07/20	\$435.00	0.10	\$43.50	Receipt and review of letter from A. Waxman re Ross Park
MES	31/07/20	\$525.00	0.60	\$315.00	Telephone call with D. Goldband re: document production issues, and exchange emails with I. Aversa re: same
JTN	04/08/20	\$435.00	0.50	\$217.50	Receipt and review of emails from J. Blinick, J. Zibarras, M. Stieber and D. Goldband; Receipt and review of further lengthy email from J. Zibarras
JTN	05/08/20	\$435.00	0.30	\$130.50	Receipt and review of email from C. Lui re discovery plan; Telephone call with client
TOTAL:			42.00	\$22,828.00	

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	25.10	\$625.00	\$15,687.50
Maria Gonzalez (MG)	0.10	\$295.00	\$29.50
Jeremy T. Nemers (JTN)	9.60	\$435.00	\$4,176.00
Matthew A. Patterson (MAP)	3.50	\$295.00	\$1,032.50
Jonathan W. Yantzi (JWVY)	0.20	\$325.00	\$65.00
Miranda E. Spence (MES)	3.50	\$525.00	\$1,837.50

OUR FEE	\$22,828.00
HST at 13%	\$2,967.64

DISBURSEMENTS

Subject to HST

Deliveries/Parss	\$638.06	
Binding and Tabs	\$276.00	
Total Disbursements		\$914.06
HST at 13%		\$118.83

AMOUNT NOW DUE

\$26,828.53

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

41239924.1

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Grant Thornton Limited
11-200 King Street West
Toronto, ON
M5H 3T4

Attention: Mr. Jonathan Krieger

Invoice No.: 681658

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 49097/134747
Client No.: 49097
Matter No.: 134747

September 9, 2020

Re: Tier 1 Transaction Advisory Services Inc. and Tier 1 Mortgage Corp

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended August 31, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	04/08/20	\$625.00	2.50	\$1,562.50	Conference call with Bennett Jones and J. Bunting; conference call with Bennett Jones, counsel and M. Spence; Emails and discussions with counsel, clients, M. Spence and J. Nemers
MES	04/08/20	\$525.00	0.40	\$210.00	Review emails from counsel re: discovery plan, and telephone call with Bennett Jones and I. Aversa re: settlement strategy
IEA	05/08/20	\$625.00	1.20	\$750.00	Emails and discussions with counsel, clients, M. Spence and J. Nemers re litigation; Telephone call, emails and discussions with client and M. Spence re Ross Park
MES	05/08/20	\$525.00	0.20	\$105.00	Exchange emails re: discovery issues
IEA	06/08/20	\$625.00	0.50	\$312.50	Emails and discussions with M. Spence re litigation proceeding and discovery plan and next steps re same
JTN	06/08/20	\$435.00	0.10	\$43.50	Telephone call with I. Aversa re status update

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	06/08/20	\$525.00	0.20	\$105.00	Discussion with I. Aversa and exchange emails with C. Miroslavich re: document collection issues
CAM	07/08/20	\$315.00	0.20	\$63.00	E-mails to Ellwood Evidence and PwC requesting quotes for e-mail collection and processing
MES	07/08/20	\$525.00	0.20	\$105.00	Exchange emails with C. Miroslavich re: discovery issues
IEA	11/08/20	\$625.00	0.30	\$187.50	Emails and discussions with counsel, clients, M. Spence and J. Nemers
MES	11/08/20	\$525.00	0.50	\$262.50	Exchange and review emails re: discovery plan
IEA	12/08/20	\$625.00	0.40	\$250.00	Emails and discussions with counsel, M. Spence and J. Nemers
JTN	12/08/20	\$435.00	0.20	\$87.00	Receipt and review of emails from J. Bell, D. Goldband and M. Spence re litigation; Consider same
MES	12/08/20	\$525.00	0.70	\$367.50	Telephone call with J. Blinick re: discovery plan revisions proposed by J. Zibarras; Review revisions drafted by J. Blinick; Exchange emails with D. Goldblatt re: recommended revisions
IEA	13/08/20	\$625.00	2.10	\$1,312.50	Telephone call, emails and discussions with counsel, clients, M. Spence and J. Nemers re litigation and the discovery plan; Telephone call, emails and discussions re Ross Park
JTN	13/08/20	\$435.00	0.10	\$43.50	Receipt and review of quarterly income update form Davies group
MES	13/08/20	\$525.00	1.20	\$630.00	Prepare for and participate in call with J. Krieger, D. Goldband, I. Aversa re: discovery plan, Ross Park issues
IEA	14/08/20	\$625.00	0.50	\$312.50	Emails and discussions with counsel, client and J. Nemers re Ross Park; Emails and discussions re litigation proceedings

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	16/08/20	\$525.00	0.10	\$52.50	Email to J. Blinick re: discovery plan
IEA	17/08/20	\$625.00	2.00	\$1,250.00	Emails and discussions with counsel, client and J. Nemers re Ross Park; Emails and discussions with counsel, clients and J. Nemers re litigation proceeding
JTN	17/08/20	\$435.00	0.40	\$174.00	Receipt and review of email from J. Blinick re discovery plan; Email exchange with I. Aversa re R. Singh settlement agreement obligations; Review and confirm same
MES	17/08/20	\$525.00	0.20	\$105.00	Exchange emails with J. Blinick re: finalizing discovery plan
IEA	18/08/20	\$625.00	1.50	\$937.50	Telephone call, emails and discussions with counsel, clients and J. Nemers re Keele Medical; Telephone call, emails and discussions with counsel, clients and J. Nemers re Ross Park
JTN	18/08/20	\$435.00	0.40	\$174.00	Receipt and review of emails from G. Phoenix, I. Aversa and D. Goldband; Telephone call with I. Aversa; Receipt and review of emails from A. Waxman and I. Wallace
IEA	19/08/20	\$625.00	1.50	\$937.50	Emails and discussions with counsel, clients, M. Spence and J. Nemers re Keele Medical; Emails and discussions with counsel, clients and M. Spence re litigation proceedings; Emails and discussions with counsel, clients and J. Nemers re Ross Park
JTN	19/08/20	\$435.00	0.10	\$43.50	Email exchanges with G. Phoenix, J. Bunting and P. Wardle
MES	19/08/20	\$525.00	0.50	\$262.50	Exchange emails re: final form of discovery plan, and review emails re: settlement issues

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	20/08/20	\$625.00	0.90	\$562.50	Emails and discussions with counsel, clients and J. Nemers re draft Singh affidavit; Emails and discussions with counsel, client and M. Spence re the discovery plan
JTN	20/08/20	\$435.00	0.10	\$43.50	Email exchanges with working group
MES	20/08/20	\$525.00	0.30	\$157.50	Execute discovery plan and email to Bennett Jones re: same
IEA	21/08/20	\$625.00	0.40	\$250.00	Engaged with reviewing documents from counsel regarding the litigation and emails and discussions with counsel, client, M. Spence and J. Nemers
MES	21/08/20	\$525.00	0.20	\$105.00	Review emails re: draft Singh affidavit
IEA	23/08/20	\$625.00	0.20	\$125.00	Emails and discussions with client, counsel, M. Spence and J. Nemers
JTN	23/08/20	\$435.00	0.10	\$43.50	Receipt and review of email from J. Krieger
IEA	24/08/20	\$625.00	0.50	\$312.50	Telephone calls, emails and discussions with counsel, clients, M. Spence and J. Nemers
JTN	24/08/20	\$435.00	0.10	\$43.50	Receipt and review of notice of change of lawyer re 132 Ontario Inc.
MES	24/08/20	\$525.00	0.50	\$262.50	Review emails re: finalizing Singh affidavit, review draft letters to Harris and Elliot counsel, discuss with I. Aversa, and email to J. Krieger
IEA	25/08/20	\$625.00	1.50	\$937.50	Telephone calls, emails and discussions with counsel, clients, M. Spence and J. Nemers re the litigation; Emails and discussions re Ross Park
JTN	25/08/20	\$435.00	0.40	\$174.00	Receipt and review of draft email from D. Goldband re Keele Medical; Engaged with consideration of and revisions to same; Email exchange with I. Aversa re same; Email to D. Goldband re same

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	25/08/20	\$525.00	0.40	\$210.00	Review emails re: settlement negotiations
IEA	26/08/20	\$625.00	1.00	\$625.00	Emails and discussions with counsel, clients, M. Spence and J. Nemers
JTN	26/08/20	\$435.00	0.20	\$87.00	Engaged with receipt and high-level review of materials from J. Blinick re B. Stewart
MES	26/08/20	\$525.00	0.30	\$157.50	Review emails re: proposed settlement correspondence
IEA	27/08/20	\$625.00	1.00	\$625.00	Telephone calls, emails and discussions with counsel, clients, M. Spence and J. Nemers; Telephone call with J. Bunting
JTN	27/08/20	\$435.00	0.10	\$43.50	Email exchanges with working group
IEA	28/08/20	\$625.00	0.90	\$562.50	Emails and discussions with counsel, clients, M. Spence and J. Nemers regarding the litigation
JTN	28/08/20	\$435.00	0.40	\$174.00	Receipt and review of email from J. Blinick and others re litigation; Receipt of, review of and revisions to draft email to OPP; Telephone call with I. Aversa re same
MES	28/08/20	\$525.00	0.20	\$105.00	Exchange emails with D. Goldband re: document collection

TOTAL: 27.90 \$16,252.50

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	18.90	\$625.00	\$11,812.50
Miranda E. Spence (MES)	6.10	\$525.00	\$3,202.50
Jeremy T. Nemers (JTN)	2.70	\$435.00	\$1,174.50
Christine A. Miroslavich (CAM)	0.20	\$315.00	\$63.00

OUR FEE \$16,252.50
 HST at 13% \$2,112.83

DISBURSEMENTS

Subject to HST

Photocopies - Local	\$46.00	
Binding and Tabs	\$11.75	
Total Disbursements		\$57.75
HST at 13%		\$7.51

AMOUNT NOW DUE

\$18,430.59

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

41513925.1

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Grant Thornton Limited
11-200 King Street West
Toronto, ON
M5H 3T4

Attention: Mr. Jonathan Krieger

Invoice No.: 684111

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 49097/134747
Client No.: 49097
Matter No.: 134747

September 30, 2020

Re: Tier 1 Transaction Advisory Services Inc. and Tier 1 Mortgage Corp

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended September 30, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	01/09/20	\$625.00	0.50	\$312.50	Emails and discussions with counsel, client and J. Nemers re the litigation and the settlement with J. Grace et al; Emails and discussions with counsel re Ross Park
JTN	01/09/20	\$435.00	0.10	\$43.50	Receipt and review of email from J. Blinick re third amended statement of claim; Email exchanges with working group re same
IEA	02/09/20	\$625.00	0.50	\$312.50	Emails and discussions with counsel, M. Spence and J. Nemers re the litigation and next steps re same; Emails and discussions re Ross Park
JTN	02/09/20	\$435.00	0.10	\$43.50	Receipt and review of status update email from J. Bell re B. Stewart
MES	02/09/20	\$525.00	0.40	\$210.00	Receive emails re: executed discovery plan
MES	02/09/20	\$525.00	0.20	\$105.00	Review emails re: proposed settlement
IEA	03/09/20	\$625.00	0.50	\$312.50	Emails and discussions with counsel, clients, M. Spence and J. Nemers

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	03/09/20	\$435.00	0.20	\$87.00	Email exchange with J. Blinick and others re discovery plan; Email exchanges with J. Blinick and others re J. Cassimy
IEA	08/09/20	\$625.00	0.50	\$312.50	Emails and discussions with clients, counsel, M. Spence and J. Nemers re the discovery plan
JTN	08/09/20	\$435.00	0.10	\$43.50	Receipt and review of further email from J. Blinick re discovery plan and next steps
MES	08/09/20	\$525.00	0.30	\$157.50	Exchange emails with J. Krieger re: discovery plan and production
IEA	09/09/20	\$625.00	0.20	\$125.00	Emails and discussions with counsel and M. Spence re the litigation proceedings
IEA	15/09/20	\$625.00	0.50	\$312.50	Engaged with reviewing correspondence from counsel and emails and discussions with counsel, M. Spence and J. Nemers re same; Conference call with client and M. Spence re discovery plan
CAM	15/09/20	\$315.00	0.30	\$94.50	Discussion with M. Spence re: document collection
JTN	15/09/20	\$435.00	0.10	\$43.50	Receipt and review of letter from B. Stewart's counsel; Email exchange with BJ re same
MES	15/09/20	\$525.00	0.90	\$472.50	Review letter from Stewart counsel; Discussions with C. Miroslavich re: production and discovery plan; Call with GT, AB re: production
IEA	16/09/20	\$625.00	0.50	\$312.50	Emails and discussions re update and next steps re discovery plan and draft affidavit of documents
IEA	18/09/20	\$625.00	1.00	\$625.00	Emails and discussions with counsel, client, M. Spence and J. Nemers regarding litigation and correspondence to Habas regarding Stewart
JTN	18/09/20	\$435.00	0.10	\$43.50	Receipt and review from J. Blinick of draft responding letter to A. Habas re B. Stewart
IEA	21/09/20	\$625.00	0.50	\$312.50	Emails and discussions with counsel, client, M. Spence and J. Nemers

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	21/09/20	\$435.00	0.10	\$43.50	Receipt and review of revised draft letter from J. Blinick re B. Stewart
MES	21/09/20	\$525.00	0.20	\$105.00	Review emails re: correspondence with Stewart's counsel
IEA	22/09/20	\$625.00	0.20	\$125.00	Emails and discussions and counsel, client, M. Spence and J. Nemers
JTN	22/09/20	\$435.00	0.10	\$43.50	Receipt and review of final letter issued today to A. Habas re B. Stewart
MES	22/09/20	\$525.00	0.10	\$52.50	Review correspondence to counsel for Stewart
IEA	24/09/20	\$625.00	1.00	\$625.00	Emails and discussions with client and M. Spence re affidavit of documents and next steps re same
MES	24/09/20	\$525.00	0.60	\$315.00	Exchange emails with W. Benwood re: documents for Affidavit of Documents; Instruct C. Miroslavich re: same; Discuss with I. Aversa; Instruct P. Dalglish re: same
PD	28/09/20	\$295.00	0.40	\$118.00	Reviewed statement of claim
PD	28/09/20	\$295.00	0.60	\$177.00	Reviewed statement of claim, statement of defence
IEA	29/09/20	\$625.00	0.50	\$312.50	Telephone call and emails with M. Spence re reviewing documents and correspondence re draft affidavit of documents
CAM	29/09/20	\$315.00	1.40	\$441.00	Receive client documents and review re: technical details; E-mails to e-discovery vendors requesting updated quotes for document processing
MES	29/09/20	\$525.00	0.30	\$157.50	Address ingestion of data for affidavit of documents
IEA	30/09/20	\$625.00	0.30	\$187.50	Emails and discussions with counsel, client, M. Spence and J. Nemers re litigation
CAM	30/09/20	\$315.00	0.30	\$94.50	Review and respond to emails from e-discovery vendors

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	30/09/20	\$435.00	0.10	\$43.50	Email exchange with S. Benjamin and J. Blinick re J. Cassimy
MES	30/09/20	\$525.00	0.40	\$210.00	Address uploading of documents for affidavit of documents review process
TOTAL:			14.10	\$7,332.50	

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	6.70	\$625.00	\$4,187.50
Jeremy T. Nemers (JTN)	1.00	\$435.00	\$435.00
Miranda E. Spence (MES)	3.40	\$525.00	\$1,785.00
Christine A. Miroslavich (CAM)	2.00	\$315.00	\$630.00
Peter Dalglish (PD)	1.00	\$295.00	\$295.00

OUR FEE \$7,332.50
 HST at 13% \$953.23

DISBURSEMENTS

Subject to HST

Photocopies - Local	\$44.75
Binding and Tabs	\$5.00
Total Disbursements	\$49.75
HST at 13%	\$6.47

AMOUNT NOW DUE

\$8,341.95

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 Aird & Berlis LLP



Steven L. Graff
 E.&O.E.

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GST / HST Registration # 12184 6539 RT0001

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IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Grant Thornton Limited
11-200 King Street West
Toronto, ON
M5H 3T4

Attention: Mr. Jonathan Krieger

Invoice No.: 687075

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 49097/134747
Client No.: 49097
Matter No.: 134747

October 31, 2020

Re: Tier 1 Transaction Advisory Services Inc. and Tier 1 Mortgage Corp

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended October 31, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	01/10/20	\$625.00	0.60	\$375.00	Telephone call with R. Cucci and M. Spence re litigation; Emails to and from counsel and M. Spence re same
CAM	01/10/20	\$315.00	0.10	\$31.50	Review quote for document processing
JTN	01/10/20	\$435.00	0.10	\$43.50	Receipt and review of email from J. Blinick re litigation
MES	01/10/20	\$525.00	0.60	\$315.00	Address affidavit of document issues, telephone call with counsel for Cassimy and First Commonwealth and review emails re: same
IEA	02/10/20	\$625.00	0.40	\$250.00	Telephone call with M. Spence regarding preparation of draft affidavit of documents
CAM	02/10/20	\$315.00	0.20	\$63.00	Email to e-service vendor re: engagement; Prepare documents for electronic transfer to e-service vendor for processing
MES	02/10/20	\$525.00	0.30	\$157.50	Address data uploading for affidavit of documents

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	05/10/20	\$625.00	1.00	\$625.00	Emails and discussions re discovery process and next steps re draft affidavit of documents
CAM	05/10/20	\$315.00	0.20	\$63.00	E-mails re: document processing
MES	05/10/20	\$525.00	0.40	\$210.00	Exchange emails with C. Miroslavich and discussion with I. Aversa re: affidavit of documents issues
IEA	06/10/20	\$625.00	1.30	\$812.50	Emails with M. Spence and C. Miroslavich re discovery process; Discussions with M. Spence re same
CAM	06/10/20	\$315.00	1.20	\$378.00	Research re: e-discovery vendors; Telephone calls and emails with e-discovery vendors ; Prepare data for transmission
MES	06/10/20	\$525.00	1.00	\$525.00	Address document processing for affidavit of documents
IEA	07/10/20	\$625.00	1.20	\$750.00	Several emails and discussions re discovery process and next steps re same
CAM	07/10/20	\$315.00	0.70	\$220.50	Review and respond to various emails from e-discovery vendors re: document processing
MES	07/10/20	\$525.00	0.70	\$367.50	Further address document processing for affidavit of documents
IEA	08/10/20	\$625.00	1.00	\$625.00	Emails and discussions re discovery process; Emails with Court, M. Spence and J. Nemers re litigation and next steps re same
CAM	08/10/20	\$315.00	0.40	\$126.00	Receive processed data from e-discovery vendors and arrange with IT for downloading; Report to M. Spence/I. Aversa
JTN	08/10/20	\$435.00	0.40	\$174.00	Telephone call with A. Max re LSO investigation; Email to M. Spence
IEA	09/10/20	\$625.00	1.10	\$687.50	Emails and discussions with C. Miroslavich, M. Spence and P. Daghli re discovery process

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
CAM	09/10/20	\$315.00	1.70	\$535.50	Download and extract data; Emails with IT and Near Zero; Create database
JTN	09/10/20	\$435.00	0.10	\$43.50	Email exchanges with working group re discovery plan implementation
CAM	10/10/20	\$315.00	1.00	\$315.00	Monitor extraction of data; Commence copying data to network
IEA	11/10/20	\$625.00	0.30	\$187.50	Emails and discussions re ongoing review re productions
CAM	11/10/20	\$315.00	1.00	\$315.00	Monitor copying data to network; Report on status
IEA	12/10/20	\$625.00	0.60	\$375.00	Emails and discussions re ongoing production review
CAM	12/10/20	\$315.00	1.60	\$504.00	Monitor copying data to network; Load data into database and report
MES	12/10/20	\$525.00	0.40	\$210.00	Review voicemail from J. Blinick re discovery plan, emails re same and discussion with I. Aversa
IEA	13/10/20	\$625.00	2.10	\$1,312.50	Telephone call, emails and discussions re ongoing review of productions; Telephone call with J. Blinick; Telephone call with A&B team re update and next steps; Telephone call with A. Max re update re litigation and emails and discussions re same
PD	13/10/20	\$295.00	0.70	\$206.50	Discussion w/ I. Aversa et all re due diligence review; discussion w/ C. Mitchell re same
CAM	13/10/20	\$315.00	0.40	\$126.00	Arrange for database to be accessible to students to facilitate document review
CRM	13/10/20	\$325.00	0.40	\$130.00	Meeting with I. Aversa, M. Spence, and P. Dalglish
CRM	13/10/20	\$325.00	3.70	\$1,202.50	Review pleadings and discovery plan and began reviewing documents for production

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	13/10/20	\$525.00	0.70	\$367.50	Review emails and conference call re document review
IEA	14/10/20	\$625.00	1.50	\$937.50	Telephone call, emails and discussions with A&B working group re ongoing review of productions; Engaged with ongoing review of productions
PD	14/10/20	\$295.00	1.40	\$413.00	Discussion w/ C. Mitchell re due diligence searching; discussion w/ C. Mitchell et al re due diligence searching; reviewed searching information and drafted list of outstanding issues; reviewed list and discovery plan with I. Aversa et al
CAM	14/10/20	\$315.00	4.60	\$1,449.00	Perform database searches to exclude orphaned email graphics and other non-documents; Repair broken image paths within database; Discussion with C. Mitchell and P. Dalglish re: searches
CRM	14/10/20	\$325.00	4.60	\$1,495.00	Review documents for production
CRM	14/10/20	\$325.00	0.40	\$130.00	Meeting with P. Dalglish re document production
CRM	14/10/20	\$325.00	0.80	\$260.00	Meeting with M. Spence, P. Dalglish, and I. Aversa re document production strategy
MES	14/10/20	\$525.00	1.00	\$525.00	Review emails and conference call re document production
IEA	15/10/20	\$625.00	1.00	\$625.00	Emails and discussions with counsel, client and J. Nemers re Ross Park; Emails and discussions re ongoing production review
EMC	15/10/20	\$295.00	0.20	\$59.00	Review of statement of claim in advance of telephone call with P. Dalglish and C. Mitchell
PD	15/10/20	\$295.00	0.50	\$147.50	Refined due diligence search terms, documents with C. Miroslavich
PD	15/10/20	\$295.00	0.50	\$147.50	Reviewed updated searches and communicated to I. Aversa and M. Spence; discussion w/ E. Chittick re

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					assistance on searches; provided update to I. Aversa
LAD	15/10/20	\$425.00	0.10	\$42.50	Monitor various emails from parties re status update re LPAT appeal
CAM	15/10/20	\$315.00	2.60	\$819.00	Complete database searches to exclude orphaned email graphics and other non-documents; Discussion with C. Mitchell and P. Dalglish re: searches; Set up searches to segregate specific groups of documents
CRM	15/10/20	\$325.00	0.40	\$130.00	Meeting with P. Dalglish and C. Miroslavich re production software
CRM	15/10/20	\$325.00	4.60	\$1,495.00	Review documents for production
JTN	15/10/20	\$435.00	0.20	\$87.00	Receipt and review of emails from municipality and others re Ross Park; Emails to client re same
IEA	16/10/20	\$625.00	0.50	\$312.50	Emails and discussion with working group regarding ongoing production review
EMC	16/10/20	\$295.00	2.50	\$737.50	Document review
PD	16/10/20	\$295.00	2.50	\$737.50	Reviewed database and searches; performed due diligence according to discovery plan, flagging documents necessary to produce and others as needed; discussion w/ C. Mitchell et al re further articling assistance; discussion w/ I. Aversa et al
CRM	16/10/20	\$325.00	0.40	\$130.00	Meeting with P. Dalglish and E. Chittick re document production
CRM	16/10/20	\$325.00	2.10	\$682.50	Review documents for production
EMC	17/10/20	\$295.00	2.10	\$619.50	Document review
PD	17/10/20	\$295.00	2.60	\$767.00	Reviewed documents and communications re discovery plan, marking documents for production; communications w/ C. Miroslavich re search terms; discussion w./ C. Mitchell et al

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	19/10/20	\$625.00	0.50	\$312.50	Emails and discussions with A&B working group regarding ongoing production review; Emails with client and J. Nemers regarding Ross Park update
EMC	19/10/20	\$295.00	1.60	\$472.00	Document review
PD	19/10/20	\$295.00	0.90	\$265.50	Reviewed documents and communications re discovery plan, flagged such for production
LAD	19/10/20	\$425.00	0.10	\$42.50	Monitor emails re status of LPAT appeal
CAM	19/10/20	\$315.00	2.40	\$756.00	Refine searches to facilitate document review
JTN	19/10/20	\$435.00	0.10	\$43.50	Email exchange with working group re Ross Park
IEA	20/10/20	\$625.00	1.00	\$625.00	Telephone call, emails and discussions with A&B working group re ongoing production review
EMC	20/10/20	\$295.00	0.50	\$147.50	Telephone call with I. Aversa, M. Spence, P. Dalglish and C. Mitchell re Eclipse document review
PD	20/10/20	\$295.00	1.70	\$501.50	Reviewed documents and communications re discovery plan, flagged such for production; discussion w/ I. Aversa et al re progress of discovery
CAM	20/10/20	\$315.00	0.30	\$94.50	Further refine searches to facilitate document review
CRM	20/10/20	\$325.00	4.20	\$1,365.00	Review documents for productions
CRM	20/10/20	\$325.00	0.40	\$130.00	Meeting with I. Aversa, M. Spence, P. Dalglish, and E. Chittick
MES	20/10/20	\$525.00	0.50	\$262.50	Exchange emails and conference call re document production
IEA	21/10/20	\$625.00	0.50	\$312.50	Emails and discussions re ongoing production review

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
LAD	21/10/20	\$425.00	0.10	\$42.50	Monitor email from neighbourhood objectors seeking status update from City and purchaser
CAM	21/10/20	\$315.00	1.80	\$567.00	Further refine searches to facilitate document review
IEA	22/10/20	\$625.00	0.40	\$250.00	Emails and discussions with A&B working group re ongoing production review
EMC	22/10/20	\$295.00	1.40	\$413.00	Eclipse document review
IEA	23/10/20	\$625.00	0.50	\$312.50	Telephone call, emails and discussions regarding ongoing production review; Emails with client and J. Nemers regarding Ross Park
PD	23/10/20	\$295.00	1.40	\$413.00	Reviewed documents and communications re discovery plan, flagged such for production
LAD	23/10/20	\$425.00	0.10	\$42.50	Monitor emails re status of appeal
JTN	23/10/20	\$435.00	0.10	\$43.50	Receipt and review of further email from municipal proceedings' service list re Ross Park; Email to client re same
EMC	24/10/20	\$295.00	1.50	\$442.50	Eclipse document review
PD	24/10/20	\$295.00	1.60	\$472.00	Reviewed documents and communications re discovery plan, flagged such for production
PD	25/10/20	\$295.00	1.10	\$324.50	Reviewed documents and communications re discovery plan, flagged such for production
IEA	26/10/20	\$625.00	0.50	\$312.50	Emails and discussions with A&B working group regarding ongoing production review
EMC	26/10/20	\$295.00	1.80	\$531.00	Eclipse document review
PD	26/10/20	\$295.00	2.30	\$678.50	Reviewed discovery plan and flagged documents for production; discussions w/ I. Aversa et al
CAM	26/10/20	\$315.00	0.10	\$31.50	Follow-up re: status of document review

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	27/10/20	\$625.00	1.00	\$625.00	Telephone call, emails and discussions with A&B working group re ongoing production review
EMC	27/10/20	\$295.00	1.50	\$442.50	Document review for productions
PD	27/10/20	\$295.00	2.30	\$678.50	Reviewed discovery plan and flagged documents for production; call with I. Aversa et al
CRM	27/10/20	\$325.00	2.10	\$682.50	Review documents for production
CRM	27/10/20	\$325.00	0.50	\$162.50	Meeting with I. Aversa, P. Dalglish, and E. Chittick re productions
IEA	28/10/20	\$625.00	1.80	\$1,125.00	Telephone call, emails and discussions with counsel and A&B working group re discovery plan, related productions and next steps re same
EMC	28/10/20	\$295.00	0.30	\$88.50	Eclipse document review and telephone call with team re next steps
PD	28/10/20	\$295.00	1.20	\$354.00	Reviewed documents and flagged for production according to discovery plan; discussion w/ I. Aversa et al
CAM	28/10/20	\$315.00	0.70	\$220.50	Discussion with C. Mitchell re: production process; Review and respond to emails from Bennett Jones re: production exchange, including review of discovery plan
CRM	28/10/20	\$325.00	0.50	\$162.50	Meeting with C. Miroslavich re productions
CRM	28/10/20	\$325.00	0.50	\$162.50	Meeting with I. Aversa, P. Dalglish, and E. Chittick re productions
IEA	29/10/20	\$625.00	2.90	\$1,812.50	Several telephone calls, emails and discussions with A&B working group re ongoing production, discovery plan and draft affidavit of documents; Emails with client re same
EMC	29/10/20	\$295.00	0.60	\$177.00	Revisions to Affidavit of Documents of Trustee;

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
CAM	29/10/20	\$315.00	3.20	\$1,008.00	Review and respond to various e-mails re: production; Prepare electronic productions; Prepare Schedule A list of productions for Affidavit of Documents; Prepare portable production database;
MES	29/10/20	\$525.00	0.50	\$262.50	Address finalizing affidavit of documents
IEA	30/10/20	\$625.00	2.20	\$1,375.00	Emails and discussions with client and A&B working group regarding productions and affidavit of documents; Engaged with coordinating service of the productions and the affidavit of documents
EMC	30/10/20	\$295.00	0.50	\$147.50	Meeting via Teams with Jonathan Krieger to commission affidavit of documents; sent signed affidavit of documents to C. Miroslavich
CAM	30/10/20	\$315.00	0.70	\$220.50	Review and respond to various e-mails re: affidavit of documents; Attend to service of affidavit of documents and productions
JTN	30/10/20	\$435.00	0.60	\$261.00	Receipt and review of without prejudice communication re N. Elliott; Engaged with finalization and service of affidavit of documents and related productions
IEA	31/10/20	\$625.00	0.50	\$312.50	Engaged with reviewing productions from counsel per the discovery plan
TOTAL:			<u>118.20</u>	<u>\$45,866.00</u>	

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	24.40	\$625.00	\$15,250.00
Christine A. Miroslavich (CAM)	24.90	\$315.00	\$7,843.50
Jeremy T. Nemers (JTN)	1.60	\$435.00	\$696.00
Miranda E. Spence (MES)	6.10	\$525.00	\$3,202.50
Peter Dalglish (PD)	20.70	\$295.00	\$6,106.50
Codie R. Mitchell (CRM)	25.60	\$325.00	\$8,320.00
Emily M. Chittick (EMC)	14.50	\$295.00	\$4,277.50
Laura A. Dean (LAD)	0.40	\$425.00	\$170.00

OUR FEE
HST at 13%

\$45,866.00
\$5,962.58

AMOUNT NOW DUE

\$51,828.58

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



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E.&O.E.

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IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Grant Thornton Limited
11-200 King Street West
Toronto, ON
M5H 3T4

Attention: Mr. Jonathan Krieger

Invoice No.: 693307

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 49097/134747
Client No.: 49097
Matter No.: 134747

December 31, 2020

Re: Tier 1 Transaction Advisory Services Inc. and Tier 1 Mortgage Corp

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended December 31, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	01/11/20	\$625.00	0.50	\$312.50	Engaged with reviewing productions from counsel per the discovery plan
IEA	02/11/20	\$625.00	1.80	\$1,125.00	Engaged with reviewing productions from counsel per the discovery plan and emails with counsel, M. Spence and C. Mitchell
CAM	02/11/20	\$315.00	0.70	\$220.50	Review various emails re: productions; Commence downloading other parties' productions
CRM	02/11/20	\$325.00	1.40	\$455.00	Organize emails and begin reviewing productions
MES	02/11/20	\$525.00	0.40	\$210.00	Address productions received from other parties and discuss with I. Aversa
IEA	03/11/20	\$625.00	0.40	\$250.00	Emails with A&B working group re productions received from counsel
CAM	03/11/20	\$315.00	0.80	\$252.00	Continue downloading productions

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	04/11/20	\$625.00	0.50	\$312.50	Emails and discussions with A&B working group re productions received from counsel; Emails and discussions with counsel re correspondence with N. Elliott's counsel
CAM	04/11/20	\$315.00	0.30	\$94.50	Continue downloading productions
IEA	06/11/20	\$625.00	0.70	\$437.50	Emails and discussions with client, counsel and M. Spence re correspondence to N. Elliott's counsel; Emails and discussions with A&B working group re productions
JTN	06/11/20	\$435.00	0.10	\$43.50	Receipt and review of draft letter to N. Elliott's counsel
MES	06/11/20	\$525.00	0.20	\$105.00	Review correspondence re: settlement offer with Elliott
IEA	07/11/20	\$625.00	0.20	\$125.00	Emails and discussions with A&B working group re productions
CAM	07/11/20	\$315.00	0.70	\$220.50	Commence extraction of data to facilitate loading into database; Report to C. Mitchell re: deficiencies in Arsenault productions
IEA	08/11/20	\$625.00	0.20	\$125.00	Emails and discussions with A&B working group re productions
CAM	08/11/20	\$315.00	0.50	\$157.50	Continue extraction of data
IEA	09/11/20	\$625.00	0.50	\$312.50	Emails with Bennet Jones, M. Spence and C. Mitchell re productions; Emails with counsel and M. Spence re letter to N. Elliott's counsel
EMC	09/11/20	\$295.00	0.50	\$147.50	Review of emails to create list of received productions
PD	09/11/20	\$295.00	1.20	\$354.00	Reviewed productions sent to I. Aversa and drafted chart summarizing what was received
CAM	09/11/20	\$315.00	0.40	\$126.00	Co-ordinating extraction of data with IT

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	09/11/20	\$525.00	0.20	\$105.00	Review correspondence re pending settlement with C. Elliott
IEA	10/11/20	\$625.00	0.60	\$375.00	Emails with Bennett Jones, M. Spence and C. Mitchell re productions; Emails with counsel, client and M. Spence re letter to N. Elliott's counsel
IEA	11/11/20	\$625.00	0.40	\$250.00	Emails with A&B working group re productions
CAM	11/11/20	\$315.00	3.60	\$1,134.00	Load other parties' productions; Prepare DB information form/report
IEA	12/11/20	\$625.00	0.40	\$250.00	Emails with A&B working group re productions
MES	12/11/20	\$525.00	0.30	\$157.50	Address extraction of productions received from parties and discuss with I. Aversa
IEA	13/11/20	\$625.00	0.40	\$250.00	Emails with counsel, M. Spence and C. Mitchell regarding productions
CAM	13/11/20	\$315.00	1.70	\$535.50	Complete loading of productions and report
JTN	13/11/20	\$435.00	0.10	\$43.50	Receipt and review of email from J. Blinick to defendants re outstanding productions and related matters
IEA	14/11/20	\$625.00	0.30	\$187.50	Emails and discussions with C. Mitchell and M. Spence regarding ongoing production review
IEA	15/11/20	\$625.00	0.30	\$187.50	Emails and discussions with C. Mitchell and M. Spence regarding ongoing production review
IEA	16/11/20	\$625.00	0.40	\$250.00	Emails and discussions with C. Mitchell re production review
EMC	16/11/20	\$295.00	0.80	\$236.00	Review of John Davies productions
PD	16/11/20	\$295.00	0.70	\$206.50	Discussion w/ C. Mitchell et al re reviewing received productions and providing summary to client; drafted charts summarizing productions from John Davies; reviewed Schedule A of John Davies

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
CRM	16/11/20	\$325.00	0.50	\$162.50	Meeting with E. Chittick and P. Dalglish re productions
CRM	16/11/20	\$325.00	0.80	\$260.00	Review productions
MES	16/11/20	\$525.00	0.30	\$157.50	Exchange emails re productions
IEA	17/11/20	\$625.00	0.40	\$250.00	Emails and discussions with A&B working group re ongoing production review
PD	17/11/20	\$295.00	1.10	\$324.50	Reviewed productions and Schedule A of John Davies; summarized such in chart for I. Aversa et al; discussions w/ A&B working team re strategy
CRM	17/11/20	\$325.00	1.10	\$357.50	Review productions
EMC	18/11/20	\$295.00	0.30	\$88.50	Review of Davies productions in Eclipse
CAM	18/11/20	\$315.00	0.60	\$189.00	Review and respond to email re: issue with production numbers between Davies and KSV; Review Schedule As and image files; Identify cause of issue and report to P. Dalglish; Refine database search for Davies productions
IEA	19/11/20	\$625.00	0.30	\$187.50	Emails and discussions with A&B working group re productions
CAM	19/11/20	\$315.00	0.40	\$126.00	Prepare portable database of productions to facilitate client document review
IEA	20/11/20	\$625.00	0.50	\$312.50	Emails and discussions with A&B working group
CAM	21/11/20	\$315.00	0.40	\$126.00	Prepare Excel spreadsheets of opposing parties' Schedule A productions
IEA	23/11/20	\$625.00	0.30	\$187.50	Emails and discussions re litigation with counsel, M. Spence and C. Mitchell
JTN	23/11/20	\$435.00	0.10	\$43.50	Receipt and review of email from J. Blinick re outstanding productions from certain parties

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	23/11/20	\$525.00	0.20	\$105.00	Exchange emails re discussion of productions and examinations
IEA	24/11/20	\$625.00	0.30	\$187.50	Emails with counsel, M. Spence and C. Mitchell re update call re production review
JTN	24/11/20	\$435.00	0.10	\$43.50	Email exchange with J. Blinick
IEA	26/11/20	\$625.00	0.60	\$375.00	Engaged with reviewing productions from counsel and emails and discussions re same
EMC	26/11/20	\$295.00	2.90	\$855.50	Review of productions sent by other parties to create chart to update client
PD	26/11/20	\$295.00	1.60	\$472.00	Communications w/ A&B working team re productions; reviewed productions and revised summary of such
CAM	26/11/20	\$315.00	0.20	\$63.00	Review and respond to email from E. Chittick re: questions on productions
IEA	27/11/20	\$625.00	1.00	\$625.00	Telephone call with BJ team and A&B team regarding production review and next steps regarding litigation
EMC	27/11/20	\$295.00	0.90	\$265.50	Preparation of chart of productions received to provide to client
PD	27/11/20	\$295.00	0.90	\$265.50	Discussion w/ A&B working group re production summary, strategy for review; emails to I. Aversa et al providing strategy proposal and update; call w/ BJ counsel team re scheduling examinations of discovery, productions
CAM	27/11/20	\$315.00	0.40	\$126.00	Discussion with C. Mitchell re: productions
CRM	27/11/20	\$325.00	0.40	\$130.00	Meeting with Bennett Jones LLP regarding productions and examinations for discovery
CRM	27/11/20	\$325.00	0.30	\$97.50	Meeting with P. Dalglish and E. Chittick re update on productions

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
CRM	27/11/20	\$325.00	0.30	\$97.50	Meeting with C. Miroslavich re eclipse and production issues
CRM	27/11/20	\$325.00	0.70	\$227.50	Review productions and high level overview
JTN	27/11/20	\$435.00	0.40	\$174.00	Attend on conference call with Bennett Jones re next steps re litigation
MES	27/11/20	\$525.00	1.00	\$525.00	Discussions with I. Aversa re: productions and examinations for discovery; Review productions and status chart prepared by students; Conference call with Bennett Jones re: document review
IEA	30/11/20	\$625.00	1.00	\$625.00	Emails with counsel, client and J. Nemers regarding McMurray; Emails with counsel, M. Spence and C. Mitchell regarding the litigation; Emails and discussions with A&B working group regarding production review
CAM	30/11/20	\$315.00	1.20	\$378.00	Download and review Elliott productions; Update database and report
JTN	30/11/20	\$435.00	0.30	\$130.50	Receipt and review of emails from A. Slavens and R. Cucci; Email exchange with client re holdback-related matters; Engaged with review of same
IEA	02/12/20	\$625.00	0.30	\$187.50	Emails with counsel, M. Spence and C. Mitchell re litigation
JTN	02/12/20	\$435.00	0.10	\$43.50	Receipt and review of status update re discovery process from J. Blinick
MES	02/12/20	\$525.00	0.30	\$157.50	Review emails re review of productions received from other parties and coordinating with Bennett Jones
IEA	03/12/20	\$625.00	1.10	\$687.50	Emails and discussions with A&B working group re discovery process; Emails and discussions with Bennett Jones team and M. Spence re same

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
CAM	03/12/20	\$315.00	0.20	\$63.00	Review email from Bennett Jones re: productions and document review strategy and respond
JTN	03/12/20	\$435.00	0.10	\$43.50	Email exchange with internal working group re next steps re discovery process
MES	03/12/20	\$525.00	0.20	\$105.00	Exchange emails with I. Aversa re strategy for document review
IEA	04/12/20	\$625.00	0.40	\$250.00	Emails with BJ team and A&B team regarding litigation and discovery
JTN	04/12/20	\$435.00	0.10	\$43.50	Receipt and review of status update email from J. Blinick re discovery process
IEA	06/12/20	\$625.00	0.20	\$125.00	Emails with M. Spence regarding litigation and next steps regarding same
MES	06/12/20	\$525.00	0.30	\$157.50	Review and consider draft email to defendants' counsel re examinations, and issue tags proposed by Bennett Jones, and email to I. Aversa
IEA	07/12/20	\$625.00	1.20	\$750.00	Emails with counsel and M. Spence regarding litigation; Telephone call with BJ team and M. Spence; Instructions to Devyn Noonan
PD	07/12/20	\$295.00	0.20	\$59.00	Discussion w/ M. Spence et al re productions received; reviewed productions and responded accordingly
JTN	07/12/20	\$435.00	0.20	\$87.00	Receipt and review of email from J. Blinick re J. Cassimy; Email exchanges with I. Aversa and M. Spence re B. Stewart
DTN	07/12/20	\$325.00	0.70	\$227.50	Reviewing pleadings in preparation for meeting with I. Aversa and M. Spence on document review project
MES	07/12/20	\$525.00	1.20	\$630.00	Telephone call with J. Blinick and I. Aversa re proposed issue tags for document review, and further discussions with I. Aversa; Review

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					pleadings and email to D. Noonan re document review; Review file re status of productions from various defendants
IEA	08/12/20	\$625.00	1.90	\$1,187.50	Telephone call with M. Spence and D. Noonan re discovery process and litigation steps; Several emails and discussions with A&B team re same; Emails with Bennett Jones and other counsel
CAM	08/12/20	\$315.00	0.30	\$94.50	Review various emails re: productions and scheduling discoveries
CAM	08/12/20	\$315.00	0.50	\$157.50	Telephone call with J. White (Bennett Jones) re: productions and load file deficiencies
CAM	08/12/20	\$315.00	0.20	\$63.00	Email to M. Kestenberg re: deficiencies in productions of N. Elliott; Email to J. Cheston re: deficiencies in productions of W. Thompson
JTN	08/12/20	\$435.00	0.40	\$174.00	Engaged with review of matters re B. Stewart and email exchanges with M. Spence re same and related matters
DTN	08/12/20	\$325.00	1.10	\$357.50	Attending meeting with I. Aversa and M. Spence to discuss document review project; preparing chart linking issue tags proposed for document review with facts pleaded in Statement of Claim
MES	08/12/20	\$525.00	1.00	\$525.00	Exchange emails with IT staff and clerks re document review; Conference call with I. Aversa and D. Noonan re document review
DTN	09/12/20	\$325.00	6.50	\$2,112.50	Preparing chart linking issue tags proposed for document review with facts pleaded in Statement of Claim
IEA	10/12/20	\$625.00	0.50	\$312.50	Emails and discussions with Bennett Jones team and M. Spence re identifier tags and ongoing discovery process

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
CAM	10/12/20	\$315.00	1.50	\$472.50	Review emails from A. Hershtal and C. Douglas re: Elliott productions; Load corrected file for Elliott productions; Review email from L. Slack re: Walter Thompson productions; Load corrected file for Thompson productions; Email to J. White at Bennett Jones forwarding corrected load files; Commence imaging Thompson productions
DTN	10/12/20	\$325.00	7.10	\$2,307.50	Preparing chart linking issue tags proposed for document review with facts pleaded in Statement of Claim; preparing chart linking legal defences with facts pleaded in Statement of Defence
MES	10/12/20	\$525.00	0.50	\$262.50	Consider issue tags and information required for document review, and exchange emails with D. Noonan re same
IEA	11/12/20	\$625.00	0.30	\$187.50	Emails with M. Spence and D. Noonan regarding discovery process and review regarding same
CAM	11/12/20	\$315.00	1.60	\$504.00	Complete imaging of Thompson productions; Create image load file for Thompson productions and email to J. White at Bennett Jones; Receive and load corrected files for the Davies productions
IEA	13/12/20	\$625.00	1.00	\$625.00	Emails and discussions with M. Spence and D. Noonan regarding discovery process
MES	13/12/20	\$525.00	0.50	\$262.50	Review summary of pleadings and instruct D. Noonan re same, and email to I. Aversa re: same
IEA	14/12/20	\$625.00	0.50	\$312.50	Telephone call and emails with M. Spence and D. Noonan regarding discovery process
MES	14/12/20	\$525.00	1.00	\$525.00	Review issue tags prepared by D. Noonan, and discuss with I. Aversa

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	15/12/20	\$625.00	0.90	\$562.50	Engaged with reviewing correspondence from counsel re litigation and emails and discussions with M. Spence and D. Noonan re same; Emails with client and J. Nemers re McMurray
JTN	15/12/20	\$435.00	0.30	\$130.50	Receipt and review of voicemail from W. Ruger at CRA re McMurray; Consider same; Email to client re same; Receipt and review of notice of intention to act in person of J. Davies and J. Davies
IEA	16/12/20	\$625.00	1.00	\$625.00	Emails and discussions with M. Spence and D. Noonan; Emails with Bennett Jones, counsel and M. Spence
PD	16/12/20	\$295.00	0.50	\$147.50	Discussion with D. Noonan et al re discovery plan, strategy and review planning
JTN	16/12/20	\$435.00	0.10	\$43.50	Receipt and review of email from J. Blinick to litigants' counsel re outstanding responses re examinations
DTN	16/12/20	\$325.00	2.30	\$747.50	Attending meeting with E. Chittick and P. Dalglish to discuss document review; preparing charts summarizing issue tags and facts in pleadings in preparation for document review; attending meeting with M. Spence to discuss organizing document review
MES	16/12/20	\$525.00	1.10	\$577.50	Exchange emails and discussion with D. Noonan re review of pleadings and preparation for examinations for discovery; Exchange emails with I. Aversa re same; Revise proposed issue tags for document review, and email to J. Blinick re: same
IEA	17/12/20	\$625.00	0.50	\$312.50	Emails with Bennett Jones, counsel, M. Spence and D. Noonan

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	17/12/20	\$435.00	0.50	\$217.50	Receipt and review of emails from A. Hershtal, P. Wardle and J. Zibarras re examinations; Telephone call with W. Ruger at CRA re McMurray; Email to client re same
DTN	17/12/20	\$325.00	0.90	\$292.50	Preparing charts tracking issue tags and defences and tying them to facts pleaded in preparation for document review
IEA	18/12/20	\$625.00	0.40	\$250.00	Emails with counsel, BJ and M. Spence regarding examinations for discovery
PD	18/12/20	\$295.00	0.10	\$29.50	Discussion w/ D. Noonan et al re document review schedule, issue tags
JTN	18/12/20	\$435.00	0.10	\$43.50	Receipt and review of email from R. Tinney re discovery examinations
DTN	18/12/20	\$325.00	3.50	\$1,137.50	Preparing charts tying issue tags and defences to facts pleaded in preparation for document review
MES	18/12/20	\$525.00	0.30	\$157.50	Exchange emails with D. Noonan, P. Dalglish re document review
PD	19/12/20	\$295.00	0.60	\$177.00	Reviewed document review charts for A&B working team re summary of pleadings for each defendant
IEA	23/12/20	\$625.00	0.20	\$125.00	Emails with BJ team and A&B team
IEA	30/12/20	\$625.00	0.40	\$250.00	Emails and discussions with A&B team and BJ team
MES	30/12/20	\$525.00	0.20	\$105.00	Exchange emails with J. Blinick re: document review
TOTAL:			91.10	\$38,086.50	

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	22.80	\$625.00	\$14,250.00
Christine A. Miroslavich (CAM)	16.20	\$315.00	\$5,103.00
Codie R. Mitchell (CRM)	5.50	\$325.00	\$1,787.50
Miranda E. Spence (MES)	9.20	\$525.00	\$4,830.00
Jeremy T. Nemers (JTN)	3.00	\$435.00	\$1,305.00
Emily M. Chittick (EMC)	5.40	\$295.00	\$1,593.00
Peter Dalglish (PD)	6.90	\$295.00	\$2,035.50
Devyn T. Noonan (DTN)	22.10	\$325.00	\$7,182.50

OUR FEE \$38,086.50
HST at 13% \$4,951.25

AMOUNT NOW DUE \$43,037.75

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference. 42965154.1

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Grant Thornton Limited
11-200 King Street West
Toronto, ON
M5H 3T4

Attention: Mr. Jonathan Krieger

Invoice No.: 698468

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 49097/134747
Client No.: 49097
Matter No.: 134747

February 28, 2021

Re: Tier 1 Transaction Advisory Services Inc. and Tier 1 Mortgage Corp

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended January 31, 2021

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	04/01/21	\$650.00	0.40	\$260.00	Emails with BJ team and M. Spence
CAM	04/01/21	\$340.00	0.10	\$34.00	Email to J. White re: Bruce Stewart productions
MES	04/01/21	\$550.00	0.70	\$385.00	Telephone call with J. Blinick re issue tags and document review; Instruct C. Miroslavich re: retrieving relevant productions; Exchange emails with D. Noonan re document review
IEA	05/01/21	\$650.00	0.40	\$260.00	Emails and discussions with M. Spence and BJ regarding ongoing discovery process
CAM	05/01/21	\$340.00	0.30	\$102.00	Review and respond to various emails re: Stewart productions
MES	05/01/21	\$550.00	0.40	\$220.00	Revise draft issue tags and email to J. Blinick re same
IEA	06/01/21	\$650.00	0.40	\$260.00	Emails and discussions with A&B team and BJ team regarding ongoing discovery process
SLG	06/01/21	\$875.00	0.50	\$437.50	Telephone call with J. Ciancone re options

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
CAM	06/01/21	\$340.00	1.00	\$340.00	Upload Stewart productions into database and report
MES	06/01/21	\$550.00	0.20	\$110.00	Exchange emails with J. Blinick re issue tags
IEA	07/01/21	\$650.00	0.40	\$260.00	Emails and discussions with BJ and A&B team regarding discovery process
PAD	07/01/21	\$295.00	0.40	\$118.00	Discussions w/ D. Noonan re production review; discussions w/ M. Spence et al re production review, scheduling
CAM	07/01/21	\$340.00	1.60	\$544.00	Review various emails re: document review; Set up issues tags to facilitate document review
DTN	07/01/21	\$325.00	3.40	\$1,105.00	Reviewing Davies productions to determine steps to maximize review efficiency; attending meeting with document review team to discuss plans for and structure of upcoming review
MES	07/01/21	\$550.00	0.80	\$440.00	Exchange emails with D. Noonan re: document review; Telephone call with D. Noonan re same; Conference call with all reviewers re document review
IEA	08/01/21	\$650.00	0.40	\$260.00	Emails and discussions with counsel, Bennett Jones and M. Spence re examination for discovery and related steps
CAM	08/01/21	\$340.00	0.70	\$238.00	Review request for new database search; Consider search parameters, create search and report to D. Noonan
JTN	08/01/21	\$475.00	0.10	\$47.50	Receipt and review of email from J. Blinick re status update re examinations
PAD	10/01/21	\$295.00	0.30	\$88.50	Created spreadsheet re tracking production review for A&B working group, summarized review instructions and distributed such to group

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	11/01/21	\$650.00	0.40	\$260.00	Emails with M. Spence and D. Noonan re issue tags and discovery process
EMC	11/01/21	\$295.00	4.20	\$1,239.00	Review of productions to tag for discovery
PAD	11/01/21	\$295.00	3.10	\$914.50	Call w/ A&B working group re production review, strategy, organization re such; instructions re revisions to spreadsheet tracking review to E. Martin; reviewed productions and flagged relevant documents accordingly
CAM	11/01/21	\$340.00	0.40	\$136.00	Review request for additional database search; Develop and test search parameters and report
DTN	11/01/21	\$325.00	6.70	\$2,177.50	Reviewing documents in preparation for examinations for discovery
MES	11/01/21	\$550.00	0.20	\$110.00	Exchange emails with D. Noonan re approach to document review
EMC	12/01/21	\$295.00	1.90	\$560.50	Review of Davies productions to tag for discovery
PAD	12/01/21	\$295.00	2.80	\$826.00	Reviewed productions and flagged with issue tags accordingly; communications with A&B working group re searching productions
CAM	12/01/21	\$340.00	0.20	\$68.00	Develop and test search parameters and report
DTN	12/01/21	\$325.00	2.60	\$845.00	Reviewing documents in preparation for examinations for discovery
EMC	13/01/21	\$295.00	2.70	\$796.50	Review of Davies productions to tag for discovery
PAD	13/01/21	\$295.00	0.20	\$59.00	Reviewed productions and flagged with issue tags accordingly
CAM	13/01/21	\$340.00	0.20	\$68.00	Update search paramaters and report
DTN	13/01/21	\$325.00	3.40	\$1,105.00	Reviewing documents in preparation for examination for discovery

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	15/01/21	\$650.00	0.50	\$325.00	Emails and discussions with Bennett Jones team, A&B team and counsel re ongoing discovery process and litigation steps
EMC	15/01/21	\$295.00	2.50	\$737.50	Review of Davies production to tag for discovery
PAD	15/01/21	\$295.00	2.10	\$619.50	Reviewed productions and flagged relevant documents with issue tags accordingly; discussions w/ A&B working group re production database; emails to IT re updating database
CAM	15/01/21	\$340.00	0.20	\$68.00	Revise review search paramaters to facilitate document review
JTN	15/01/21	\$475.00	0.10	\$47.50	Email exchanges with J. Blinick re examination scheduling
DTN	15/01/21	\$325.00	2.60	\$845.00	Reviewing documents in preparation for examination for discovery
MES	15/01/21	\$550.00	0.60	\$330.00	Exchange emails with A&B review team re document review; Exchange emails with J. Blinick re: scheduling examinations for discovery
IEA	16/01/21	\$650.00	0.10	\$65.00	Emails with M. Spence and D. Noonan
EMC	16/01/21	\$295.00	2.70	\$796.50	Review of Davies productions to tag for discovery
PAD	16/01/21	\$295.00	1.50	\$442.50	Reviewed productions and flagged w/ issue tags accordingly
JTN	16/01/21	\$475.00	0.10	\$47.50	Email exchange with working group re discovery examination timing
DTN	16/01/21	\$325.00	3.40	\$1,105.00	Reviewing documents in prepartion for examination for discovery
IEA	17/01/21	\$650.00	0.20	\$130.00	Emails with client and M. Spence re dates for discovery
EMC	17/01/21	\$295.00	1.10	\$324.50	Review of Davies productions to tag for discovery

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
PAD	17/01/21	\$295.00	3.60	\$1,062.00	Reviewed productions and tagged documents with issue tags accordingly
DTN	17/01/21	\$325.00	3.10	\$1,007.50	Reviewing documents in preparation for examination for discovery
MES	17/01/21	\$550.00	0.20	\$110.00	Email to J. Krieger re examination dates
IEA	18/01/21	\$650.00	0.40	\$260.00	Emails with Bennett Jones team and A&B team re discovery dates
EMC	18/01/21	\$295.00	2.00	\$590.00	Review of Davies productions to tag for discovery
PAD	18/01/21	\$295.00	0.90	\$265.50	Reviewed productions and flagged documents with issue tags accordingly; communications with A&B working group re expediting review, strategy re such
CAM	18/01/21	\$340.00	0.30	\$102.00	Update search paramaters and add hot keys to Admin tags and report
JTN	18/01/21	\$475.00	0.10	\$47.50	Receipt and review of email from J. Blinick to defendants' counsel re examination dates
DTN	18/01/21	\$325.00	6.00	\$1,950.00	Reviewing documents in preparation for examination for discovery
MES	18/01/21	\$550.00	0.20	\$110.00	Exchange emails with J. Blinick re proposed examination dates, and exchange emails with J. Krieger re same
IEA	19/01/21	\$650.00	0.40	\$260.00	Emails and discussions with client, counsel, Bennett Jones team and M. Spence re litigation
EMC	19/01/21	\$295.00	1.50	\$442.50	Review of Davies productions to tag for discovery
PAD	19/01/21	\$295.00	2.80	\$826.00	Reviewed productions and flagged documents with issue tags accordingly
JTN	19/01/21	\$475.00	0.10	\$47.50	Receipt and review of email from J. Blinick

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
DTN	19/01/21	\$325.00	5.90	\$1,917.50	Reviewing documents in preparation for examinations for discovery
MES	19/01/21	\$550.00	0.20	\$110.00	Exchange emails with J. Krieger re examination dates and approach
IEA	20/01/21	\$650.00	0.40	\$260.00	Emails and discussions with J. Blinick and M. Spence re correspondence to counsel re discovery process
EMC	20/01/21	\$295.00	2.50	\$737.50	Review of Davies productions to tag for discovery
PAD	20/01/21	\$295.00	0.30	\$88.50	Reviewed productions and flagged documents with issue tags accordingly
DTN	20/01/21	\$325.00	2.30	\$747.50	Reviewing documents in preparation for examination for discovery
MES	20/01/21	\$550.00	0.20	\$110.00	Discussion with I. Aversa and email to J. Blinick re: discussions with defendants
IEA	21/01/21	\$650.00	0.50	\$325.00	Emails with counsel, BJ and M. Spence regarding discovery dates and related matters; Discussions with S. Graff regarding possible settlement
PAD	21/01/21	\$295.00	1.90	\$560.50	Reviewed productions and flagged documents with issue tags accordingly
SLG	21/01/21	\$875.00	0.50	\$437.50	Telephone call with M. Kestenberg
JTN	21/01/21	\$475.00	0.10	\$47.50	Receipt and review of email from J. Blinick to defendants' counsel
DTN	21/01/21	\$325.00	7.00	\$2,275.00	Reviewing documents in preparation for examinations for discovery
DTN	22/01/21	\$325.00	3.50	\$1,137.50	Reviewing documents in preparation for examinations for discovery
EMC	23/01/21	\$295.00	1.50	\$442.50	Review of Davies productions to tag for discovery

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
PAD	23/01/21	\$295.00	1.30	\$383.50	Reviewed productions and flagged documents with issue tags accordingly
IEA	25/01/21	\$650.00	0.30	\$195.00	Emails with M. Spence and D. Noonan regarding update and next steps regarding discovery process and review of materials
PAD	25/01/21	\$295.00	1.10	\$324.50	Reviewed productions and flagged w/ issue tags accordingly
DTN	25/01/21	\$325.00	5.80	\$1,885.00	Reviewing documents in preparation for examinations for discovery
MES	25/01/21	\$550.00	0.20	\$110.00	Exchange emails with D. Noonan re document review
IEA	26/01/21	\$650.00	0.30	\$195.00	Emails and discussions re McMurray and return of holdback funds
PAD	26/01/21	\$295.00	2.30	\$678.50	Reviewed productions and flagged w/ issue tags accordingly; reviewed pleadings, issue list, issues chart; communications w/ A&B working team re review strategy
JTN	26/01/21	\$475.00	0.30	\$142.50	Email exchanges with A. Slavens re McMurray holdback status; Email exchange with I. Aversa re same; Email to client re same
DTN	26/01/21	\$325.00	5.20	\$1,690.00	Reviewing documents in preparation for examination for discovery
DTN	27/01/21	\$325.00	6.20	\$2,015.00	Reviewing documents in preparation for examinations for discovery
IEA	28/01/21	\$650.00	0.30	\$195.00	Telephone call with S. Graff re potential settlement discussions re litigation
PAD	28/01/21	\$295.00	2.30	\$678.50	Reviewed productions and flagged w/ issue tags accordingly
SLG	28/01/21	\$875.00	0.30	\$262.50	Attend to discussion with I. Aversa re resolution
DTN	28/01/21	\$325.00	7.00	\$2,275.00	Reviewing documents in preparation for examinations for discovery

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	29/01/21	\$875.00	0.50	\$437.50	Telephone call with M> Kestenberg
DTN	29/01/21	\$325.00	5.40	\$1,755.00	Reviewing documents in preparation for examinations for discovery
DTN	30/01/21	\$325.00	4.10	\$1,332.50	Reviewing documents in preparation for examinations for discovery
EMC	31/01/21	\$295.00	1.90	\$560.50	Review of Davies productions to tag for discovery
PAD	31/01/21	\$295.00	1.70	\$501.50	Reviewed productions and flagged w/ issue tags accordingly
DTN	31/01/21	\$325.00	4.10	\$1,332.50	Reviewing documents in preparation for examinations for discovery

TOTAL: 158.20 Hours \$53,784.50 Value

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	5.80	\$650.00	\$3,770.00
Christine A. Miroslavich (CAM)	5.00	\$340.00	\$1,700.00
Miranda E. Spence (MES)	3.90	\$550.00	\$2,145.00
Steven L. Graff (SLG)	1.80	\$875.00	\$1,575.00
Peter A. Dalglish (PAD)	28.60	\$295.00	\$8,437.00
Devyn T. Noonan (DTN)	87.70	\$325.00	\$28,502.50
Jeremy T. Nemers (JTN)	0.90	\$475.00	\$427.50
Emily M. Chittick (EMC)	24.50	\$295.00	\$7,227.50

OUR FEE \$53,784.50
 HST at 13% \$6,991.99

AMOUNT NOW DUE \$60,776.49

THIS IS OUR ACCOUNT HEREIN
 Aird & Berlis LLP



Steven L. Graff
 E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference. 43672954.1

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Grant Thornton Limited
11-200 King Street West
Toronto, ON
M5H 3T4

Attention: Mr. Jonathan Krieger

Invoice No.: 702312

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 49097/134747
Client No.: 49097
Matter No.: 134747

March 31, 2021

Re: Tier 1 Transaction Advisory Services Inc. and Tier 1 Mortgage Corp

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended February 27, 2021

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	01/02/21	\$650.00	0.70	\$455.00	Emails and discussions with Bennett Jones and M. Spence re discovery process; Emails with A&B team re same
SLG	01/02/21	\$875.00	0.50	\$437.50	Telephone call with M. Kestenberg re settlement proposal
CAM	01/02/21	\$340.00	1.00	\$340.00	Create review batches for remaining documents
JTN	01/02/21	\$475.00	0.10	\$47.50	Receipt and review of email from J. Blinick re possible case conference and related matters
DTN	01/02/21	\$325.00	4.40	\$1,430.00	Reviewing documents in preparation for examinations for discovery
MES	01/02/21	\$550.00	0.40	\$220.00	Exchange emails with J. Blinick re proposed correspondence to defendants' counsel; Discussion with I. Aversa re: communications with counsel; Exchange emails with D. Noonan re document review
IEA	02/02/21	\$650.00	0.60	\$390.00	Emails and discussions with A&B team re ongoing discovery process; Emails with counsel and J. Nemers re McMurray

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
EMC	02/02/21	\$295.00	2.80	\$826.00	Review of Davies productions to tag for discovery
PAD	02/02/21	\$295.00	1.70	\$501.50	Reviewed productions and flagged issue accordingly
JTN	02/02/21	\$475.00	0.40	\$190.00	Email exchanges and telephone call with A. Slavens re McMurray payment; Attend to administrative matters re incoming wire instructions re same
JTN	02/02/21	\$475.00	0.10	\$47.50	Receipt and review of email from A. Hershtal re discovery timetable matters
DTN	02/02/21	\$325.00	6.50	\$2,112.50	Reviewing documents in preparation for examinations for discovery
MES	02/02/21	\$550.00	0.20	\$110.00	Address document review issues
IEA	03/02/21	\$650.00	0.60	\$390.00	Emails and discussions with Bennett Jones team and A&B team re litigation; Emails with counsel and J. Nemers re McMurray
EMC	03/02/21	\$295.00	2.00	\$590.00	Review of Davies productions to tag for discovery
PAD	03/02/21	\$295.00	2.20	\$649.00	Reviewed productions and flagged w/ issue tags accordingly; d/w A&B working group re strategy
JTN	03/02/21	\$475.00	0.20	\$95.00	Email exchange with J. Blinick re case conference; Telephone call with I. Aversa and M. Spence re same
JTN	03/02/21	\$475.00	0.10	\$47.50	Email to A. Slavens re status of wire re McMurray
DTN	03/02/21	\$325.00	6.20	\$2,015.00	Reviewing documents in preparation for examinations for discovery
MES	03/02/21	\$550.00	0.40	\$220.00	Exchange emails with J. Blinick and discussion with I. Aversa re scheduling case conference
IEA	04/02/21	\$650.00	1.50	\$975.00	Emails with client and J. Nemers re McMurray funds; Emails with M. Spence and R. Wessel; Emails with Bennett Jones team and M. Spence re litigation and 9:30 hearing; Telephone call with S. Graff re potential settlement

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
EMC	04/02/21	\$295.00	1.90	\$560.50	Review of Davies productions to tag for discovery
PAD	04/02/21	\$295.00	2.70	\$796.50	Reviewed productions and flagged w/ issue tags accordingly
JTN	04/02/21	\$475.00	0.10	\$47.50	Email exchange with court office re case conference scheduling
JTN	04/02/21	\$475.00	0.20	\$95.00	Attend to receipt of wire re McMurray and email exchanges with client re forwarding of funds
DTN	04/02/21	\$325.00	2.70	\$877.50	Reviewing documents in preparation for examinations for discovery
MES	04/02/21	\$550.00	0.20	\$110.00	Review confirmation emails re case conference
IEA	05/02/21	\$650.00	0.20	\$130.00	Emails with client, counsel and J. Nemers re McMurray
PAD	05/02/21	\$295.00	0.80	\$236.00	Reviewed productions and flagged w/ issue tags accordingly
JTN	05/02/21	\$475.00	0.20	\$95.00	[A109] Appear for/Attend - Attend to matters re wiring of McMurray funds to client
DTN	05/02/21	\$325.00	2.50	\$812.50	Reviewing documents in preparation for examinations for discovery
EMC	06/02/21	\$295.00	1.30	\$383.50	Review of Davies productions to tag for discovery
DTN	06/02/21	\$325.00	3.30	\$1,072.50	Reviewing documents in preparation for examinations for discovery
EMC	07/02/21	\$295.00	1.10	\$324.50	Review of Davies productions to tag for discovery
PAD	07/02/21	\$295.00	1.70	\$501.50	Reviewed productions and flagged w/ issue tags accordingly
DTN	07/02/21	\$325.00	2.30	\$747.50	Reviewing documents in preparation for examinations for discovery
IEA	08/02/21	\$650.00	0.30	\$195.00	Emails with counsel, client and J. Nemers re McMurray

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
EMC	08/02/21	\$295.00	0.80	\$236.00	Review of Davies productions to tag for discovery
PAD	08/02/21	\$295.00	1.30	\$383.50	Reviewed productions and flagged w/ issue tags accordingly
SLG	08/02/21	\$875.00	0.30	\$262.50	Telephone call with I. Aversa; telephone call with M. Kestenberg; email from M. Kestenberg
JTN	08/02/21	\$475.00	0.20	\$95.00	Email exchange with A. Slavens re McMurray; Email to client re same
DTN	08/02/21	\$325.00	4.40	\$1,430.00	Reviewing documents in preparation for examinations for discovery
EMC	09/02/21	\$295.00	1.50	\$442.50	Review of Davies productions to tag for discovery
PAD	09/02/21	\$295.00	1.10	\$324.50	Reviewed productions and flagged w/ issue tags accordingly
DTN	09/02/21	\$325.00	2.60	\$845.00	Reviewing documents in preparation for examinations for discovery
IEA	10/02/21	\$650.00	0.40	\$260.00	Emails with counsel, S. Graff and M. Spence re litigation
EMC	10/02/21	\$295.00	1.50	\$442.50	Review of Davies productions to tag for discovery
JTN	10/02/21	\$475.00	0.10	\$47.50	Receipt and review of email from A. Hershtal re examination-related scheduling
DTN	10/02/21	\$325.00	3.40	\$1,105.00	Reviewing documents in preparation for examinations for discovery
MES	10/02/21	\$550.00	0.20	\$110.00	Review proposed timetable circulated by defendants' counsel
IEA	11/02/21	\$650.00	1.40	\$910.00	Engaged with reviewing offer to settle; Discussions with S. Graff re same; Emails and discussions with client re same; Emails and discussions with Bennett Jones team re same; Instructions to D. Noonan
EMC	11/02/21	\$295.00	1.40	\$413.00	Review of Davies productions to tag for discovery

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	11/02/21	\$875.00	0.50	\$437.50	Telephone call with I. Aversa re letter from M. Kestenberg and emails with J. Krieger
JTN	11/02/21	\$475.00	0.40	\$190.00	Email exchanges with working group re revised proposed examination schedule; Telephone call with I. Aversa re potential additional settlement; Email to I. Aversa re template document re same; Receipt and review of settlement offer
DTN	11/02/21	\$325.00	4.70	\$1,527.50	Reviewing documents in preparation for examinations for discovery
MES	11/02/21	\$550.00	0.20	\$110.00	Review proposed settlement offer from Nancy Elliott
IEA	12/02/21	\$650.00	0.20	\$130.00	Emails with M. Spence and D. Noonan re potential settlement
EMC	12/02/21	\$295.00	1.50	\$442.50	Review of Davies productions to tag for discovery
JTN	12/02/21	\$475.00	0.20	\$95.00	Telephone call with D. Noonan re draft settlement
DTN	12/02/21	\$325.00	4.60	\$1,495.00	Reviewing documents in preparation for examinations for discovery; preparing settlement agreement for N. Elliot
IEA	13/02/21	\$650.00	0.30	\$195.00	Emails and discussions with D. Noonan re settlement agreement
EMC	13/02/21	\$295.00	1.50	\$442.50	Review of Davies productions to tag for discovery
EMC	13/02/21	\$295.00	1.50	\$442.50	Review of Davies productions to tag for discovery
IEA	14/02/21	\$650.00	0.20	\$130.00	Emails with Bennett Jones team and A&B team
IEA	15/02/21	\$650.00	0.40	\$260.00	Emails re litigation efforts; Emails and discussions re draft settlement agreement
JTN	15/02/21	\$475.00	0.10	\$47.50	Receipt and review of email from D. Noonan re draft settlement agreement re N. Elliott

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
DTN	15/02/21	\$325.00	0.70	\$227.50	Drafting settlement agreement with N. Elliott
MES	15/02/21	\$550.00	0.20	\$110.00	Exchange emails re potential settlement with Nancy Elliott
IEA	16/02/21	\$650.00	0.50	\$325.00	Emails and discussions with counsel, client and Bennett Jones team re litigation efforts, timetable and possible settlement
EMC	16/02/21	\$295.00	1.60	\$472.00	Review of Davies productions to tag for discovery
PAD	16/02/21	\$295.00	2.30	\$678.50	Reviewed productions and flagged with issue tags accordingly
DTN	16/02/21	\$325.00	8.40	\$2,730.00	Reviewing documents in preparation for examinations for discovery
MES	16/02/21	\$550.00	0.20	\$110.00	Exchange emails with J. Krieger re discovery schedule
IEA	17/02/21	\$650.00	3.10	\$2,015.00	Telephone call, emails and discussions with Bennett Jones team and A&B team re litigation and possible settlement agreement; Engaged with reviewing and revising the draft settlement agreement; Engaged with brief review of motion materials re Keele Medical and emails with client and J. Nemers re same
EMC	17/02/21	\$295.00	1.50	\$442.50	Review of Davies productions to tag for discovery
SLG	17/02/21	\$875.00	0.50	\$437.50	Telephone call with Bennett Jones and A&B re settlement; telephone call with I. Aversa
JTN	17/02/21	\$475.00	0.10	\$47.50	Email exchange with working group re examination schedule
JTN	17/02/21	\$475.00	0.60	\$285.00	Receipt and review of motion record re Keele Medical; Email exchange with I. Aversa re same; Email to client re same; Attend to related tasks
JTN	17/02/21	\$475.00	0.10	\$47.50	Email exchanges with working group re draft settlement re N. Elliott

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
DTN	17/02/21	\$325.00	8.10	\$2,632.50	Drafting settlement agreement with N. Elliot; reviewing documents in preparation for examinations for discovery
MES	17/02/21	\$550.00	1.20	\$660.00	Telephone call with Bennett Jones re discovery schedule and Elliott settlement; Revise draft settlement agreement with N. Elliott
IEA	18/02/21	\$650.00	1.20	\$780.00	Emails with Bennett Jones team and A&B team re litigation; Emails and discussions re form of settlement agreement; Telephone call with A&B team re litigation update and discovery process
EMC	18/02/21	\$295.00	2.30	\$678.50	Review of Davies productions to tag for discovery; update meeting with M. Spence, P. Dalglish and D. Noonan
PAD	18/02/21	\$295.00	1.10	\$324.50	Reviewed productions and flagged with issue tags accordingly; d/w A&B working group re strategy
SLG	18/02/21	\$875.00	0.30	\$262.50	Telephone call with M. Spence and review settlement doc; consider financial disclosure
CAM	18/02/21	\$340.00	3.70	\$1,258.00	Review and respond to emails re: issues viewing documents and launching native files in the Davies productions; Identify issue and report; Commence repair of image paths in database
DTN	18/02/21	\$325.00	7.10	\$2,307.50	Reviewing documents in preparation for examinations for discovery; attending internal meeting with M. Spence, P. Dalglish, and E. Chittick to discuss progress of document review
MES	18/02/21	\$550.00	0.60	\$330.00	Exchange emails with Bennett Jones, J. Krieger re proposed settlement with N. Elliott, discussions with S. Graff and I. Aversa re same
MES	18/02/21	\$550.00	0.30	\$165.00	Meet with students, D. Noonan re document review
EMC	19/02/21	\$295.00	0.20	\$59.00	Review of Davies productions to tag for discovery

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	19/02/21	\$875.00	0.10	\$87.50	Telephone call with M. Kestenberg
SLG	19/02/21	\$875.00	0.10	\$87.50	Email with T. Harrison
CAM	19/02/21	\$340.00	3.70	\$1,258.00	Continue repair of image paths in database
PAD	20/02/21	\$295.00	0.30	\$88.50	Reviewed productions and flagged w/ issue tags accordingly
DTN	20/02/21	\$325.00	3.00	\$975.00	Reviewing documents in preparation for examinations for discovery
PAD	21/02/21	\$295.00	1.50	\$442.50	Reviewed productions and flagged w/ issue tags accordingly
EMC	22/02/21	\$295.00	1.50	\$442.50	Review of Davies productions to tag for discovery
PAD	22/02/21	\$295.00	1.50	\$442.50	Reviewed productions and flagged w/ issue tags accordingly
SLG	22/02/21	\$875.00	0.30	\$262.50	Email to T. Harrison re recoveries and losses
DTN	22/02/21	\$325.00	3.50	\$1,137.50	Reviewing documents in preparation for examinations for discovery
EMC	23/02/21	\$295.00	1.40	\$413.00	Review of Davies productions to tag for discovery
CAM	23/02/21	\$340.00	1.60	\$544.00	Continue repair of image paths in database
DTN	23/02/21	\$325.00	1.60	\$520.00	Reviewing documents in preparation for examination for discovery
IEA	24/02/21	\$650.00	0.20	\$130.00	Emails and discussions re draft settlement agreement
EMC	24/02/21	\$295.00	1.40	\$413.00	Review of Davies productions to tag for discovery
PAD	24/02/21	\$295.00	1.10	\$324.50	Reviewed productions and flagged w/ issue tags accordingly
CAM	24/02/21	\$340.00	0.80	\$272.00	Review Davies production range 73240-73803 to determine cause of image viewing issues and report to E. Chittick

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
DTN	24/02/21	\$325.00	2.90	\$942.50	Reviewing documents in preparation for examinations for discovery
IEA	25/02/21	\$650.00	0.20	\$130.00	Emails with Bennett Jones team and A&B team re draft settlement agreement
EMC	25/02/21	\$295.00	1.00	\$295.00	Review of Davies productions to tag for discovery
DTN	25/02/21	\$325.00	1.80	\$585.00	Reviewing documents in preparation for examinations for discovery
EMC	26/02/21	\$295.00	1.20	\$354.00	Review of Davies productions to tag for discovery
PAD	26/02/21	\$295.00	0.40	\$118.00	D/w A&B working group re production review, strategy re such; reviewed productions and flagged with issue tags accordingly
DTN	26/02/21	\$325.00	1.60	\$520.00	Reviewing documents in preparation for examinations for discovery
IEA	27/02/21	\$650.00	0.40	\$260.00	Emails and discussions with client, counsel and S. Graff; Engaged with reviewing the revised draft settlement agreement
DTN	27/02/21	\$325.00	2.10	\$682.50	Reviewing documents in preparation for examinations for discovery
TOTAL:			172.10	\$61,439.00	

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	12.40	\$650.00	\$8,060.00
Steven L. Graff (SLG)	2.60	\$875.00	\$2,275.00
Christine A. Miroslavich (CAM)	10.80	\$340.00	\$3,672.00
Jeremy T. Nemers (JTN)	3.20	\$475.00	\$1,520.00
Devyn T. Noonan (DTN)	88.40	\$325.00	\$28,730.00
Miranda E. Spence (MES)	4.10	\$550.00	\$2,255.00
Emily M. Chittick (EMC)	30.90	\$295.00	\$9,115.50
Peter A. Dalglish (PAD)	19.70	\$295.00	\$5,811.50

OUR FEE \$61,439.00
 HST at 13% \$7,987.07

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Wire Charges \$50.00

Subject to HST

Agency Fee \$1,674.00

HST at 13% \$217.62

AMOUNT NOW DUE

\$71,367.69

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Grant Thornton Limited
11-200 King Street West
Toronto, ON
M5H 3T4

Attention: Mr. Jonathan Krieger

Invoice No.: 704962

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 49097/134747
Client No.: 49097
Matter No.: 134747

April 23, 2021

Re: Tier 1 Transaction Advisory Services Inc. and Tier 1 Mortgage Corp

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended March 31, 2021

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	01/03/21	\$650.00	0.30	\$195.00	Emails and discussions with client and J. Nemers re service list; Emails and discussions re draft settlement agreement
EMC	01/03/21	\$295.00	1.00	\$295.00	Review of Davies productions to tag for discovery
PAD	01/03/21	\$295.00	1.70	\$501.50	Reviewed productions and flagged w/ issue tags accordingly
SLG	01/03/21	\$875.00	0.10	\$87.50	Emails with M. Kestenberg
JTN	01/03/21	\$475.00	0.20	\$95.00	Engaged with revisions to service list; Email to client re same
DTN	01/03/21	\$325.00	1.40	\$455.00	Reviewing documents in preparation for examinations for discovery
IEA	02/03/21	\$650.00	0.50	\$325.00	Emails and discussions with client, counsel and J. Nemers re Keele Medical; Emails and discussions with client, counsel and M. Spence re litigation timetable
EMC	02/03/21	\$295.00	1.50	\$442.50	Review of Davies productions to tag for discovery

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	02/03/21	\$475.00	0.30	\$142.50	Attend at hearing re Keele Medical; Email exchange with client re same; Telephone call with I. Aversa
DTN	02/03/21	\$325.00	1.40	\$455.00	Reviewing documents in preparation for examinations for discovery
MES	02/03/21	\$550.00	0.10	\$55.00	Email to J. Krieger re timetable for examinations
EMC	03/03/21	\$295.00	1.00	\$295.00	Review of Davies productions to tag for discovery
PAD	03/03/21	\$295.00	0.90	\$265.50	Review productions and flag w/ issue tags accordingly
IEA	04/03/21	\$650.00	0.20	\$130.00	Emails with M. Spence and D. Noonan regarding litigation and document review
SLG	04/03/21	\$875.00	0.50	\$437.50	Telephone call with M. Kestenberg and review options and structure
IEA	05/03/21	\$650.00	0.50	\$325.00	Emails and discussions regarding the draft settlement agreement and reviewing comments regarding same; Emails with counsel, client and M. Spence regarding litigation timetable
EMC	05/03/21	\$295.00	0.50	\$147.50	Review of Davies productions to tag for discovery
PAD	05/03/21	\$295.00	1.40	\$413.00	Reviewed productions and flagged with issue tags accordingly
SLG	05/03/21	\$875.00	0.20	\$175.00	Review emails and telephone call with M. Kestenberg
JTN	05/03/21	\$475.00	0.10	\$47.50	Receipt and review of email from J. Blinick re discovery schedule and Monday's court attendance
MES	05/03/21	\$550.00	0.40	\$220.00	Telephone call with J. Blinick re discovery plan scheduling, review response from N. Elliott counsel, email to J. Krieger re discovery plan scheduling

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	07/03/21	\$650.00	0.20	\$130.00	Emails with M. Spence and J. Nemers re tomorrow's hearing
EMC	07/03/21	\$295.00	0.40	\$118.00	Review of Davies productions to tag for discovery
DTN	07/03/21	\$325.00	2.50	\$812.50	Reviewing documents in preparation for examinations for discovery
IEA	08/03/21	\$650.00	0.30	\$195.00	Emails with counsel, client and M. Spence re the hearing and the endorsement and discussions with M. Spence re same
EMC	08/03/21	\$295.00	0.50	\$147.50	Review of Davies productions to tag for discovery
PAD	08/03/21	\$295.00	1.10	\$324.50	Reviewed productions and flagged w/ issue tags accordingly
JTN	08/03/21	\$475.00	0.10	\$47.50	Receipt and review of endorsement from today's Court attendance
DTN	08/03/21	\$325.00	2.60	\$845.00	Reviewing documents in preparation for examinations for discovery
MES	08/03/21	\$550.00	0.50	\$275.00	Attend case conference before Justice McEwen re discovery schedule and review and circulate endorsement
EMC	09/03/21	\$295.00	1.00	\$295.00	Review of Davies productions to tag for discovery
PAD	09/03/21	\$295.00	1.10	\$324.50	Reviewed productions and flagged w/ issue tags accordingly
DTN	09/03/21	\$325.00	4.60	\$1,495.00	Reviewing documents in preparation for examinations for discovery
IEA	10/03/21	\$650.00	1.00	\$650.00	Several emails and discussions with client, counsel and M. Spence re the potential settlement; Emails and discussions re litigation
EMC	10/03/21	\$295.00	2.40	\$708.00	Review of Davies productions to tag for discovery

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
PAD	10/03/21	\$295.00	1.70	\$501.50	Discussion with A&B working group re strategy, scope of review re GT documents; reviewed productions and flagged w/ issue tags accordingly
SLG	10/03/21	\$875.00	0.20	\$175.00	Emails re settlement
CAM	10/03/21	\$340.00	0.40	\$136.00	Discussion with D. Noonan re: database searches and tags; Create new tag group and search
DTN	10/03/21	\$325.00	8.20	\$2,665.00	Reviewing documents in preparation for examinations for discovery
MES	10/03/21	\$550.00	1.80	\$990.00	Discussion with D. Noonan re document review; Review and consider response from M. Kestenberg re proposed settlement with N. Elliott; Discuss with S. Graff; Exchange emails with Bennett Jones, J. Krieger, S. Graff, I. Aversa re further negotiation of same
IEA	11/03/21	\$650.00	0.40	\$260.00	Emails with M. Spence and D. Noonan regarding document review update and status; Discussions with M. Spence regarding same
SLG	11/03/21	\$875.00	0.50	\$437.50	Emails with M. Kestenberg
CAM	11/03/21	\$340.00	4.20	\$1,428.00	Prepare published database of productions for review by M. Spence/I. Aversa and report to D. Noonan; Discussion with D. Noonan re: removal of issues tags; Instructional email to M. Spence/I. Aversa re: document review
DTN	11/03/21	\$325.00	1.70	\$552.50	Reviewing documents in preparation for examinations for discovery; preparing for publication of document review results to I. Aversa and M. Spence
MES	11/03/21	\$550.00	0.20	\$110.00	Exchange emails with S. Graff re negotiation of settlement with N. Elliott
IEA	12/03/21	\$650.00	0.10	\$65.00	Emails and discussions regarding settlement agreement

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
IEA	16/03/21	\$650.00	0.10	\$65.00	Emails with M. Spence re draft settlement agreement
MES	16/03/21	\$550.00	0.20	\$110.00	Exchange emails re Nancy Elliott settlement
DTN	17/03/21	\$325.00	3.10	\$1,007.50	Implementing M. Kestenberg revisions to N. Elliott Settlement Agreement
MES	17/03/21	\$550.00	0.40	\$220.00	Discussion with I. Aversa and exchange emails with D. Noonan re: revisions to settlement with N. Elliott
IEA	18/03/21	\$650.00	0.30	\$195.00	Engaged with reviewing the revised draft settlement agreement and emails and discussions with M. Spence re same
MES	18/03/21	\$550.00	0.60	\$330.00	Revise draft settlement agreement with N. Elliott, and exchange emails with S. Graff and I. Aversa re: same
IEA	19/03/21	\$650.00	0.10	\$65.00	Emails with counsel and J. Nemers regarding McMurray
JTN	19/03/21	\$475.00	0.10	\$47.50	Email exchange with D. Fox re McMurray
MES	19/03/21	\$550.00	0.20	\$110.00	Exchange emails with M. Kestenberg re settlement with N. Elliott
IEA	22/03/21	\$650.00	0.30	\$195.00	Emails with counsel and J. Nemers regarding McMurray; Emails regarding litigation
JTN	22/03/21	\$475.00	0.10	\$47.50	Email exchange with J. MacLellan re Trisura
IEA	23/03/21	\$650.00	0.40	\$260.00	Emails with counsel and J. Nemers re McMurray; emails with counsel and M. Spence re draft settlement agreement
JTN	23/03/21	\$475.00	0.10	\$47.50	Follow-up email exchanges with D. Fox and A. Slavens
IEA	24/03/21	\$650.00	0.20	\$130.00	Emails with client and J. Nemers re small payment re McMurray

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	24/03/21	\$475.00	0.20	\$95.00	Email to client re wire re McMurray; Arrange for issuance of same to client
MES	24/03/21	\$550.00	0.10	\$55.00	Receive comments from A. Hershtal re Elliott settlement
IEA	25/03/21	\$650.00	0.50	\$325.00	Emails with client and J. Nemers regarding McMurray; Emails with client and M. Spence regarding draft settlement agreement
MES	25/03/21	\$550.00	0.40	\$220.00	Review comments from Nancy Elliott counsel re settlement, exchange emails with S. Graff re same, and exchange emails with Bennett Jones re call to discuss
IEA	26/03/21	\$650.00	0.50	\$325.00	Conference call with BJ team and M. Spence regarding draft settlement agreement and next steps; Discussions with M. Spence regarding same
MES	26/03/21	\$550.00	0.30	\$165.00	Call with Bennett Jones re terms of Nancy Elliott settlement
IEA	29/03/21	\$650.00	0.40	\$260.00	Emails and discussions with BJ team and M. Spence
MES	29/03/21	\$550.00	0.60	\$330.00	Telephone call and exchange of emails with M. Kestenberg re Nancy Elliott settlement; Email to Bennett Jones re same
IEA	31/03/21	\$650.00	0.20	\$130.00	Emails and discussions with M. Spence

TOTAL: 61.30 \$23,928.00

Name	Hours	Rate	Value
Ian E. Aversa (IEA)	6.50	\$650.00	\$4,225.00
Emily M. Chittick (EMC)	8.30	\$295.00	\$2,448.50
Peter A. Dalglish (PAD)	7.90	\$295.00	\$2,330.50
Steven L. Graff (SLG)	1.50	\$875.00	\$1,312.50
Jeremy T. Nemers (JTN)	1.20	\$475.00	\$570.00
Devyn T. Noonan (DTN)	25.50	\$325.00	\$8,287.50
Miranda E. Spence (MES)	5.80	\$550.00	\$3,190.00
Christine A. Miroslavich (CAM)	4.60	\$340.00	\$1,564.00

OUR FEE	\$23,928.00
HST at 13%	\$3,110.64

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Wire Charges	\$32.50
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AMOUNT NOW DUE

\$27,071.14

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

STATEMENT OF RESPONSIBLE INDIVIDUALS

Aird & Berlis LLP's professional fees herein are made with respect to the following individuals

Lawyer	Call to Bar	Hrly Rate	Total Time	Value
Graff, S. L.	1991	\$850.00 (2020)	0.20	\$ 170.00
		\$875.00 (2021)	5.90	\$ 5,162.50
Aversa, I. E	2008	\$625.00 (2020)	123.90	\$77,437.50
		\$650.00 (2021)	24.70	\$16,055.00
Spence, M. E	2011	\$525.00 (2020)	31.40	\$16,485.00
		\$550.00 (2021)	13.80	\$ 7,590.00
Nemers, J. T	2014	\$435.00 (2020)	25.50	\$11,092.50
		\$475.00 (2021)	5.30	\$ 2,517.50
Yantzi, J.	2019	\$325.00 (2020)	0.20	\$ 65.00
Mitchell, C. R.	2020	\$325.00 (2020)	31.10	\$10,107.50
Dean, L. A.	2015	\$425.00 (2020)	0.40	\$ 170.00
Noonan, D. T.	2020	\$325.00 (2020)	22.10	\$ 7,182.50
		\$325.00 (2021)	201.60	\$65,520.00
Clerk/Student	Call to Bar	Hrly Rate		Value
Patterson, M. A.	N/A	\$295.00 (2020)	4.50	\$ 1,327.50
Gonzalez, M.	N/A	\$295.00 (2020)	0.10	\$ 29.50
Miroslavich, C. A.	N/A	\$315.00 (2020)	43.30	\$ 13,639.50
		\$340.00 (2021)	20.40	\$ 6,936.00
Dalglish, P.	N/A	\$295.00 (2020)	28.60	\$ 8,437.00
		\$295.00 (2021)	56.20	\$ 16,579.00
Chittick, E. M.	N/A	\$295.00 (2020)	19.90	\$ 5,870.50
		\$295.00 (2021)	63.70	\$ 18,791.50

****Standard hourly rates listed. However, in certain circumstances adjustments to the account were made.***

THE SUPERINTENDENT OF FINANCIAL SERVICES

-and-

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET)
TRUSTEE CORPORATION, et al.

Applicant

Respondents

CV-16-11567-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

AFFIDAVIT OF STEVEN L. GRAFF

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSO # 31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

E-mail: sgraff@airdberlis.com

Ian Aversa (LSO # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Jeremy Nemers (LSO # 66410Q)

Tel: (416) 865-7724

Fax: (416) 863-1515

Email: jnemers@airdberlis.com

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

APPENDIX 17

TEXTBOOK STUDENT SUITES (625 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
 TRUSTEE'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
 AS AT MARCH 31, 2021

	2223947 Ontario Limited (Note 1)											Scollard Trustee Corporation (Note 1)			(Note 2)		Total	
	525 Princess	555 Princess	445 Princess	Ross Park	Bronson Ave.	McMurray	MC Kitchener	MC Burlington	MC Oakville	Legacy Lane	Guildwood	Keele Medical	Hazelton	Silver Seven	Vaughan Crossings	Boathaus		Litigation Recovery
RECEIPTS																		
Mortgage Recovery	\$ 1,260,378	\$ 1,332,879	\$ -	\$ 1,751,395	\$ 740,427	\$ 520,426	\$ -	\$ 700,000	\$ 2,037,000	-	\$ 4,101,304	\$ -	\$ 6,590,172	\$ 2,900,000	\$ -	\$ 5,873,173	\$ -	\$ 27,807,154
Litigation Recovery	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,450,000	2,450,000
Interest Reserve	110,741	46,536	574,894	-	428,701	-	690	-	-	-	95,793	-	310,737	149,537	-	-	-	1,717,629
Mortgage Interest	-	-	-	-	-	-	-	-	-	-	159,705	162,768	-	-	-	-	-	322,473
Closing Proceeds - Vaughan Crossings	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	210,000	210,000
Uncashed Interest Distributions	2,016	1,496	5,158	12,897	2,823	504	-	997	493	2,499	2,395	4,033	6,904	2,112	2,617	3,056	-	50,000
Cost Award	975	975	975	975	975	975	4,308	4,308	4,308	975	975	975	975	975	975	975	-	25,600
Interest Allocation	4,522	4,560	8,440	5,372	5,714	2,964	116	1,757	5,087	9	10,864	2,014	16,447	8,810	616	16,961	20,175	114,428
Advance from Grant Thornton - Filing Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL RECEIPTS	\$ 1,378,632	\$ 1,386,446	\$ 589,467	\$ 1,770,639	\$ 1,178,640	\$ 524,869	\$ 5,115	\$ 707,063	\$ 2,046,889	\$ 3,482	\$ 4,371,036	\$ 169,790	\$ 6,925,235	\$ 3,061,433	\$ 214,209	\$ 5,894,166	\$ 2,470,175	\$ 32,697,284
DISBURSEMENTS																		
Distribution to Investors	\$ 1,003,246	\$ 1,014,464	\$ -	\$ 1,165,278	\$ 768,470	\$ -	\$ -	\$ 327,080	\$ 1,535,712	\$ -	\$ 3,931,141	\$ -	\$ 6,409,958	\$ 2,576,104	\$ -	\$ 5,359,736	\$ -	\$ 24,091,189
Consulting fees	-	-	33,584	-	33,584	-	-	-	-	-	-	-	1,225	-	-	-	-	68,394
Advertising/Photocopies	1,146	1,146	-	1,146	1,146	-	1,146	114	329	1	703	1,146	1,146	383	27	736	-	10,312
Appraisal	-	-	4,616	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4,616
Rent Expense for Investor Meetings	1,211	1,211	-	-	1,211	-	-	-	-	-	-	-	-	-	-	-	-	3,632
Ascend License Fee	275	275	275	275	275	275	275	27	79	0	169	275	275	92	6	177	-	3,025
HST Paid	185	185	3,681	185	185	36	185	18	53	0	113	185	344	62	4	119	-	5,538
Filings fees paid to Official Receiver	70	70	70	70	70	70	70	7	20	0	43	70	70	23	2	45	-	770
Bank Charges	30	30	30	30	30	49	15	32	15	15	30	75	30	20	1	39	-	581
Trustee's Legal Fees	104,295	104,294	127,628	196,829	110,043	106,151	-	105,494	105,096	-	109,847	58,103	60,789	152,089	115,072	151,544	679,129	2,286,403
HST on Trustee's Legal Fees	13,529	13,529	13,510	25,539	14,273	13,772	-	13,633	14,031	-	14,649	7,883	17,510	14,928	20,043	88,226	-	292,588
Representative Counsel's Fees	16,028	15,626	14,893	21,788	14,389	17,430	-	17,741	16,806	-	18,513	-	15,204	24,589	-	20,595	53,946	267,550
HST on Representative Counsel's Fees	2,032	1,980	1,884	2,781	1,819	2,214	-	2,306	2,185	-	2,407	-	1,893	3,197	-	2,677	-	27,375
Trustee's Fees	65,972	65,972	82,050	94,095	85,920	72,237	-	66,800	85,903	-	77,644	38,622	65,470	100,035	70,796	143,975	323,528	1,439,020
HST on Trustee's Fees	8,576	8,576	10,666	12,232	11,170	9,391	-	8,684	11,167	-	10,094	5,021	8,511	13,005	9,204	18,717	42,059	187,073
TOTAL DISBURSEMENTS	\$ 1,216,594	\$ 1,227,356	\$ 292,887	\$ 1,520,248	\$ 1,042,584	\$ 221,625	\$ 1,691	\$ 541,937	\$ 1,771,396	\$ 16	\$ 4,165,352	\$ 111,031	\$ 6,572,798	\$ 2,887,109	\$ 210,041	\$ 5,718,404	\$ 1,186,998	\$ 28,688,066
RECEIPTS LESS DISBURSEMENTS	\$ 162,038	\$ 159,089	\$ 296,580	\$ 250,391	\$ 136,056	\$ 303,243	\$ 3,425	\$ 165,126	\$ 275,493	\$ 3,466	\$ 205,684	\$ 58,759	\$ 352,437	\$ 174,325	\$ 4,168	\$ 175,761	\$ 1,283,177	\$ 4,009,218

Note 1 - Certain shared receipts and disbursements within 2223947 Ontario Limited and Scollard Trustee Corporation were pro-rated amongst the applicable properties within those corporations based on the proportionate receipts of each property.

Note 2 - The Litigation Recovery account represents funds recovered by the Trustee in respect to the ongoing litigation against multiple parties. Once the entirety of the litigation is completed, the Trustee will make a recommendation for an allocation of the net recoveries amongst the Tier 1 properties.

TAB F

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

**TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947
ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE
CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE
CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and
HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION**

Respondents

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

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

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

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

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK (445 PRINCESS STREET) INC.

**AND IN THE MATTER OF AN APPLICATION UNDER 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)**

B E T W E E N:

**GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE
OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION AND 7743718
CANADA INC.**

Applicant

- and -

**TEXTBOOK (774 BRONSON AVENUE) INC., TEXTBOOK ROSS PARK INC. and
MCMURRAY STREET INVESTMENTS INC.**

Respondents

**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)**

B E T W E E N:

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND TEXTBOOK ROSS PARK INC.

Plaintiffs

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, JAMES GRACE, BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC., JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE

Defendants

SERVICE LIST
(As of May 4, 2020)

TO: THE SUPERINTENDENT OF FINANCIAL SERVICES

5160 Yonge Street
P.O. Box 85
Toronto, ON M2N 6L9

Tel: (416) 590-7143
Fax: (416) 590-7556

Mark Bailey

Email: mark.bailey@fSCO.gov.on.ca

Martina Aswani

Email: martina.aswani@fSCO.gov.on.ca

Troy Harrison

Email: troy.harrison@fSCO.gov.on.ca

Lawyers for the Applicant, The Superintendent of Financial Services

AND TO: GRANT THORNTON LIMITED

19th Floor, Royal Bank Plaza
South Tower, 200 Bay Street
Toronto, ON M5J 2P9

Jonathan Krieger

Tel: (416) 360-5055
Email: jonathan.krieger@ca.gt.com

William Benwood

Tel: (416) 607-8752
Email: william.benwood@ca.gt.com

Court-appointed Trustee

AND TO: KSV KOFMAN INC.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

Bobby Kofman
Tel: (416) 932-6228
Fax: (416) 932-6266
Email: bkofman@ksvadvisory.com

Noah Goldstein
Tel: (416) 932-6207
Fax: (416) 932-6266
Email: ngoldstein@ksvadvisory.com

Andrew Edwards
Tel: (416) 932-6031
Fax: (416) 932-6266
Email: aedwards@ksvadvisory.com

Receiver and manager in the Expanded Receivership Proceedings

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

Sean Zweig
Tel: (416) 777-6254
Fax: (416) 863-1716
Email: zweigs@bennettjones.com

Jonathan Bell
Tel: (416) 777-6511
Fax: (416) 863-1716
Email: bellj@bennettjones.com

Joseph Blinick
Tel: (416) 777-4828
Fax: (416) 863-1716
Email: blinickj@bennettjones.com

Lawyers for the receiver and manager in the Expanded Receivership Proceedings

AND TO: TYR LLP
180 John Street
Toronto, ON M5T 1X5

James Bunting
Tel: (647) 519-6607
Email: jbunting@tyrllp.com

-and to-

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Andrew Carlson
Tel: (416) 367-7437
Email: acarlson@dwpv.com

Lawyers for RS Consulting Group Inc., Bhaktraj Singh a.k.a. Raj Singh, RS Consulting Group Inc. and Tier 1 Transaction Advisory Services Inc.

AND TO: RUBIN & CHRISTIE LLP
Lawyers
2nd Floor, 219 Finch Avenue West
Toronto, ON M2R 1M2

Douglas Christie
Tel: (416) 361-0900
Fax: (416) 361-3459
Email: dchristie@rubinchristie.ca

Lawyers for Textbook Student Suites (525 Princess Street) Inc., Textbook Student Suites (555 Princess Street) Inc., Textbook Student Suites (Ross Park) Inc., Textbook Student Suites (Ross Park) Inc., Textbook Student Suites (774 Bronson Avenue) Inc. and Textbook Student Suites (445 Princess Street) Inc.

AND TO: WEIRFOULDS LLP
66 Wellington Street West, Suite 4100
Toronto, ON M5K 1B7

Edmond Lamek
Tel: (416) 947-5042
Fax: (416) 365-1876
Email: elamek@weirfoulds.com

Danny Nunes
Tel: (416) 619-6293
Fax: (416) 365-1876
Email: dnunes@weirfoulds.com

Lawyers for Textbook Student Suites (525 Princess Street) Inc., Textbook Student Suites (555 Princess Street) Inc., Textbook Student Suites (Ross Park) Inc., Textbook Student Suites (774 Bronson Avenue) Inc., Textbook Student Suites (445 Princess Street) Inc., Memory Care Investments (Oakville) Ltd., Memory Care Investments (Burlington) Ltd., Memory Care Investments (Kitchener) Ltd., Legacy Lane Investments Inc. and Scollard Development Corporation

AND TO: JOHN DAVIES
Email: john@textbooksuites.com
Email: johndavies55@rogers.com

AND TO: WALTER THOMPSON
Email: walter@textbooksuites.com
Email: walter@gxudc.com

AND TO: DEPARTMENT OF JUSTICE
The Exchange Tower
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

Diane Winters
Tel: (416) 973-3172
Fax: (416) 973-0810
Email: diane.winters@justice.gc.ca

AND TO: JUDE CASSIMY
337 Castlemore Ave.
Markham, ON L6C 2Y1
Tel: (416) 452-3687
Email: cassimy1376@rogers.com

AND TO: OLYMPIA TRUST COMPANY
200, 125-9 Avenue SE
Calgary, AB T2G 0P6

Jonathan Bahnuik
Tel: (403) 668-8365
Email: BahnuikJ@olympiatrust.com

Johnny Luong
Tel: (403) 668-8349
Email: LuongJ@olympiatrust.com

Jennifer Marquez
Tel: (403) 776-8699
Email: MarquezJ@olympiatrust.com

AND TO: HARRIS + HARRIS LLP
295 The West Mall
6th Floor
Etobicoke, ON M9C 4Z4

Gregory H. Harris
Tel: (416) 798-2722 Ext. 240
Fax: (416) 798-2720
Email: gregharris@harrisandharris.com

Peter V. Matukas
Tel: (416) 798-2722 Ext. 272
Fax: (416) 798-2720
Email: petermatukas@harrisandharris.com

Amy Lok
Tel: (416) 798-2722 Ext. 255
Fax: (416) 798-2720
Email: amylok@harrisandharris.com

Lawyers for Harris & Harris LLP

AND TO: CHAD PAULI
Email: whatsupdoc6000@gmail.com

AND TO: NANCY ELLIOTT, BARRISTER AND SOLICITOR
5000 Yonge Street, Suite 1901
Toronto, ON M2N 7E9

Email: elliottlawfirm@gmail.com

AND TO: SOLOWAY WRIGHT LLP
700 – 427 Laurier Avenue West
Ottawa, ON K1R 7Y2

Ryan D. Garrett
Tel: (613) 236-0111
Fax: (613) 238-8507
Email: garretr@solowaywright.com

Lawyers for J. L. Richards & Associates Limited

AND TO: VINER, KENNEDY, FREDERICK, ALLAN & TOBIAS LLP
366 King Street East, Suite 300
Kingston, ON K7K 6Y3

Garth B. Allan
Tel: (613) 542-7867
Fax: (613) 542-1279
Email: gallan@vinerkennedy.com

Lawyers for Computershare Trust Company of Canada

AND TO: HARRISON PENZA LLP
450 Talbot Street, P.O. Box 3237
London, ON N6A 4K3

Ian C. Wallace
Tel: (519) 679-9660
Fax: (519) 667-3362
Email: iwallace@harrisonpensa.com

Lawyers for 2377358 Ontario Limited and Creek Crest Holdings Inc.

AND TO: BORDEN LADNER GERVAIS LLP
40 King Street West
Toronto, ON M5H 3Y4

James MacLellan
Tel: (416) 367-6592
Fax: (416) 361-7350
Email: jmaclellan@blg.com

Sonny Ingram

Tel: (416) 367-6387
Fax: (416) 367-6749
Email: singram@blg.com

Lawyers for Trisura Guarantee Insurance Company

AND TO: CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton
Tel: (416) 218-1129
Fax: (416) 218-1849
Email: harvey@chaitons.com

George Benchetrit
Tel: (416) 218-1141
Fax: (416) 218-1849
Email: george@chaitons.com

Lawyers for the Investors Committee

AND TO: DLA PIPER CANADA LLP
1 First Canadian Place
100 King Street West, Suite 6000
Toronto, ON M5X 1E2

Howard D. Krupat
Tel: (416) 365-3510
Fax: (416) 777-7421
Email: howard.krupat@dlapiper.com

Lawyers for Leeswood Design Build Ltd.

AND TO: GOLDMAN, SLOAN, NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto, ON M5G 1V2

Paul Hancock
Tel: (416) 597-9922
Fax: (416) 597-3370
Email: hancock@gsnh.com

Lawyers for Limen Group Const. Ltd.

AND TO: MARCIANO BECKENSTEIN LLP
Barristers & Solicitors
7625 Keele Street
Concord, Ontario L4K 1Y4

Shael E. Beckenstein
Tel: 905-760-8773
Fax: 905-669-7416
Email: sbeckenstein@mblaw.ca

Lawyers for Sarah Kranc personally and as Estate Trustee for the Estate of Harry Kranc

AND TO: BATTISTON & ASSOCIATES
Barristers and Solicitors
1013 Wilson Avenue
Suite 202
Toronto, Ontario M3K 1G1

Flavio Battiston (22965F)
Tel: (416) 630-7151
Fax: (416) 630-7472
Email: f.battiston@battistonlaw.com

Lawyers for lien claimant, Triaxis Construction Limited

AND TO: TIER 1 TRANSACTION ADVISORY SERVICES INC.
3100 Steeles Avenue East
Suite 902
Markham, Ontario L3R 8T3

Bhaktraj Singh
Email: rajsingh100@gmail.com

AND TO: BLANEY McMURTRY LLP
1500-2 Queen Street East
Toronto, ON M5C 3G5

Steven P. Jeffery
Tel: (416) 593-3939
Fax: (416) 594-2966
Email: sjeffery@blaney.com

Lawyers for Downing Street Financial Inc.

AND TO: BREAKWALL FINANCIAL CORPORATION
3200 Lakeshore Road
Burlington, ON L7N 1A4

Dennis Jewitt
Email: dennis@breakwall.com

AND TO: 2569880 ONTARIO LIMITED
3200 Lakeshore Road
Burlington, ON L7N 1A4

Dennis Jewitt
Email: dennis@breakwall.com

AND TO: VARCON CONSTRUCTION CORPORATION
c/o Scalisi Barristers
8800 Dufferin Street, Suite 103
Concord, ON L4K 0C5

Vito S. Scalisi
Tel: (905) 760-5588 ext. 226
Email: vito@scalisilaw.ca

AND TO: HARRISON PENZA LLP
450 Talbot Street
P.O. Box 3237
London, ON N6A 4K3

Tim Hogan
Tel: (519) 661-6743
Fax: (519) 667-3362
Email: thogan@harrisonpenza.com

Lawyers for Versa Bank

AND TO: DUNNET LAW PROFESSIONAL CORPORATION
648 Shenandoah Dr.
Mississauga, ON L5H 1V9

David Dunnet
Tel: (905) 990-1902
Fax: (905) 990-2072
Email: david.dunnet@dunnetlaw.com

Lawyers for the Failed McMurray Transaction Purchaser

AND TO: 1884871 ONTARIO LIMITED
Box 149
Ripley, ON N0G 2R0

Attn: Rob Thompson, President
Email: royaloakcreek@gmail.com

AND TO: ROB THOMPSON
Box 149
Ripley, ON N0G 2R0

Email: royaloakcreek@gmail.com

AND TO: LIUHUAN SHAN
Email: serenashan@icloud.com

AND TO: DAVE I'ANSON
Email: dave.ianson063@sympatico.ca

AND TO: JERZY MICHNIEWICZ
Email: george.michniewicz@yahoo.ca

AND TO: KATARZYNA MICHNIEWICZ
Email: kmichniewicz66@gmail.com

AND TO: R Q PARTNERS LLP
BDC Building
3901 Highway #7, Suite 400
Vaughan, ON L4L 8L5

Domenic Rotundo
Tel: (905) 264-7800
Fax: (905) 264-7808
Email: Drotundo@rqpartners.ca

Lawyers for Silver Seven Corporate Centre Inc.

AND TO: LAX O’SULLIVAN LISUS GOTTLIEB LLP
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8

Matthew Gottlieb
Tel: (416) 644-5353
Fax: (416) 598-3730
Email: mgottlieb@counsel-toronto.com

Andrew Winton
Tel: (416) 598-1744
Fax: (416) 598-3730
Email: awinton@counsel-toronto.com

Lawyers for Kingsett Mortgage Corporation

AND TO: MNP LTD.
148 Fullarton Street, Suite 1002
London, ON N6A 5P3

Rob Smith
Tel: (519) 964-2212
Fax: (519) 964-2210
Email: rob.smith@mpn.ca

Ross Park Receiver

AND TO: LOOPSTRA NIXON LLP
135 Queens Plate Drive
Etobicoke, ON M9W 6V1

R. Graham Phoenix
Tel: (416) 748-4776
Email: gphoenix@loonix.com

Lawyers for the Ross Park Receiver

AND TO: RISE REAL ESTATE INC.
611 Tradewind Drive, Suite 300
Ancaster, ON L9G 4V5

Brian McMullan
Email: brianm@riserealestate.ca

AND TO: FOGLER, RUBINOFF LLP
77 King Street West, Suite 3000
TD Centre, North Tower
Toronto, ON M5K 1G8

Martin L. Middlestadt
Email: mlm@foglers.com

Lawyers for the Ross Park Purchaser

AND TO: ONTARIO MUNICIPAL BOARD
Environment and Land Tribunals Ontario

S. Jacobs, Tamara Zwarycz and Hodan Egeh
Tel: (416) 212-6349 / (416) 326-6790
Fax: (416) 326-5370
Email: tamara.zwarycz@ontario.ca / hodan.egeh@ontario.ca

AND TO: CITY OF LONDON
C. Saunder
Email: csaunder@london.ca

AND TO: GUNN & ASSOCIATES
108 Centre Street
St. Thomas ON N5R 2Z7

Nicole D. Rogers (Hall)
Tel: (519) 631-0700
Email: nicolerogers@gunn.on.ca

AND TO: UPPER THAMES RIVER CONSERVATION AUTHORITY

c/o A. Ferreira, Ferreira Law
Email: analee@ferreiralaw.ca

AND TO: SUSAN BENTLEY AND ALEX ROSTAS

c/o S. Trosow
Email: strosow@uwo.ca

AND TO: TORYS LLP
79 Wellington Street West
33rd Floor
Toronto, ON M5K 1N2

Adam Slavens
Tel: (416) 865-7333
Fax: (416) 865-7380
Email: aslavens@torys.com

Lawyers for Tarion Warranty Corporation

AND TO: CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Robert A. Miller
Tel: (416) 218-1134
Fax: (416) 218-1834
Email: robert@chaitons.com

Escrow Agent

**AND TO: LEVINE SHERKIN BOUSSIDAN
PROFESSIONAL CORPORATION**
23 Lesmill Road, Suite 300
Toronto, ON M3B 3P6

Kevin Sherkin
Tel: (416) 224-2400 ext. 120
Fax: (416) 224-2408
Email: kevin@lsblaw.com

Eric Sherkin
Tel: (416) 224-2400 ext. 101
Fax: (416) 224-2408
Email: eric@lsblaw.com

*Lawyers for Karen Spitzer, Jay Spitzer, Bianca Marcus,
Ari Eisen, Michael Cadotte and Paul Bennett*

AND TO: DAMODAR SHARMA
c/o Shivan Micoo
Lawyer
Shivan Micoo Professional Corporation
202-8920 Woodbine Avenue
Markham, ON L3R 9W9

Tel: (905) 752-1446 ext. 120
Fax: (905) 752-1453
Email: smprofessionalcorp@gmail.com

AND TO: PRESVELOS LAW
300 - 55 Adelaide Street East
Toronto, ON M5C 1K6

Sam A. Presvelos
Tel: (416) 844-3457
Email: spresvelos@presveloslaw.com

*Lawyers for Sanda Weiler, Muhammad Saeed,
Gina Marques, Fernando Marques, Darrell Flint,
Susan Barron, Gerrardo Deluca, Maria Deluca,
Patt Caravaggio and Ninetta Caravaggio*

AND TO: ANTHONY DEL ZOTTO
19-1591 Southparade Court
Mississauga, ON
L5M 6G1
Email: anzdelzotto@rogers.com

AND TO: KYUNG HEE KIM
201-586 Yonge St.
Toronto, ON
M4Y 1Z3
Email: kyungheene@hotmail.com

AND TO: WAI LIN NG WONG
213-1205 Vanrose Street
Mississauga, ON
L5V 1W8
Email: tpwwong@yahoo.com

AND TO: TERESA LAI AND BERNADETTE LEUNG
53 Oakmoor Lane
Markham, ON L6B 0P1
Email: teresalai@live.com

AND TO: DOMENIC CARAVAGGIO
c/o Patrizio Caravaggio
48 Katie Court
North York, ON M6L 1R6
Email: pcaravaggio@gmail.com

AND TO: JOSEPH MARIGNANI
14880 Jane Street
King City, ON L7B 1A3
Email: renojo2015@gmail.com

AND TO: ARTHUR SHLANGER
80 McCallum Drive, Unit 17
Richmond Hill, ON L4C 9X5
Email: shlangeraccountingservices@bellnet.ca

AND TO: JING ZHI LI (JANE LI)
2126 – 15 Northtown Way
North York, ON M2N 7A2
Email: janeli8763@yahoo.com

**AND TO: CYNTHIA KAR-KAY LI, BEN LI
AND REBECCA LI**
31 Horner Court
Richmond Hill, ON L4B 3G6

Attention: Rebecca Li
Email: rebeccawcli@gmail.com

AND TO: DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto, ON M5K 0A1

Michael Beeforth
Tel: (416) 367-6779
Fax: (416) 863-4592
Email: mbeeforth@dentons.com

Lawyers for Aeolian Investments Ltd.

AND TO: RUBIN & CHRISTIE LLP
219 Finch Ave. W., 2nd Floor
Toronto, ON M2R 1M2

Douglas G. Christie – LSO #226560
Tel: (416) 361-0900
Fax: (416) 361-3459
Email: dchristie@rubinchristie.com

Lawyers for Aeolian Investments Ltd.

AND TO: MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

James Zibarras
Tel: (416) 595-2998
Fax: (416) 595-8695
Email: jzibarras@millertomson.com

Lawyers for Walter Thompson

AND TO: REAIN LUI STOCK LLP
Barristers
18 King Street East, Suite 500
Toronto, ON M5C 1C4

Clarence Lui
Tel: (416) 304-9330
Fax: (416) 304-9340
Email: clarence.lui@rls.law

Lawyers for 1321805 Ontario Inc.

AND TO: SINGLETON URQUHART REYNOLDS VOGEL LLP
150 King Street West, Suite 2512
P.O. Box 24
Toronto, ON M5H 1J9

Peter Wardle
Tel: (416) 585-8604
Email: pwardle@singleton.com

Evan Rankin
Tel: (416) 585-8615
Email: erankin@singleton.com

Fax: (416) 585-9458

Lawyers for Harris + Harris LLP, and Gregory Harris, in his personal capacity and in his capacity as Trustee of the Davies Family Trust

AND TO: KESTENBERG SIEGAL LIPKUS LLP
65 Granby Street
Toronto, ON M5B 1H8

Michael R. Kestenberg
Aaron Hershtal
Tel: (416) 342-1111
Fax: (416) 597-6567
Email: mrk@ksllaw.com
Email: ahershtal@ksllaw.com

Lawyers for Nancy Elliott and Elliott Law Professional Corporation

AND TO: BRESVER GROSSMAN CHAPMAN & HABAS LLP
Barristers & Solicitors
2900 – 390 Bay Street
Toronto, ON M5H 2Y2

Andrea M. Habas
Tel: (416) 869-0366
Fax: (416) 869-0321
Email: ahabas@bgchl.com

Lawyers for Bruce Stewart and The Traditions Development Company Ltd.

AND TO: WILSON VUKELICH LLP
Barristers and Solicitors
60 Columbia Way, Suite 710
Markham, ON L3R 0C9

Christopher A.L. Caruana
Tel: (905) 944-2952 ext. 2395
Fax: (905) 940-8785
Email: ccaruana@wvllp.ca

Lawyers for David Arsenault

AND TO: TYR LLP
180 John Street
Toronto, ON M5T 1X5

James Bunting
Tel: (647) 519-6607
Email: jbunting@tyrllp.com

-and to-

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Andrew Carlson
Tel: (416) 367-7437
Email: acarlson@dwpv.com

*Lawyers for RS Consulting Group Inc., Bhaktraj Singh a.k.a. Raj Singh,
RS Consulting Group Inc. and Tier 1 Transaction Advisory Services Inc.*

AND TO: STIEBER BERLACH LLP
130 Adelaide St. W., 18th Floor
Toronto, ON M5H 3P5

Murray Stieber
Tel: (416) 594-4675
Fax: (416) 366-1466
Email: mstieber@sblegal.ca

Lawyers for Michael Cane

AND TO: ROBERTO CUCCI
99 Edith Dr
Toronto, ON M4R 1Z3

Roberto Cucci
Tel: (416) 485-0986
Email: cuccislaw@gmail.com

*Lawyers for Jude Cassimy and First Commonwealth Mortgage
Corporation*

AND TO: JOHN DAVIES
24 Country Club Drive
King City, ON L7B 1M5

Email: Johndavies55@rogers.com

Defendant

AND TO: JUDITH DAVIES
24 Country Club Drive
King City, ON L7B 1M5

Email: Judydavies67@rogers.com

Defendant

AND TO: TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION
2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

AND TO: TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION
2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

AND TO: TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION
2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

AND TO: 2223947 ONTARIO LIMITED
7 Bowan Court
Toronto, ON M2K 3A8

AND TO: MC TRUSTEE (KITCHENER) LTD.
2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

AND TO: SCOLLARD TRUSTEE CORPORATION
2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

AND TO: TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION

2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

AND TO: 7743718 CANADA INC.

2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

AND TO: TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION

2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

AND TO: HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

AND TO: KEELE MEDICAL TRUSTEE CORPORATION

2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

AND TO: FIRST COMMONWEALTH MORTGAGE CORPORATION

337 Castlemore Ave.
Markham, ON L6C 2Y1

AND TO: TIER 1 MORTGAGE CORPORATION

604 Four Winds Way
Mississauga, ON L5R 3M4

AND TO: DAVE BALKISSOON

604 Four Winds Way
Mississauga, ON L5R 3M4

AND TO: VAUGHAN CROSSINGS INC.

7501 Keele Street
Suite 401
Vaughan, Ontario L4K 1Y2

AND TO: VINCENT ALBERT GUIDO

4 Magic Avenue
Markham, Ontario L4C 0A5

AND TO: ANTHONY DEGUSTOFARO

64 Carmen Crescent

Woodbridge, Ontario L4L 5P5

AND TO: HLD CORPORATION LTD.

50 Howland Drive, Unit 4
Huntsville, ON P1H 2P9

AND TO: THE GUARANTEE COMPANY OF NORTH AMERICA

Suite 1400, 4950 Yonge Street
Toronto, ON M2N 6K1

AND TO: WILLIAMS SCOTSMAN OF CANADA INC.

13932 Woodbine Ave.
P.O. Box 89
Gormley, ON L0H 1G0

AND TO: 1875443 ONTARIO LIMITED

71837 Sunridge Cres., R.R. 1
Dashwood, ON N0M 1N0

Attention: Gary Connolly

AND TO: MEMORY CARE INVESTMENTS LTD.

51 Caldari Road, Suite #A1M
Concord, ON L4K 4G3

-and-

24 Country Club Drive
King City, ON L7B 1M5

AND TO: TEXTBOOK SUITES INC.

2355 Skymark Avenue
Suite 300
Mississauga, ON L4W 4Y6

-and to-

51 Caldari Road, Suite #A1M
Concord, ON L4K 4G3

-and to-

295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

AND TO: TEXTBOOK STUDENT SUITES INC.
2355 Skymark Avenue
Suite 300
Mississauga, ON L4W 4Y6

-and to-

51 Caldari Road, Suite #A1M
Concord, ON L4K 4G3

-and to-

295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and - **TEXTBOOK STUDENTS SUITES (525 PRINCESS STREET)
TRUSTEE CORPORATION ET AL.**
Respondents

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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, ET AL.

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

KINGSETT MORTGAGE CORPORATION

Applicant

- and - **TEXTBOOK (445 PRINCESS STREET) INC.**
Respondent

Court File No. CV-17-589078-00CL

**GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-
APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON
AVENUE) TRUSTEE CORPORATION, ET AL.**

Applicant

- and - **TEXTBOOK (774 BRONSON AVENUE) INC., ET AL.**

Respondents

Court File No. CV-18-598788-00CL

**GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-
APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS
STREET) TRUSTEE CORPORATION, ET AL, AND KSV KOFMAN INC., IN
ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER
OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION,
ET AL.**

Plaintiffs

- and - **AEOLIAN INVESTMENTS LTD., ET AL.**

Defendants

Court File No. CV-18-606314-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**SERVICE LIST
(As of May 4, 2021)**

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSO# 31871V)

Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Ian Aversa (LSO# 55449N)

Phone: (416) 865-3082
Email: iaversa@airdberlis.com

Miranda Spence (LSO# 60621M)

Phone: (416) 865-3414
Email: mspence@airdberlis.com

Fax: (416) 863-1515

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

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

-and- **TEXTBOOK STUDENTS SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION ET AL.**

Respondents

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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, ET AL.

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

KINGSETT MORTGAGE CORPORATION

Applicant

-and-

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

Court File No. CV-17-589078-00CL

GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, ET AL.

Applicant

-and-

TEXTBOOK (774 BRONSON AVENUE) INC., ET AL.

Respondents

Court File No. CV-18-598788-00CL

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, ET AL, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, ET AL.

Plaintiffs

-and-

AEOLIAN INVESTMENTS LTD., ET AL.

Defendants

Court File No. CV-18-606314-00CL

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

**PROCEEDING COMMENCED AT
TORONTO**

MOTION RECORD
(Returnable May 13, 2021)

AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSO# 31871V)

Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Ian Aversa (LSO# 55449N)

Phone: (416) 865-3082
Email: iaversa@airdberlis.com

Miranda Spence (LSO# 60621M)

Phone: (416) 865-3414
Email: mspence@airdberlis.com

Fax: (416) 863-1515

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as court-appointed trustee of the Trustee
Corporations*