



**First Report of  
KSV Kofman Inc.  
as Receiver and Manager of  
Certain Property of  
Scollard Development Corporation**

April 5, 2017

## Contents

	Page
1.0 Introduction.....	1
1.1 Purposes of this Report.....	1
1.2 Restrictions.....	2
2.0 Background .....	2
2.1 Creditors .....	3
2.2 Other Creditors .....	3
3.0 Company Sale Process.....	4
4.0 Strategic Process .....	4
4.1 Request for Proposals from Realtors .....	4
4.2 Confidentiality .....	5
4.3 Strategic Process .....	5
4.4 Strategic Process Recommendation .....	7
5.0 Sources and Uses of the Company's Cash.....	7
5.1 Advances to Aeolian.....	11
6.0 Conclusion and Recommendation .....	12

## Appendices

Appendix	Tab
Request for Proposal.....	A
Loan Agreement .....	B
Description of Affiliated Property Companies.....	C

### Confidential Appendix

Realtor Summary.....	1
Listing Agreement.....	2



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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT  
CORPORATION

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

FIRST REPORT OF  
KSV KOFMAN INC.  
AS RECEIVER AND MANAGER

APRIL 5, 2017

## 1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager of the real property ("Real Property") registered on title as being owned by Scollard Development Corporation (the "Company"), and of all of the assets, undertakings and properties of the Company acquired for or used in relation to the Real Property (together with the Real Property, the "Property").
2. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on February 2, 2017 (the "Receivership Order"), KSV was appointed as the receiver and manager ("Receiver") of the Property.
3. The principal purpose of these proceedings is to complete a transaction that maximizes value for the Company's creditors.

### 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about the Company;
  - b) summarize the recommended marketing process to solicit offers for the development and/or sale of the Property (the "Strategic Process"), including the retention of TD Cornerstone Commercial Realty Inc. ("TD") to act as listing agent for the Property;

- c) provide the Receiver's preliminary findings concerning its review of the Company's receipts and disbursements for the period April 1, 2014, the date the Company appeared to have opened its bank account, to February 2, 2017, the date of the Receivership Order; and
- d) recommend that the Court issue an order, among other things:
  - approving the Strategic Process, including the retention of TD as the listing agent;
  - approving the activities of the Receiver as described in this Report; and
  - sealing the confidential appendices until further order of this Court.

## 1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information of the Company and discussions with the Company's accountant, SourcePoint Business Group Inc., and the Company's legal counsel, Harris & Harris LLP ("Harris"). The Receiver has not performed an audit or other verification of such information. The financial information discussed herein is preliminary and remains subject to further review, including the information discussed in Section 5 below. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report.

## 2.0 Background

1. The Company purchased the Real Property in September, 2014. The Real Property is located in Whitby, Ontario and comprises approximately three acres.
2. The Company intended to develop a project known as "Boathaus" on the Real Property. Boathaus is presently intended to be a five-story condominium consisting of 291 residential units. The Company was considering adding a sixth story with an additional 74 residential units. As part of its development efforts, the Company pre-sold 214 units and collected approximately \$8 million in deposits. The deposits are being held by Chaitons LLP and are not being used by the Receiver to fund these proceedings or for any other purpose.
3. The only structure on the Real Property is a single storey 7,500 square foot commercial building that was renovated by the Company so that it could be used as the project sales centre.
4. John Davies is the sole director and officer of the Company. The Receiver understands that the Company's shareholders are Aeolian Investments Ltd. ("Aeolian") (50%) and Erika Harris (50%). The Receiver understands that Aeolian is owned by Mr. Davies' wife and children<sup>1</sup>. Ms. Harris is the mother of Greg Harris, a partner at Harris.

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<sup>1</sup> This information is sourced from the Affidavit of John Davies sworn December 6, 2016 in support of the Company's and certain related entities' application for protection under the *Companies' Creditors Arrangement Act*.

## 2.1 Creditors

### 2.1.1 Downing Street Financial Inc.

1. Pursuant to the Receivership Order, the Receiver was authorized to borrow \$3.5 million from Downing Street Financial Inc. (“Downing Street”) under a Receiver’s Certificate (the “Downing Street Facility”). Downing Street was granted a charge on the Property (other than the deposits). At the commencement of the receivership, Downing Street advanced the Receiver all funds available under the Downing Street Facility. In accordance with the Receivership Order, the Downing Street Facility was used to repay a mortgage in the amount of approximately \$2.5 million owing to Firm Capital Mortgage Corporation (“Firm Capital”) and the remaining funds are being used to fund the costs of these proceedings.

### 2.1.2 Scollard Trustee Corporation

1. Scollard Trustee Corporation (“STC”) raised monies from investors through syndicated mortgage investments. STC then entered into a loan agreement with the Company for the full amount of the funds advanced by investors, secured by a mortgage over the Property. STC is a bare trustee and is responsible for holding and administering the mortgage. The STC debt ranks behind the Downing Street Facility.
2. As of the date of the receivership, the Company’s indebtedness to STC totalled approximately \$14.1 million; interest and costs continue to accrue on this debt.
3. Pursuant to an order of the Court dated October 27, 2016, Grant Thornton Limited was appointed the trustee (“Trustee”) of STC and several related entities under Section 37 of the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29, as amended. The application to appoint KSV as Receiver was brought by the Trustee.

## 2.2 Other Creditors

1. Trisura Guarantee Insurance Company and Everest Insurance Company of Canada (jointly, the “Sureties”) provided bonds to Tarion Warranty Corporation (“Tarion”) in connection with certain liabilities that may accrue to Tarion in connection with the Boathaus project. As of the date of the receivership, the amounts, if any, owing to the Sureties are unknown; however, they are not expected to be significant. The Receivership Order provides that Trisura will be paid, in full, for any and all losses, damages, liabilities, costs and expenses owed to it from any proceeds of sale resulting from a transaction in respect of the Property.
2. According to searches conducted of the Land Titles Office (Toronto), three liens totalling approximately \$800,000 have been registered on title against the Real Property pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended. The Receiver’s counsel is in the process of reviewing these lien claims.

3. According to the Company's books and records, as of the date of the Receivership Order, the Company's unsecured obligations totalled approximately \$6.1 million, of which approximately \$4.5 million appears to be owing to affiliated entities for monies advanced by them to the Company. Details concerning the amounts owing to the affiliated entities are provided in Section 5 below.

### **3.0 Company Sale Process**

1. The Receiver understands that the Company engaged Wynn Realty Corporation ("Wynn") in January, 2017 to list the Property for sale.
2. Since the date of its appointment, the Receiver has considered two offers presented by Wynn:
  - in respect of the first offer, immediately following its appointment, the Receiver spoke with the prospective purchaser to understand the status of its diligence - the offer had a one month diligence condition. The prospective purchaser advised the Receiver that Wynn had approached it just a few days prior to the receivership application and that it had neither conducted any diligence on the Property nor had any background on the Company. The Receiver advised that Purchaser that it was not prepared to pursue this transaction; and
  - in respect of the second offer, an agreement of purchase and sale ("APS") was negotiated; however, the purchaser failed to pay the deposit contemplated by the APS when due. On April 4, 2017, the purchaser advised that it would not be pursuing this transaction.

### **4.0 Strategic Process**

#### **4.1 Request for Proposals from Realtors**

1. Contemporaneous with its discussions with parties that expressed an interest in acquiring the Property, the Receiver solicited proposals from six realtors to act as listing agent for the Property. The Receiver requested that each realtor provide, among other information, background information regarding each firm's experience with real estate similar to the Property, a marketing plan which considered investment, development and the outright sale of the Property, an estimate of value of the Property and the realtor's proposed commission structure. A copy of the request for proposal sent to realtors is attached as Appendix "A".
2. Each realtor was provided access to an electronic data room after it executed a confidentiality agreement ("CA").
3. The deadline for proposals was February 22, 2017. Five of the six realtors submitted a proposal. The Receiver prepared a summary of the proposals (the "Realtor Summary") and provided it to the Trustee and its legal counsel. The Realtor Summary is attached as Confidential Appendix "1". The rationale for seeking a sealing order for the Realtor Summary is provided in Section 4.2 below.
4. Two realtors, including TD, were short listed to present to the Receiver their proposals to sell the Property. Presentations were conducted on March 2, 2017.

5. The Receiver selected TD to act as the realtor on this assignment. The Receiver considered, among other things, TD’s experience selling similar properties and its identification of opportunities to enhance value on the project. The Receiver negotiated TD’s commission structure. The commission structure is such that TD’s fees increase as the value of any transaction increases. The Receiver discussed its realtor recommendation with the Trustee and after consideration, the Trustee provided its consent.
6. The Receiver negotiated a “carve out” in the listing agreement in respect of one party who has expressed an interest in the Property (the “Excluded Party”). Pursuant to the carve-out, TD agreed to waive its commission under the listing agreement and to receive a maximum fee of \$50,000<sup>2</sup>, plus its out of pocket expenses, in the event the Receiver completes a transaction with the Excluded Party. The fee is intended to compensate TD for its time and costs incurred in connection with its early stage marketing efforts for the Property.
7. A copy of TD’s listing agreement is provided in Confidential Appendix “2”. The Receiver proposes to file the listing agreement on a sealed basis for the reasons provided below.

#### 4.2 Confidentiality

1. The Receiver respectfully requests that the Realtor Summary and the listing agreement be filed with the Court on a confidential basis and be sealed (“Sealing Order”) as the documents contain confidential information. If these documents are not sealed, the information in these documents may negatively impact realizations on the Property as interested parties would have access to value estimates. The Receiver is not aware of any party that will be prejudiced if the information is sealed. The Receiver believes the proposed Sealing Order is appropriate in the circumstances.

#### 4.3 Strategic Process

1. The Receiver recommends that the Court issue an order approving the Strategic Process summarized in the table below.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Finalize marketing materials	<ul style="list-style-type: none"> <li>➤ TD and the Receiver to:               <ul style="list-style-type: none"> <li>○ prepare a summary of the project and the opportunity;</li> <li>○ populate an online data room;</li> <li>○ prepare a CA; and</li> </ul> </li> </ul>	

<sup>2</sup> In the event the Receiver closes a transaction with the Excluded Party within 30 days from the date the Court approves a marketing process (the “Exclusion Period”), TD will be entitled to a fee of \$25,000 plus its out-of-pocket expenses. The fee increases by \$25,000 if the Receiver enters into a transaction with the Excluded Party after the Exclusion Period.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
	<ul style="list-style-type: none"> <li>○ prepare a Confidential Information Memorandum (“CIM”).</li> </ul>	Weeks 1 -2
Prospect Identification	<ul style="list-style-type: none"> <li>➤ TD to develop a master prospect list. TD will qualify and prioritize prospects.</li> <li>➤ TD will also have pre-marketing discussions with targeted developers.</li> </ul>	
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> <li>➤ Mass market introduction, including: <ul style="list-style-type: none"> <li>○ Offering summary and marketing materials printed;</li> <li>○ publication of the acquisition opportunity in <i>The Globe and Mail</i> (National Edition);</li> <li>○ telephone and email canvass of leading prospects; and</li> <li>○ meet with and interview prospective bidders.</li> </ul> </li> <li>➤ Assist the Receiver and its legal counsel in the preparation of a vendor’s form of Purchase and Sale Agreement (the “PSA”).</li> </ul>	Weeks 3-4
Stage 2	<ul style="list-style-type: none"> <li>➤ TD to provide detailed information to qualified prospects which sign the CA, including the CIM, access to the data room and a form PSA.</li> <li>➤ TD to facilitate all diligence by interested parties.</li> </ul>	Weeks 4-5
Stage 3	<ul style="list-style-type: none"> <li>➤ Prospective purchasers to submit PSAs or other proposals, including development proposals.</li> </ul>	Week 6
<i>Phase 3 – Offer Review and Negotiations</i>		
Short-listing of Offers	<ul style="list-style-type: none"> <li>➤ Short listing of bidders.</li> <li>➤ Further bidding - Interested bidders may be asked to improve their offers.</li> </ul>	One week following bid deadline
Selection of Successful Bids	<ul style="list-style-type: none"> <li>➤ Select successful bidder and finalize definitive documents.</li> </ul>	One week
Transaction Approval Motion and Closing	<ul style="list-style-type: none"> <li>➤ Motion for transaction approval and close transaction</li> </ul>	Two weeks

2. Additional aspects of the Strategic Process include:

- a) the Property will be marketed on an “as is, where is” basis;
- b) the Receiver will be entitled to extend the deadline to submit offers under the Strategic Process if it considers it to be appropriate and necessary;



- c) the Receiver will have the right to reject any and all offers, including the highest offer; and
- d) any transaction will be subject to Court-approval.

#### **4.4 Strategic Process Recommendation**

1. The Receiver recommends that the Court issue an order approving the Strategic Process, including the retention of TD as the listing agent, for the following reasons:
  - a) TD's team will be led by individuals who have extensive real estate experience, including properties similar to the Property - TD has relationships with likely bidders for the Property. Its fees are structured is structured to incentivize it to maximize recoveries. Its fee structure is consistent with market;
  - b) the Strategic Process provides flexibility for the Receiver to consider various options for the Property, including sale and development proposals;
  - c) the Strategic Process is a fair, open and transparent process intended to canvass the market broadly in order to obtain the highest and best offer;
  - d) there will be no delay commencing the process – TD has conducted a review of information concerning the Property; and
  - e) the duration of the Strategic Process is sufficient to allow interested parties to perform diligence and to submit an offer. The Receiver will also have the right to extend or amend timelines. Each bidder will be provided with the same deadline to submit an offer.

#### **5.0 Sources and Uses of the Company's Cash**

1. At the commencement of the receivership proceedings, the Receiver reviewed the Company's balance sheet and identified significant balances owing to and from other real estate development projects affiliated with the Company's principal, Mr. Davies (collectively, the "Affiliated Property Companies"<sup>3</sup>).
2. Pursuant to paragraph 7.02 (g) of the loan agreement between STC and the Company dated April 8, 2014 (the "Loan Agreement"), the Company is not permitted to use the loan proceeds received from STC (the "Loan Proceeds") for any purpose other than the development and construction of the Boathaus project, unless the consent of STC is obtained for such alternative use. A copy of the Loan Agreement is attached as Appendix "B".

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<sup>3</sup> These are: Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., Memory Care Investments (Burlington) Ltd., Textbook (445 Princess Street) Inc., Textbook (555 Princess Street) Inc., Textbook (525 Princess Street) Inc., 1703858 Ontario Inc., Memory Care Investments Ltd., Textbook Student Suites Inc., Textbook Suites Inc., 2375219 Ontario Ltd., McKenzie Marsh Investments Ltd., Lafontaine Terrace Management Corporation, Legacy Lane Investments Ltd., McMurray Street Investments Inc. and Textbook (774 Bronson Avenue) Inc.

3. The Receiver reviewed the Company's bank statements, accounting records and unaudited financial statements for the period April 1, 2014 to February 2, 2017 (the "Review Period").

(unaudited; \$C000s)	Amount
<i>Receipts</i>	
Loan proceeds	
STC	13,596
Firm Capital	2,350
2174217 Ontario Ltd.	750
Affiliated Property Companies	6,186
Raj Singh and entities related to Mr. Singh	350
Aeolian	25
Sundry receipts	602
Total receipts	<u>23,859</u>
<i>Disbursements</i>	
Purchase of Real Property	9,163
Affiliated Property Companies	3,355
Interest and fees <sup>4</sup>	2,705
STC loan commissions	2,175
Aeolian	1,244
Sales centre construction and operating costs	1,174
Development costs	1,161
Raj Singh and entities related to Mr. Singh	636
Loan repayment (2174217 Ontario Ltd.)	750
Professional fees	446
Entities and individuals related to John Davies (excluding Aeolian)	92
Other	955
Total disbursements	<u>23,856</u>
Ending balance	<u>3</u>

4. The table above reflects that the Company:
- a) had total receipts of approximately \$23.859 million, including \$6.186 million from Affiliated Property Companies; and
  - b) made disbursements of approximately \$23.856 million, including \$3.355 million to Affiliated Property Companies and approximately \$1.244 million to Aeolian, a company owned by Mr. Davies' wife and children. Details regarding payments to Aeolian are discussed in Section 5.1 below.

<sup>4</sup> Approximately \$2.0 million in interest was paid in respect of STC. The remainder represents amounts paid to Firm Capital and 2174217 Ontario Ltd.

5. The Receiver understands that each Affiliated Property Company is a single purpose entity. Set out in Appendix "C" is a brief description of the single purpose activity. A summary of the amounts received from Affiliated Property Companies and paid to Affiliated Property Companies is provided in the table below:

(unaudited; \$C000s) Entity	Amounts Received From	Amounts Advanced To	Net Received/ (Advanced)
Memory Care Investments (Oakville) Ltd.	2,191	(687)	1,504
Memory Care Investments (Kitchener) Ltd.	1,516	(95)	1,421
Textbook (445 Princess Street) Inc.	645	-	645
Textbook (774 Bronson Avenue) Inc.	559	-	559
1703858 Ontario Inc.	553	(28)	525
Textbook Student Suites Inc.	122	(6)	116
Textbook (555 Princess Street) Inc.	13	-	13
Textbook Suites Inc.	14	(3)	11
Textbook (525 Princess Street) Inc.	7	-	7
2375219 Ontario Ltd.	23	(25)	(2)
McKenzie Marsh Investments Ltd.	100	(111)	(11)
Lafontaine Terrace Management Corporation	-	(75)	(75)
Memory Care Investments Ltd.	47	(229)	(182)
Legacy Lane Investments Ltd.	12	(229)	(217)
Memory Care Investments (Burlington) Ltd.	384	(884)	(500)
McMurray Street Investments Inc.	-	(983)	(983)
Total	<u>6,186</u>	<u>(3,355)</u>	<u>2,831</u>

6. During September and October, 2014, Loan Proceeds totalling approximately \$13.596 million were advanced from STC to the Company on four different dates. The Receiver was able to isolate the use of the Loan Proceeds, as reflected in the table below.

(unaudited; \$C000s)	Amount
Cash balance, as of September 1, 2014	3
<i>Receipts</i>	
STC	13,596
Other <sup>5</sup>	32
Subtotal	13,628
<i>Disbursements</i>	
Purchase of Real Property	8,163 <sup>6</sup>
First Commonwealth Mortgage Corporation	2,175
Affiliated Property Companies	1,259
STC interest reserve	1,088
Development costs	331
Professional fees	287
Tier 1 Transaction Advisory Services Inc.	156
Aeolian	133
Subtotal	13,592
Cash balance, as of October 31, 2014	39

7. The table reflects:

- a) \$2.175 million (16.0% of the total proceeds) was paid to First Commonwealth Mortgage Corporation<sup>7</sup> as commissions and brokerage fees in connection with raising the STC loan. The amount of the commissions appears to be consistent with the Loan Agreement;
- b) approximately \$1.259 million (9.3% of the total proceeds) was advanced to certain Affiliated Property Companies. These advances occurred almost immediately after the Company received the Loan Proceeds. A schedule of these advances is provided below.

<sup>5</sup> Mainly represents an HST refund.

<sup>6</sup> The total amount paid for the Real Property, including closing expenses, was \$9.2 million. Of this amount, \$1 million was paid by Memory Care Investments (Oakville) Ltd.

<sup>7</sup> The Loan Agreement indicates that First Commonwealth Mortgage Corporation and Tier 1 Mortgage Corporation are jointly the Mortgage Broker in connection with the STC loan.

(unaudited; \$C000s) Entity	Amount Advanced
Memory Care Investments (Burlington) Ltd.	366
McMurray Street Investments Inc.	350
Memory Care Investments (Oakville) Ltd.	322
Legacy Lane Investments Ltd.	120
Memory Care Investments (Kitchener) Ltd.	71
Memory Care Investments Ltd.	30
	1,259

- c) approximately \$287,000 was paid in professional fees and related disbursements, including approximately \$243,000 to Harris. Pursuant to Schedule "C" of the Loan Agreement, it appears that Harris was to receive approximately \$95,000, plus disbursements, in connection with the STC Loan. The amount received by Harris is subject to further review, including whether Harris performed other services to the Company which would have entitled it to further fees.

## 5.1 Advances to Aeolian

1. Net payments to Aeolian during the Review Period totalled approximately \$1.2 million, as follows:

(unaudited; C\$000's) Description	Amount
Management fees	780
Amounts advanced by the Company on behalf of:	
Legacy Lane Investments Ltd.	116
Memory Care Investments (Burlington) Ltd.	116
Memory Care Investments (Kitchener) Ltd.	116
Memory Care Investments (Oakville) Ltd.	116
	464
Total	1,244

2. The table above reflects:
- a) \$780,000 was charged by Aeolian on account of management fees on the Company's project. Approximately \$624,000 of these fees were recorded subsequent to the commencement of the receivership, the effect of which was to eliminate a receivable owing by Aeolian to the Company which arose because Aeolian had received cash from the Company in excess of the management fees it charged the Company prior to the commencement of the receivership; and
- b) approximately \$464,000 was paid by the Company to Aeolian on behalf of the projects noted in the table above.

3. The transactions between the Company and both the Affiliated Property Companies and Aeolian raise concerns about the use of monies invested by syndicated mortgage investors in the Company and in the Affiliated Property Companies.
4. The Receiver intends to discuss the implications of its preliminary findings in this section with the Trustee.

## 6.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc". The signature is written in a cursive, flowing style.

**KSV KOFMAN INC.  
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF  
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION  
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

## **Appendix “A”**

**Request for Proposals for  
REAL ESTATE BROKER SERVICES  
Re: Scollard Development Corporation**

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KSV Kofman Inc. ("KSV"), in its capacity as Court-appointed receiver and manager (the "Receiver") of Scollard Development Corporation (the "Company") invites proposals to provide real estate broker services for 1606, 1612 and 1614 Charles Street, Whitby, Ontario known as the Boathaus development (the "Property").

**Proposals must be submitted to Noah Goldstein, Senior Manager, KSV Kofman Inc., 150 King Street West, Suite 2308, Toronto, Ontario M5H 1J9 by 5:00 p.m. (Toronto time) on February 22, 2017.**

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



## **A. Background**

- Pursuant to an order made by the Ontario Superior Court of Justice on February 2, 2017, KSV Kofman Inc. was appointed receiver and manager (“Receiver”) of the real property (“Real Property”) registered on title as being owned by the Company and of all of the assets, undertakings and properties of the Company acquired for or used in relation to the Real Property (together with the Real Property, the “Property”).
- Copies of all Court orders made, and other court materials filed, in these proceedings are available on the Receiver’s website at:

<http://www.ksvadvisory.com/insolvency-cases/scollard-development-corporation/>

- The Company intended to construct a condominium development on the Property. The project is known as “Boathaus”. As of the date of the receivership, the Company had pre-sold over 200 condominium units in connection with the proposed development. Construction on the Property has not commenced.
- The Receiver is now accepting proposals (“Proposals”) to act as listing agent to solicit sale, investment and/or development proposals for the Property.
- The terms of any sale, investment and/or development process (the “Strategic Process”) and the selection of a realtor are subject to Court approval.

## **B. Proposal Submission Deadline**

- Proposals are to be submitted to the Receiver by 5:00 p.m. (Toronto time) on February 22, 2017.

## **C. Realtor's Role**

The realtor’s role will include, *inter alia*, the following:

- developing a detailed marketing process, including timelines for the Strategic Process, with the assistance of the Receiver;
- establishing an estimated value for the Property;
- preparing all marketing materials, with input from the Receiver;
- advertising the Property at the agent’s expense to the extent relevant;
- obtaining and negotiating confidentiality agreements from interested parties;
- showing the Property to interested parties and establishing and maintaining a data room or data rooms to facilitate the Strategic Process;
- qualifying interested parties from a financial prospective;
- assisting interested parties in their due diligence;

- assisting the Receiver to assess offers submitted, including development proposals and sale proposals;
- providing the Receiver with a report summarizing the Strategic Process with respect to the Property, to be relied upon by the Receiver to support the Receiver's recommended transaction; and
- assisting the Receiver to close a transaction.

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

The Proposal must contain the following:

1. **Work Plan:** all bidders shall provide a detailed work plan.
2. **Valuation:** all bidders shall provide an estimate of the value of the Property, together with supporting assumptions;
3. **Firm Background and Staff Experience:** all bidders shall provide background of the firm, including the experience of their staff on this assignment (including résumés).
4. **Bidder's Liability Insurance Certificate:** a copy of the bidder's liability insurance certificate should be included with the Proposal.
5. **Compensation Structure:** all Proposals shall indicate the proposed compensation structure.
6. **Conflict of Interest Statement:** all bidders shall disclose any professional or personal financial interests which could be a possible conflict of interest. In addition, all bidders shall further disclose any arrangements to derive additional compensation.

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

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

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

## **Appendix “B”**

**LOAN AGREEMENT**

**THIS AGREEMENT** is made as of the 8<sup>th</sup> day of April, 2014.

**B E T W E E N:**

**SCOLLARD TRUSTEE CORPORATION**, a corporation  
incorporated under the laws of the Province of Ontario

(hereinafter referred to as the "**Lender**")

**AND**

**SCOLLARD DEVELOPMENT CORPORATION**, a  
corporation incorporated under the laws of the Province of Ontario

(hereinafter referred to as the "**Borrower**")

**WHEREAS** the Lender, on the terms and conditions hereinafter set forth, has agreed to lend to the Borrower and the Borrower has agreed to borrow from the Lender the sum of up to **Eighteen Million Six Hundred Thousand (\$18,600,000.00) Dollars** of lawful money of Canada (the "**Principal Sum**") for a term of Three (3) years, subject to extensions as provided herein, (the "**Term**") in connection with the development and construction by the Borrower of a condominium project on the lands and premises situated at 1606, 1610 and 1614 Charles Street, Whitby, Ontario, and more particularly described in Schedule "A" attached hereto (the "**Property**").

**AND WHEREAS** the Borrower agrees to pay to the Lender interest on the Principal Sum at the Loan Rate (as hereinafter defined), calculated annually and payable quarterly during the Term along with the Additional Loan Payment as more particularly described in Schedule "D" attached hereto;

**AND WHEREAS** the Borrower has agreed to allow a Charge/Mortgage of Land in addition to the other Security Documents, on the terms set out herein, to be registered against the Property in first priority and in favour of the Lender (the "**Mortgage**"), as security for repayment of the Principal Sum with interest at the Loan Rate and the payment of the Additional Loan Payment;

**AND WHEREAS** the Borrower agrees to repay to the Lender the Principal Sum and interest at the Loan Rate and the payment of the Additional Loan Payment on or before the expiry of the Term, as specified herein;

**AND WHEREAS** the Lender and the Borrower (collectively, the "**Parties**") wish to evidence their agreement in respect of the Loan;

- 2 -

AND WHEREAS the Lender acknowledges that the Mortgage shall be granted, *inter alia*, in the form of a syndicated first Charge/Mortgage of Land as more fully described herein and shall be in form and substance satisfactory to the Lender;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants, agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

#### ARTICLE 1 RECITALS

1.01 The Parties to this Agreement acknowledge and agree that the recitals to this Agreement are true and correct in substance and in fact are incorporated into and form an integral part of this Agreement.

#### ARTICLE 2 DEFINITIONS AND TERMS

2.01 The following words and phrases have the following meanings when used in this Agreement:

- (a) "Acceleration Date" means the date on which an Acceleration Event occurs;
- (b) "Acceleration Event" means the earlier of: (i) the occurrence of an Insolvency Event; and (ii) the delivery by the Lender to the Borrower of a written notice that the Borrowers Liabilities or any part thereof are immediately due and payable, following the occurrence and during the continuation of an Event of Default other than an Insolvency Event;
- (c) "Additional Loan Payment" has the same meaning as set forth in Section 4.11 hereof;
- (d) "Agreement", means this Agreement entitled "Loan Agreement", and all instruments supplemental hereto or in amendment or confirmation hereof; "hereof", "hereto" and "hereunder" and similar expressions refer to this Agreement, and where relevant, to any particular article, section or paragraph hereof; "Article", "Section" and "paragraph" mean and refer to the specified article, section or paragraph of this Agreement;
- (e) "BIA" means the *Bankruptcy and Insolvency Act* (Canada), as amended from time to time;
- (f) "Borrower's Books and Records" shall have the same meaning as set forth in Section 7.04 hereof.
- (g) "Borrower's Liabilities", refers collectively to the Loan, all interest from time to time accruing thereon as set forth in this Agreement, and all liabilities and indebtedness now or hereafter owing, arising, due or payable by the Borrower to the Lender whether

- 3 -

under this Agreement or the Security Documents and including the Additional Loan Payment;

- (h) "Borrower's Solicitors" shall mean Harris + Harris LLP, or such other solicitors that the Borrower may in writing designate;
- (i) "Business Day", refers to any day other than a Saturday, Sunday or Statutory Holiday in Toronto, Ontario;
- (j) "Closing Date" or "Closing", or similar references means the date of the initial Loan Instalment or the date, as the context requires, of any other Loan Instalments made pursuant hereto;
- (k) "Commodity Taxes" means all commodity taxes, including all sales, use, retail, goods and services, harmonized sales, value-added and similar taxes imposed, levied or assessed by any Governmental Authority;
- (l) "Default" means any event, act, omission or condition which with the giving of notice or the passage of time, or both, would result in an Event of Default;
- (m) "Distributable Cash Proceeds" means all amounts received by the Borrower arising out of the Property or the sale or operation thereof or of the sale of condominium units for the period including but not limited to the following:
  - (i) all revenues derived from the sale of condominium units or any part or all of the Property (including all premiums, upgrade costs (net of commissions) and applicable harmonized sales tax or goods and services tax rebates);
  - (ii) all gross receipts derived from all rents and fees payable by tenants, licensees and concessionaires;
  - (iii) the gross amount, if any, of any insurance proceeds received by the Borrower, including business interruption payments;
  - (iv) the net proceeds of any refinancing, if any, received by the Borrower, other than any construction loan which contains terms prohibiting the use of such loan proceeds to repay existing indebtedness (net of repayments of existing mortgage financing being refinanced); and
  - (v) the gross amount, if any, from partial or total expropriations of all or part of the Property,

but excluding: (i) Commodity Taxes which the Borrower is required by law to collect from purchasers, tenants, concessionaires or licensees and remit to an applicable taxing authority.

- 4 -

- (n) "Distribution" means any amount paid to or on behalf of the employees, directors, officers, shareholders, partners or unitholders of the Borrower, by way of salary, bonus, commission, management fees, directors' fees, dividends, redemption of shares, distribution of profits or otherwise, and whether payments are made to such Persons in their capacity as shareholders, partners, unitholders, directors, officers, employees, owners or creditors of the Borrower or otherwise, or any other direct or indirect payment in respect of the earnings or capital of the Borrower;
- (o) "Event of Default" is defined in Section 9.01 hereof;
- (p) "Expenses", means all expenses relating to the Loan and all fees and expenses for legal services relative to the preparation, review and enforcement of this Agreement and the Security Documents, the making of Loan Instalments and the repayment of the Borrower's Liabilities and the release of the security therefore;
- (q) "Fiscal Year" means the fiscal year end of the Borrower, being December 31<sup>st</sup> in every year;
- (r) "GAAP" means generally accepted accounting principles in Canada as approved by the Canadian Institute of Chartered Accountants in effect from time to time; and for greater certainty if international financial reporting standards are adopted by the Canadian Institute of Chartered Accountants in replacement for generally accepted accounting principles, each reference to "GAAP" herein shall be deemed to refer to such international financial reporting standards;
- (s) "Governmental Authority" means any: (i) federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision or authority of any of the foregoing; or (iii) any quasi-governmental, judicial or administrative body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;
- (t) "Hazardous Materials" means any contaminant, pollutant, waste or substance that is likely to cause immediately or at some future time harm or degradation to the surrounding environment or risk to human health; and without restricting the generality of the foregoing, including any pollutant, contaminant, waste, hazardous waste or dangerous goods that is regulated by any Requirements of Environmental Law or that is designated, classified, listed or defined as hazardous, toxic, radioactive or dangerous or as a contaminant, pollutant or waste by any Requirements of Environmental Law;
- (u) "Indemnitees" means the Lender and its successors and permitted assignees, any agent of any of them (specifically including a receiver or receiver-manager) and its officers, directors, employees, beneficial owners and shareholders;
- (v) "Insolvency Event" means, in respect of any Person:
  - (i) such Person ceases to carry on its business; or commits an act of bankruptcy or becomes insolvent (as such terms are used in the BIA); or

- 5 -

makes an assignment for the benefit of creditors, files a petition in bankruptcy, makes a proposal or commences a proceeding under Insolvency Legislation; or petitions or applies to any tribunal for, or consents to, the appointment of any receiver, trustee or similar liquidator in respect of all or a substantial part of its property; or admits the material allegations of a petition or application filed with respect to it in any proceeding commenced in respect of it under Insolvency Legislation; or takes any corporate action for the purpose of effecting any of the foregoing; or

- (ii) any proceeding or filing is commenced against such Person seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition of it or its debts under any Insolvency Legislation, or seeking appointment of a receiver, trustee, custodian or other similar official for it or any of its property or assets; unless (i) such Person is diligently defending such proceeding in good faith and on reasonable grounds as determined by the Lender and (ii) such proceeding does not in the reasonable opinion of the Lender materially adversely affect the ability of such Person to carry on its business and to perform and satisfy all of its obligations hereunder;
- (w) "Insolvency Legislation" means legislation in any applicable jurisdiction relating to reorganization, arrangement, compromise or re-adjustment of debt, dissolution or winding-up, or any similar legislation, and specifically includes for greater certainty the BIA, the *Companies' Creditors Arrangement Act* (Canada) and the *Winding-Up and Restructuring Act* (Canada);
- (x) "Interest Reserve" means the amounts set aside or deducted as contemplated in Section 4.12 hereof to fund the obligations of the Borrower to pay interest as set forth in this Agreement on the Loan Instalments that may from time to time be made by the Lender to the Borrower.
- (y) "Laws" means all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, or any provisions of such laws, including general principles of common and civil law and equity or policies or guidelines, to the extent such policies or guidelines have the force of law, binding on the Person referred to in the context in which such word is used; and "Law" means any of the foregoing;
- (z) "Lender's Solicitors" shall mean Nancy Elliott, Barrister & Solicitor, or such other solicitors that the Lender may in writing designate;
- (aa) "Lien" means: (i) a lien, charge, mortgage, pledge, security interest or conditional sale agreement; (ii) an assignment, lease, consignment, trust or deemed trust that secures payment or performance of an obligation; (iii) a garnishment; (iv) any other



- 6 -

encumbrance of any kind; and (v) any commitment or agreement to enter into or grant any of the foregoing;

- (bb) "Loan", means the aggregate amount, not to exceed Eighteen Million Six Hundred Thousand (\$18,600,000.00) Dollars, of all Loan Instalments made from time to time hereunder by the Lender to the Borrower, less the amount, if any, repaid from time to time by the Borrower to the Lender;
- (cc) "Loan Instalment" has the same meaning as set forth in Sub-Section 4.08(a) hereof, with each Loan Instalment to be made in the sole and absolute discretion of the Lender;
- (dd) "Loan Rate", means the annual rate of interest applicable to any particular amount outstanding pursuant to this Agreement being Eight (8%) percent per annum;
- (ee) "Material Adverse Change" means any change or event which: (i) constitutes a material adverse change in the business, operations, condition (financial or otherwise) or properties of the Borrower taken as a whole; or (ii) could materially impair the Borrower's ability to timely and fully perform its obligations under this Agreement or the Security Documents, or materially impair the ability of the Lender to enforce its rights and remedies under this Agreement or the Security Documents;
- (ff) "Material Agreement" means, in respect of the Borrower, any agreement made between the Borrower and another Person which the Lender, in its sole and absolute discretion, determines to be material to the Borrower;
- (gg) "Maturity Date" shall have the same meaning as set forth in Section 4.04 hereof;
- (hh) "Mortgage" has the same meaning as set forth in Sub-Section 5.01(c) hereof;
- (ii) "Note" shall mean the promissory note executed by the Borrower in favour of the Lender in the sum of up to Eighteen Million Six Hundred Thousand (\$18,600,000.00) Dollars which Note shall be in form and substance satisfactory to the solicitors of the Lender;
- (jj) "Outstanding Encumbrances and Liens" shall have the same meaning as set forth in Sub-Section 7.01(l) hereof;
- (kk) "Person", means a natural person, firm, trust, partnership, association, corporation, government or governmental board, agency or instrumentality;
- (ll) "Permitted Encumbrances" are those Liens described in Schedule "E" attached hereto and any construction financing subsequently acquired by the Borrower for the construction of the condominium project on the Property not exceeding Fifty-Two Million (\$52,000,000.00) Dollars;
- (mm) "Requirements of Environmental Law" means: (i) obligations under common law; (ii) requirements imposed by or pursuant to statutes, regulations and by-laws whether

- 7 -

presently or hereafter in force; (iii) requirements announced by a Governmental Authority as having immediate effect (provided that at the time of making such announcement the government also states its intention of enacting legislation to confirm such requirements retroactively); (iv) all directives, policies and guidelines issued or relied upon by any Governmental Authority to the extent such directives, policies or guidelines have the force of law; (v) all permits, licenses, certificates and approvals from Governmental Authorities which are required in connection with air emissions, discharges to surface or groundwater, noise emissions, solid or liquid waste disposal, the use, generation, storage, transportation or disposal of Hazardous Materials; and (vi) all requirements imposed under any clean-up, compliance or other order made pursuant to any of the foregoing, in each and every case relating to environmental, health or safety matters including all such obligations and requirements which relate to (A) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation and (B) exposure to Hazardous Materials;

- (nn) "Security" means all guarantees, security agreements, mortgages, debentures and other documents mentioned comprising the Security Documents or otherwise and all other documents and agreements delivered by the Borrower or other Persons to the Lender for the benefit of the Lender from time to time as security for the payment and performance of the Borrowers Liabilities, and the security interests, assignments and Liens constituted by the foregoing;
- (oo) "Security Documents", refers collectively to this Agreement, the Mortgage, those documents and instruments referred to in Section 5.01 hereof and any and other documents, agreements or writings delivered to the Lender as contemplated in this Agreement whether as security for the Loan or otherwise. At the option of the Lender, the Security Documents may reflect a fixed rate of interest as designated by the Lender's counsel. Notwithstanding the same, the provisions with respect to the payment of interest as set out in this Agreement shall prevail;
- (pp) "Statutory Lien" means a Lien in respect of any property or assets of a Company created by or arising pursuant to any applicable legislation in favour of any Person (such as but not limited to a Governmental Authority), including a Lien for the purpose of securing the Borrower's obligation to deduct and remit employee source deductions and goods and services tax pursuant to the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada), the *Canada Pension Plan* (Canada), the *Employment Insurance Act* (Canada) and any federal or provincial legislation similar to or enacted in replacement of the foregoing from time to time; and,
- (qq) "Subsidiary" means a business entity which is controlled by another business entity (as used herein, "business entity" includes a corporation, company, partnership, limited partnership, trust or joint venture).

2.02 Unless otherwise provided herein, all financial terms used in this Agreement shall be determined in accordance with GAAP in effect at the date of such determination. Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other computation is required to be made for the purpose of

- 8 -

this Agreement, such determination or calculation shall be made in accordance with GAAP applied on a consistent basis, unless otherwise indicated.

2.03 All amounts referred to in this Agreement are in Canadian Dollars unless otherwise noted.

2.04 Whenever in this Agreement reference is made to a statute or regulations made pursuant to a statute, such reference shall, unless otherwise specified, be deemed to include all amendments to such statute or regulations from time to time and all statutes or regulations which may come into effect from time to time substantially in replacement for the said statutes or regulations.

2.05 Terms defined in the singular have the same meaning when used in the plural, and vice-versa. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term "including" shall mean "including, without limitation", and the term "includes" shall mean "includes, without limitation". Any reference herein to the exercise of discretion by the Lender (including phrases such as "in the discretion of", "in the opinion of", "in its opinion", "to the satisfaction of" and similar phrases) shall mean that such discretion is absolute and unfettered and shall not imply any obligation to act reasonably, unless otherwise expressly stated herein.

### **ARTICLE 3 SCHEDULES**

3.01 The following are the schedules attached to and incorporated in this Agreement by reference and deemed to be a part thereof:

Schedule "A" – Lands to be Charged/Mortgaged

Schedule "B" – Schedule of Interest Payments

Schedule "C" – Expenses

Schedule "D" – Additional Loan Payment

Schedule "E" – Permitted Encumbrances

### **ARTICLE 4 THE LOAN, INTEREST, EXPENSES, AND PAYMENT THEREOF**

4.01 Subject to the terms and conditions hereof, the Lender agrees to provide to the Borrower the Loan.

4.02 The Borrower and the Lender acknowledge and confirm that, notwithstanding any rate of interest set out in the Security Documents or any of them, the provisions of this Agreement

- 9 -

regarding the Loan Rate shall govern the rate of interest payable on the Loan. The Borrower and the Lender further acknowledge and confirm that the Security Documents shall be in form and substance satisfactory to the Lender.

4.03 Interest on the Loan Rate shall be determined daily and shall be due, payable and compounded quarterly, not in advance, on the 1st day of each month during such quarterly period, as well after as before demand, maturity, default and judgment, together with interest on overdue interest determined daily (if relevant) and compounded quarterly at the same rate applicable until the Borrower's Liabilities have been paid in full. Interest shall be calculated on the basis of a three hundred and sixty-five (365) day year. Interest on the Loan at the Loan Rate and calculated as aforesaid shall accrue as of the date of the first Loan Instalment. Any disputes on the determination and calculation of interest of the Interest Rate shall be resolved by the Lender, in its opinion but acting reasonably. The first payment of interest and all subsequent payments of interest as aforesaid shall be payable in the amounts and on the dates as set forth in Schedule "B" attached hereto.

4.04 The Loan, together with all accrued and outstanding interest and other charges in connection therewith as set forth in this Agreement and the Security Documents including without limiting the generality of the foregoing the Additional Loan Payment and all other Borrower's Liabilities, shall become fully due and repayable on the third anniversary of the first Loan Instalment, unless extended as set out in this Agreement (the "Maturity Date"). The Maturity Date may be extended for up to two six month extension periods, by notice in writing delivered by the Borrower to the Lender at least 60 days prior to the scheduled Maturity Date, or extended Maturity Date, in the case of a second six month extension. During any extension of the Term, all of the provisions in this Agreement shall remain in full force and effect and interest shall continue to be payable and accrue during any extension to the Term, on the same terms and conditions as interest is calculated and payable prior to any extension of the Term. The Maturity Date shall be deemed amended to the date which is six months from the date of the prior Maturity Date, or first amended Maturity Date in the case of a second six month extension.

4.05 Any payment provided hereunder to be made by the Borrower to the Lender shall be in certified funds or Bank Draft and shall be payable to the Borrower's Solicitors, in trust, and delivered to the Borrower's Solicitors, or any other payee or office designated by the Lender from time to time. The Borrower's Solicitors shall coordinate further delivery of such funds with the Lender's Solicitors. Any payment as aforesaid received after two o'clock (2:00) p.m. Toronto time shall be deemed to have been received on the next following Business Day.

4.06 This Agreement shall constitute evidence of the obligation of the Borrower to repay all the Borrower's Liabilities in accordance with the terms hereof. The Borrower shall repay the Loan and the Borrower's Liabilities in full on the Maturity Date, and until then shall pay interest at the time or times and in the manner provided herein.

4.07 All Loan Instalments and Expenses as and when advanced or incurred shall be and become secured by the Security Documents and Expenses may be paid by the Lender and be deducted from Loan Instalments which would otherwise have been made to the Borrower. The Security Documents shall be in addition to any other security which the Lender may now have or subsequently acquire for the performance of the Borrower's Liabilities. The Expenses listed in

- 10 -

Schedule "C" attached hereto are a list of Expenses (but by no means an exhaustive list of all Expenses) that shall be deducted from the Loan Instalments.

4.08 The Lender and the Borrower mutually acknowledge, confirm, represent and covenant as follows:

- (a) Any amounts advanced by the Lender, in its sole and absolute discretion, to the Borrower pursuant to this Agreement, may occur in tranches (the "Loan Instalments") with the anticipated first Loan Instalment to be in the amount of not less than Twelve Million Eight Hundred Thousand (\$12,800,000.00) Dollars. The second Loan Installment is expected to be in the amount of Eight Hundred Thousand (\$800,000.00) Dollars;
- (b) the initial face value of the Mortgage will be Thirteen Million Six Hundred Thousand (\$13,600,000.00) Dollars; which amount can be increased where the Borrower obtains a new valuation/appraisal for the property in form satisfactory to Olympia Trust (or any successor trust company acting for a majority of registered account syndicated mortgage participants), whereupon Olympia Trust agrees to increase the maximum mortgage amount; provided in no circumstance will the maximum mortgage amount exceed Eighteen Million Six Hundred Thousand (\$18,600,000.00) Dollars; and,
- (c) prior to the release of any funds by the Lender's Solicitors to the solicitor(s) for the Borrower, each Party hereby irrevocably acknowledges and directs that their respective solicitors are authorized to and shall cause to be registered any such instruments on title to the Lands which in the opinion of the solicitor for the Lender may be required as evidence of any sums advanced to the Borrower on the security of this Agreement or the Security Documents.

4.09 The Borrower may not prepay all or any portion of the Borrower's Liabilities hereunder, other than pursuant to Section 4.13 hereof.

4.10 Notwithstanding anything to the contrary contained in this Agreement, any Loan Instalment made by the Lender and the Borrower shall be at the Lender's sole and absolute discretion and the Lender shall not be obligated at any time or times to make any Loan Instalment to the Borrower.

4.11 In addition to the payment by the Borrower of the Loan plus interest as set forth in this Agreement, the Borrower shall also pay to the Lender, in certified funds or Bank Draft, forthwith after the determination is made by the Lender in its opinion that the Additional Loan Payment is payable, the amount of the Additional Loan Payment calculated as described in Schedule "D" attached hereto in the same manner as contemplated in Section 4.05 hereof. Notwithstanding the foregoing, the Lender, at its option, may also deduct from the Distributable Cash Proceeds, at any time and from time to time, all or any part of the Additional Loan Payment that the Lender, in its opinion, believes is due and payable.

4.12 The parties hereto acknowledge, confirm, covenant and agree that the Lender shall be deducting from the first Loan Instalment and any subsequent Loan Instalments an amount equal

- 11 -

to the projected interest on the amount of such Loan Instalment for 12 months which shall be a contribution of the Borrower to the Interest Reserve. The parties hereto further acknowledge, confirm, covenant and agree that the Lender may from time to time and at any time, acting reasonably, deduct from the funds held in trust by the Lender's Solicitors or received from the Borrower, whether from the Distributable Cash Proceeds or otherwise, such amounts that in its opinion is necessary or appropriate to replenish the Interest Reserve. The Borrower covenants and agrees that the amount in the Interest Reserve shall be applied by the Lender against the obligations of the Borrower to pay interest hereunder on the Loan Instalments and that once applied or deducted by the Lender from the Loan Instalments, the Distributable Cash Proceeds or otherwise, the Borrower shall have no claim against the funds in the Interest Reserve.

4.13 The Borrower, at any time after the second anniversary hereof, shall be entitled to repay all or a portion of the Loan without penalty, notice or bonus and the interest at the rate of 8% per annum on the principal outstanding ceasing at the date of prepayment; provided that the Lender shall continue to be entitled to the Additional Loan Payment for all three years of this Loan, even though the Loan shall have been prepaid prior to the three year term expiry (to also be paid at the time of prepayment) plus the prepayment fee; but shall not be entitled to any additional interest Payment for the third year of the Term of this Loan nor any compensation for loss of interest after the date of such prepayment.

#### ARTICLE 5 SECURITY

5.01 The Borrower agrees to provide the Security Documents listed below to the Lender, as continuing security for the payment and performance of all of its present and future, direct and indirect obligations to the Lender, specifically including the Loan, the Borrowers Liabilities and its direct indebtedness and obligations to the Lender arising under this Agreement:

- (a) The Note;
- (b) A mortgage in the amount of the Principal Sum (or such lesser amount as determined by the Lender in its sole and unfettered discretion) ranking as a first mortgage; provided that said mortgage shall be subordinated to any construction financing (in one or multiple tranches) not exceeding in the aggregate Fifty-Two Million (\$52,000,000.00) Dollars obtained by the Borrower related to construction of the condominium project on the Property and for the hard and soft costs related thereto (the "Mortgage");
- (c) if requested by the Lender from time to time, security agreements creating an assignment security interest in respect of its rights to and interest in Material Agreements to which it is a party, together with any necessary consents from the other parties thereto which security interest may not be a first ranking security interest;
- (d) an assignment of its interest in all policies of insurance, specifically including the right to receive any refunds of premiums paid thereunder; and

- 12 -

- (e) such other security and further assurances as the Lender may reasonably require from time to time.

5.02 The Security Documents shall be in form and substance satisfactory to the Lender, acting reasonably. The Lender may require that any item of Security Documents be governed by the laws of the jurisdiction where the property subject to such item of Security Documents is located. The Security Documents shall be registered by the Lender or, at the request of the Lender, by the Borrower, all at the Borrower's cost and expense, where necessary or desirable to record and perfect the charges contained therein, as determined by the Lender in its sole and absolute discretion.

5.03 The Borrower shall cause to be delivered to the Lender prior to each Loan Instalment the opinion of the solicitors for the Borrower regarding its corporate status, the due authorization, execution and delivery of the Security Documents provided by it, all registrations in respect of the Security Documents, the results of all applicable searches in respect of them, and the enforceability of such Security Documents and any other matters requested by the Lender in its opinion; all such opinions to be in form and substance satisfactory to the Lender.

5.04 The Borrower shall execute and deliver from time to time all such further documents and assurances as may be reasonably required by the Lender from time to time in order to provide the Security Documents contemplated hereunder, specifically including supplemental or additional security agreements which shall include lists of specific assets to be subject to the security interests required hereunder.

5.05 If insurance proceeds become payable in respect of loss of or damage to any property owned by the Borrower the Lender shall apply such proceeds against the Borrower's Liabilities (allocated amongst the components of the Borrower's Liabilities, at all times, by the Lender in its sole and absolute discretion).

## ARTICLE 6 COVENANTS, REPRESENTATIONS AND WARRANTIES

6.01 The Borrower represents and warrants to the Lender as follows (which shall survive the execution and delivery of this Agreement), the truth and accuracy of which are a continuing condition of the advance of the Loan Instalments and the Borrower hereby acknowledges, confirms and agrees that the Lender is relying on such representations and warranties:

- (a) The Borrower is a validly subsisting corporation under the *Business Corporations Act* (Ontario), and is duly qualified to carry on its business in the jurisdiction in which it carries on business and has the power and authority to enter into and perform its obligations under this Agreement, is the registered owner of the Property and is legally entitled to carry on its business as currently conducted or as currently contemplated.
- (b) The Borrower has obtained all material licenses, permits and approvals from all governments, governmental commissions, boards and other agencies of

- 13 -

jurisdictions in which it carries on (or contemplates carrying on) business which are required and which will allow for the development of the Property.

- (c) The Borrower or its solicitor has delivered to the Lender, or its solicitor, copies of the constating documents of the Borrower and the Lender's solicitor has obtained a legal opinion from the Borrower's solicitor that the Borrower is authorized to enter into this Agreement and the Security Documents.
- (d) The execution, delivery and performance of this Agreement and the Security Documents has been duly authorized by all requisite action on the part of the Borrower; and this Agreement and the Security Documents have been, or will be, duly executed and delivered by the Borrower, and this Agreement and the Security Documents delivered or to be delivered pursuant hereto and thereto constitutes, or when delivered will constitute, a valid and binding obligation of the Borrower and enforceable against the Borrower in accordance with their terms, subject to the application of bankruptcy, insolvency and similar laws affecting the enforcement of creditors' rights generally and the fact that the right to obtain judicial orders requiring specific performance or other equitable remedies is in the discretion of the court.
- (e) The Borrower shall and does indemnify and hold harmless the Lender and the Indemnitees from and against all losses, claims, damages, liabilities, and expenses, to which any such person or entity may become subject arising out of or in connection with this Agreement, the use of proceeds, or any related transaction or any claim, litigation, investigation or proceeding, relating to any of the foregoing, regardless of whether the Lender is a party thereto, and to reimburse the Lender, forthwith upon demand for any reasonable, legal or other expenses incurred in connection with investigating or defending any of the foregoing.
- (f) The Borrower acknowledges that neither its execution nor delivery of this Agreement or the Security Documents the consummation of the transactions herein contemplated nor compliance with the terms, conditions and provisions hereof or thereof does not and will not conflict with, and does not and will not result in any breach of or constitutes a default under any of the provisions of the constating documents or by-laws of the Borrower or any applicable Law including applicable securities laws, rules, policies and regulations or any contract or agreement upon or to which the Borrower is a party.
- (g) The Borrower has good and marketable title to the Property and its assets free from all mortgages, security interests, Liens, pledges, charges, encumbrances, title retention agreements, options or adverse claims, other than the permitted encumbrances as identified in Schedule "D" attached hereto (the "Permitted Encumbrances") and the Outstanding Encumbrances and Liens.
- (h) The Borrower has filed or caused to be filed, in a timely manner all tax returns, reports and declarations, which are required to be filed by it. All information in such tax returns, reports and declarations is complete and accurate in all material



- 14 -

respects. The Borrower has paid or caused to be paid all taxes due and payable or claimed due and payable in any assessment received by it, except taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to the said Borrower and with respect to which adequate reserves have been set aside on its books. Adequate provision has been made for the payment of all accrued and unpaid federal, provincial, local, foreign and other taxes whether or not yet due and payable and whether or not disputed.

- (i) All representations and warranties of the Borrower contained in this Agreement or in any of the Security Documents shall survive the execution and delivery of this Agreement and shall be deemed to have been made again to the Lender on the date of each Loan Instalment pursuant to this Agreement and shall be conclusively presumed to have been relied on by the Lender regardless of any investigation made or information possessed by the Lender. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which the Borrower shall now or hereafter give, or cause to be given, to the Lender.
- (j) The Borrower further acknowledges and agrees that the terms of this Agreement shall override the terms of any previous loan agreements to which the Borrower and the Lender may be or may have been Parties.
- (k) The Borrower acknowledges that the Lender may have executed a loan agreement that has been amended to accommodate the beneficial owners of the Lender and the Borrower agrees to abide by the specific terms of each of said Agreements.
- (l) The Borrower has no Subsidiaries.
- (m) no Person has any agreement or option or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement, including convertible securities, warrants or convertible obligations of any nature, for the purchase of any properties or assets of the Borrower out of the ordinary course of business or for the purchase, subscription, allotment or issuance of any debt or equity securities of the Borrower.
- (n) The Borrower is in compliance in all material respects with all applicable Laws of each jurisdiction in which it carries on business and is duly licensed, registered and qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the property owned or leased by it make such qualification necessary; and all such licences, registrations and qualifications are valid and subsisting and in good standing.
- (o) The Borrower owns, possesses and has a good and marketable title to its undertaking, property and assets, free and clear of any and all Liens except for Permitted Encumbrances and the Outstanding Encumbrances and Liens. The Borrower does not have any commitment or obligation (contingent or otherwise)

- 15 -

to grant any Liens except for the Permitted Encumbrances. No event has occurred which constitutes, or which with the giving of notice, lapse of time or both.

- (p) The Borrower have placed insurance, including property, boiler and machinery, business interruption and liability insurance, in appropriate amounts and for appropriate risks as would be considered prudent for similar business.
- (q) The Borrower and its business, operations, assets, equipment, property, leaseholds and other facilities is in compliance in all material respects with all Requirements of Environmental Law, specifically including all Requirements of Environmental Law concerning the storage and handling of Hazardous Materials. The Borrower holds all material permits, licenses, certificates and approvals from Governmental Authorities which are required in connection with (i) air emissions; (ii) discharges to surface or groundwater; (iii) noise emissions; (iv) solid or liquid waste disposal; (v) the use, generation, storage, transportation or disposal of Hazardous Materials; and (vi) all other Requirements of Environmental Law. There has been no material emission, spill, release, or discharge into or upon (i) the air; (ii) soils, or any improvements located thereon; (iii) surface water or groundwater; or (iv) the sewer, septic system or waste treatment, storage or disposal system servicing the premises, of any Hazardous Materials at or from the Property, and there has been no complaint, order, directive, claim, citation, or notice from any Governmental Authority or any other Person with respect to (i) air emissions; (ii) spills, releases, or discharges to soils or improvements located thereon, surface water, groundwater or the sewer, septic system or waste treatment, storage or disposal systems servicing the Property; (iii) noise emissions; (iv) solid or liquid waste disposal; (v) the use, generation, storage, transportation, or disposal of Hazardous Materials; or (vi) other Requirements of Environmental Law affecting the Property. There are no legal or administrative proceedings, investigations or claims now pending, or to the Borrower's knowledge, threatened, with respect to the presence on or under, or the discharge, emission, spill, radiation or disposal into or upon any of the Properties, the atmosphere, or any watercourse or body of water, of any Hazardous Material; nor are there any material matters under discussion with any Governmental Authority relating thereto; and there is no factual basis for any such proceedings, investigations or claims. The Borrower has no material indebtedness, obligation or liability, absolute or contingent, matured or not matured, with respect to the storage, treatment, cleanup or disposal of any Hazardous Materials (including without limitation any such indebtedness, obligation, or liability under any Requirements of Environmental Law regarding such storage, treatment, cleanup or disposal).
- (r) Save and except for the Outstanding Encumbrances and Liens, there are no actions, suits or proceedings now pending, or to the Borrower's knowledge, threatened, against the Borrower in any court or before or by any federal, provincial, municipal or other Governmental Authority.
- (s) No guarantees have been granted by the Borrower.

- 16 -

- (t) The Borrower has remitted on a timely basis all amounts required to have been withheld and remitted (including withholdings from employee wages and salaries relating to income tax, employment insurance and Canada Pension Plan contributions), goods and services and Harmonized Sales tax and all other amounts which if not paid when due could result in the creation of a Statutory Lien against any of the Borrower's property including the Property, except for Permitted Encumbrances.
- (u) Save and except for the Outstanding Encumbrances and Lien, no Default, Event of Default or Material Adverse Change has occurred and is continuing.
- (v) All financial and other information furnished by or in respect of the Borrower to the Lender for the purposes of or in connection with this Agreement or the Security Documents are true and accurate in all material respects and is not incomplete by omitting to state any fact necessary to make such information not misleading. There are no facts known to the Borrower which could materially adversely affect the Borrower's ability to observe and perform their obligations under the Security Documents, or which if known to the Lender could reasonably be expected to deter the Lender from making any Loan Instalments hereunder on the terms and conditions contained herein.

#### ARTICLE 7 COVENANTS

7.01 The Borrower hereby covenants and agrees with the Lender that it will:

- (a) pay all principal, interest and other amounts due hereunder including the Borrowers Liabilities at the times and in the manner specified herein;
- (b) maintain its corporate existence in good standing, continue to carry on its business, preserve its rights, powers, licences, privileges, franchises and goodwill, exercise any rights of renewal or extensions of any leases, licences, concessions, franchises or any other rights whatsoever which are material to the conduct of its business, maintain all qualifications to carry on business in each jurisdiction in which such qualifications are required, and carry on and conduct its business in a proper and efficient manner so as to protect its property and income; and not materially change the nature of its business;
- (c) comply in all material respects with all applicable Laws (specifically including, for greater certainty, all applicable Requirements of Environmental Law), use the proceeds of all Loan Instalments hereunder for legal and proper purposes in connection with the purposes set out in the first recital of this Agreement, and obtain and maintain in good standing all material leases, licences, permits and approvals from any and all Governmental Authorities required in respect of its business and operations;

- 17 -

- (d) pay when due all rents, taxes, rates, levies, assessments and governmental charges, fees and dues lawfully levied, assessed or imposed in respect of its property which are material to the conduct of its business, and deliver to the Lender upon request receipts evidencing such payments;
- (e) maintain adequate books, accounts and records in accordance with GAAP;
- (f) keep the Property and its assets in good repair and working condition;
- (g) permit the Lender and its employees, representatives and agents (during normal business hours and in a manner which does not materially interfere with its business) to enter upon and inspect the Property and its properties, assets, books and records from time to time and make copies of and abstracts from such books and records, and discuss its affairs, finances and accounts with its officers, directors, accountants and auditors; such access shall be on 48 hours' prior notice unless a Default has occurred and is continuing in which event no notice shall be required;
- (h) obtain from financially responsible insurance company and maintain liability insurance, all-risks property insurance on a replacement cost basis (less a reasonable deductible not to exceed amounts customary in the industry for similar businesses and properties), business interruption insurance and insurance in respect of such other risks as the Lender may reasonably require from time to time; all of which policies of insurance shall be in such amounts as may be reasonably required by the Lender and shall include a standard mortgage clause approved by the Insurance Bureau of Canada; and the Lender's interest shall be noted as an additional insured on all liability insurance policies and as second mortgagee and loss payee on all other insurance policies; and the Lender shall be provided with certificates of insurance and certified copies of such policies from time to time upon request;
- (i) fulfil all covenants and obligations required to be performed by it under this Agreement and the Security Documents to which it is a party and any other agreement or undertaking now or hereafter made between it and the Lender;
- (j) provide prompt notice to the Lender of: (i) the occurrence of any Default or Event of Default; (ii) the incorrectness of any representation or warranty contained herein or any Security Documents in any material respect; (iii) any material contravention of or non-compliance by any Borrower with any terms and conditions of this Agreement or any Security Document; (iv) any Material Adverse Change; (v) any litigation affecting the Borrower; (vi) any material labour dispute affecting the Borrower; or (vii) any notice in respect of the termination or suspension of, or a material default under, any Material Contract;
- (k) provide the Lender with such further information, financial data, documentation and other assurances as the Lender may reasonably require from time to time in order to ensure ongoing compliance with the terms of this Agreement and the Security Documents and to achieve the spirit and intent of this Agreement;

- 18 -

- (l) The Borrower hereby covenants and agrees with the Lender that the first Loan Instalment will be used to purchase the Property free and clear of any encumbrances and liens. The Borrower acknowledges that no funds will be disbursed directly to the Borrower until the Property has been acquired, free and clear of liens and encumbrances.

7.02 The Borrower hereby covenants and agrees with the Lender that it will not without the prior written consent of the Lender (which consent may be withheld in the sole and absolute discretion of the Lender):

- (a) grant or suffer to exist any Liens in respect of any of its property and assets including the Property, except the Permitted Encumbrances;
- (b) directly or indirectly sell or otherwise dispose of any of its assets save and except in the ordinary course of its business or further save and except to sales of dwelling units to bona fide arm's length third party purchasers of such units;
- (c) make any Distributions;
- (d) not materially change the nature of its business, maintain a place of business or any material assets in any jurisdiction other than the Province of Ontario, or enter into any transaction whereby all or a substantial portion of its undertaking, property and assets would become the property of any other Person, whether by way of reconstruction, reorganization, recapitalization, consolidation, amalgamation, merger, transfer, sale or otherwise, in each case without the prior written consent of the Lender in its sole and absolute discretion;
- (e) change its Fiscal Year (which for greater certainty presently ends on the last day of December in each year);
- (f) change its Accountants except with the prior written consent of the Lender which consent shall not be unreasonably withheld; and,
- (g) use the proceeds of any Loan Instalment for any purposes other than the development and construction of a condominium project on the Property; other than for the purposes of earning interest income on funds which are not immediately required to be expended by the Borrower.

7.03 The Borrower shall deliver by courier delivery to the Lender the following financial and other information at the times indicated below:

- (a) the annual Year-end Financial Statements of the Borrower, by the 120th day after the end of the Fiscal Year accompanied by a Compliance Certificate certified by the Chief Financial Officer of the Borrower or other senior officer of the Borrower acceptable to the Lender;
- (b) within the first 120 days after the start of each Fiscal Year, a business plan for the Borrower in respect of such Fiscal Year, which shall disclose all material

- 19 -

assumptions utilized and shall include the following items set out on a quarterly basis: balance sheet, income statement, cashflow statement, Capital Expenditures and tax liabilities; and

- (c) such additional information and documents as the Lender may reasonably require from time to time.

7.04 Full, true and accurate accounting and financial information shall be kept by the Borrower in accordance with GAAP as of the date hereof until at least after eighteen (18) months after the Borrower's Liabilities have been repaid. The Lender or anyone designated by the Lender shall have access to the books, records, financial information, financial statements and data of the Borrower (the "Borrower's Books and Records") at any and all times during regular business hours for the purpose of examining and reviewing the Borrower's Books and Records. The Lender shall not disclose any confidential information so obtained except to the extent that disclosure is reasonable in the conduct of the Lender's business.

7.05 The Lender hereby covenants with the Borrower, that the Lender shall execute any necessary documents and register such documents as may be reasonably requested by any construction financier to subordinate the Lender's Mortgage security to any mortgage or other security granted by the construction financier to the Borrower, for the purposes of funding the Borrower's construction of the project on the Property (which shall include demolition costs and professional fees in furtherance of such construction (architectural, engineering, etc.)); and the Lender appoints the Borrower as the Lender's power of attorney to execute any required documents on behalf of the Lender to evidence the foregoing.

#### ARTICLE 8 CONDITIONS PRECEDENT

8.01 The Lender shall have no obligation to make the first Loan Instalment hereunder or any Loan Instalments thereafter on the Closing Date unless at the time of making such Loan Instalment the following terms and conditions (which are condition precedents in favour of the Lender) shall have been satisfied in the opinion of the Lender:

- (a) the Lender shall have completed and shall be satisfied with its due diligence in respect of the Property;
- (b) all representations and warranties made by the Vendor contained in this Agreement or the Security Documents shall be true, correct and complete in all material respects;
- (c) all Security Documents required to be provided at the time of the first Loan Instalment shall have been executed and delivered, all registrations necessary or desirable in connection therewith shall have been made, and all legal opinions and other documentation required by the Lender in connection therewith shall have been executed and delivered, all in form and substance satisfactory to the Lender in its sole and absolute discretion;

- 20 -

- (d) the Lender shall have received satisfactory evidence that there are no Liens affecting the Borrower or its assets, except for Permitted Encumbrances and the Outstanding Encumbrances and Liens which shall be paid in full and deducted from the First Loan Instalment on the Closing Date;
- (e) the Lender shall have received particulars of all Permitted Encumbrances, specifically including the assets encumbered thereby, the amounts due thereunder, and confirmation from the holders thereof that the terms thereof are being complied with;
- (f) the property and assets of the Borrower shall be insured on the Closing Date; the terms and conditions of such insurance to be in compliance with the requirements of this Agreement in the opinion of the Lender;
- (g) the Lender shall have received an officer's certificate and certified copies of resolutions of the board of directors of the Borrower concerning the due authorization, execution and delivery of the Security Documents to which it is a party, and such related matters as the Lender may reasonably require;
- (h) the Lender shall have received from the Borrower a certificate of status as of the Closing Date or the date of any Loan Instalment, as the case may be, certificate of compliance or similar certificate for the Borrower issued by its governing jurisdiction and each other jurisdiction in which it carries on business or holds any material assets;
- (i) the Lender shall have received such additional evidence, documents or undertakings as it may reasonably require to complete the transactions contemplated hereby in accordance with the terms and conditions contained herein;
- (j) All Realty Taxes related to the Property are up-to-date as of the Closing Date; and
- (k) All mortgages, charges, Liens and encumbrances have been discharged, on the Closing Date and prior to any Loan Instalment being made.

8.02 The Borrower hereby acknowledges, confirms, covenants and agrees that the Lender is syndicating the Loan and therefore, the Lender shall have no obligation to make the first Loan Instalment hereunder on the Closing Date or any Loan Instalment thereafter unless at the time of making such Loan Instalment the syndication of the Loan has been completed in the opinion of the Lender.

#### **ARTICLE 9 DEFAULT AND REMEDIES**

9.01 The occurrence of any one or more of the following events, after the expiry of any applicable cure period set out below, shall constitute an event of default under this Agreement (an "Event of Default"):

- 21 -

- (a) the Borrower fails to pay any principal, interest, Expenses or any other amount payable hereunder when due under the terms of this Agreement or any of the Security Documents;
- (b) any representation, warranty or statement made to the Borrower herein or in any Security Documents is incorrect in any material respect on the date on which such representation, warranty or statement was made or deemed to have been made, or subsequently becomes incorrect in any material respect; provided that if such representation, warranty or statement is capable of being corrected within twenty (20) days, the Borrower diligently attempts to take all such action as may be necessary in order that such representation, warranty or statement will become correct and diligently keep the Lender informed of its efforts in this regard, and such representation, warranty or statement is correct by not later than the expiry of such twenty (20) day period on the opinion of the Lender, then the incorrectness of such representation, warranty or statement shall not constitute an Event of Default;
- (c) the Borrower fails to perform or comply with any of the covenants or obligations set out in this Agreement;
- (d) the Borrower fails to perform or comply with any of its covenants or obligations contained in any of the Security Documents, in each case, following receipt of notice of such non-compliance from the Lender; provided that if such non-compliance is capable of remedy within twenty (20) days, the Borrower diligently attempts to remedy such non-compliance and diligently keeps the Lender informed of its efforts in this regard, and such non-compliance is remedied within such twenty (20) day period in the opinion of the Lender, then such non-compliance shall not constitute an Event of Default;
- (e) an Insolvency Event occurs in respect of the Borrower;
- (f) any document constituting part of the Security Documents shall for any reason cease to be in full force and effect or shall be declared in a final judgment of a court of competent jurisdiction to be null and void; or the Borrower contests the validity or enforceability thereof or denies it has any further liability or obligation thereunder; or any document constituting part of the Security Documents shall for any reason fail to create a valid and perfected First-Ranking Security Interest subject to Permitted Encumbrances in the opinion of the Lender, in and to the property purported to be subject thereto, except that if such failure is capable of remedy within thirty (30) days, the Borrower diligently attempts to remedy such failure and diligently informs the Lender of its efforts in this regard, and the failure is remedied within such thirty (30) day period in the opinion of the Lender, then the failure shall not constitute an Event of Default;
- (g) any Person takes possession, or threatens to take possession, of any property of the Borrower including the Property by way of or in contemplation of enforcement of any security it may hold, or a distress or execution or similar process is levied or enforced against any such property; and,



- (h) any Governmental Authority shall take any action or proceeding to condemn, seize or appropriate any property of the Borrower that is material to its financial condition, business or operations.

9.02 Upon the occurrence of an Insolvency Event, the Borrower's Liabilities shall become immediately due and payable, without the necessity of any demand upon or notice to the Borrower by the Lender. Upon the occurrence and during the continuation of any Event of Default other than an Insolvency Event, the Lender may by written notice to the Borrower declare the Borrower's Liabilities to be immediately due and payable. Upon the occurrence and during the continuation of an Event of Default, both before and after the Acceleration Date, all outstanding Loan Instalments shall bear interest at the Loan Rate plus two percent (2%) per annum in order to compensate the Lender for the additional risk.

9.03 Upon the occurrence and during the continuation of an Event of Default, the Lender may apply any proceeds of realization from any Security or related to this Agreement or the Security Documents, against any portion or portions of the Borrower's Liabilities, and the Borrower may not require any different application. The taking of a judgment or any other action or dealing whatsoever by the Lender in respect of the Security Documents shall not operate as a merger of any of the Borrower's Liabilities hereunder or in any way affect or prejudice the rights, remedies and powers which the Lender may have, and the foreclosure, surrender, cancellation or any other dealing with any Security Documents or the said obligations shall not release or affect the liability of the Borrower or any other Person in respect of the remaining portion of the Borrower's Liabilities.

9.04 The Lender shall not be obliged to make any further Loan Instalments from and after the earliest to occur of the following: (i) delivery by the Lender to the Borrower of a written notice that a Default or an Event of Default has occurred and is continuing (whether or not such notice also requires immediate repayment of the Borrower's Liabilities); (ii) the occurrence of an Insolvency Event; and (iii) receipt by the Borrower of any garnishment notice or other notice of similar effect in respect of the Borrower pursuant to the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada) or any similar notice under any other statute.

9.05 All of the rights and remedies granted to the Lender in this Agreement and the Security Documents, and any other rights and remedies available to the Lender at law or in equity, shall be cumulative. The exercise or failure to exercise any of the said remedies shall not constitute a waiver or release thereof or of any other right or remedy, and shall be non-exclusive.

9.06 If the Borrower fails to perform any covenant or obligation to be performed by it pursuant to this Agreement or the Security Documents, the Lender may in its sole and absolute discretion, after written notice to the Borrower, perform any of the said obligations but shall be under no obligation to do so; and any amounts expended or advanced by the Lender for such purpose shall be payable by the Borrower upon demand together with interest at the Interest Rate.

9.07 If the Borrower intends to take the benefit of any Insolvency Legislation, including making an assignment for the general benefit of creditors, making a proposal or filing a notice of intention to make a proposal under Insolvency Legislation, the Borrower covenants and agrees to

provide the Lender with five (5) Business Days' prior written notice before any of the aforementioned proceedings are commenced. As soon as possible prior to the commencement of any such proceedings, the Borrower shall provide to the Lender copies of all relevant filing materials, including copies of draft court orders, plans of compromise, proposals and notices of intention. During this notice period the Lender may, in its sole discretion, elect to exercise any and all rights and remedies which may be available to it at that time as set out in this Agreement.

#### ARTICLE 10 GENERAL CONTRACT TERMS

10.01 The failure or delay by the Lender in exercising any right or privilege with respect to the non-compliance with any provisions of this Agreement by the Borrower and any course of action on the part of the Lender, shall not operate as a waiver of any rights of the Lender unless made in writing by the Lender. Any such waiver shall be effective only in the specific instance and for the purpose for which it is given and shall not constitute a waiver of any other rights and remedies of the Lender with respect to any other or future non-compliance.

10.02 In addition to any other liability of the Borrower hereunder, the Borrower hereby agrees to indemnify and save harmless the Indemnitees from and against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (including reasonable legal fees on a solicitor and his own client basis) of any kind or nature whatsoever (but excluding any consequential damages and damages for loss of profit) which may be imposed on, incurred by or asserted against the Indemnitees (except to the extent arising from the negligence or wilful misconduct of such Indemnitees) which relate or arise out of or result from:

- (a) any failure by the Borrower to pay and satisfy its obligations hereunder and the Security Documents including the Borrower's Liabilities; and,
- (b) any investigation by Governmental Authorities or any litigation or other similar proceeding related to any use made or proposed to be made by the Borrower of the proceeds of any Loan Instalment
- (c) any losses suffered by the Indemnitees for, in connection with, or as a direct or indirect result of, the failure of the Borrower to comply with all Requirements of Environmental Law;
- (d) any losses suffered by the Indemnitees for, in connection with, or as a direct or indirect result of, the presence of any Hazardous Material situated in, on or under any property owned by the Borrower including the Property or upon which it carries on business; and
- (e) any and all liabilities, losses, damages, penalties, expenses (including reasonable legal fees) and claims which may be paid, incurred or asserted against the Indemnitees for, in connection with, or as a direct or indirect result of, any legal or administrative proceedings with respect to the presence of any Hazardous Material on or under any property owned by the Borrower including the Property or upon which it carries on business, or the discharge, emission, spill, radiation or disposal by the Borrower of

- 24 -

any Hazardous Material into or upon the Property, the atmosphere, or any watercourse or body of water; including the costs of defending and/or counterclaiming or claiming against third parties in respect of any action or matter and any cost, liability or damage arising out of a settlement entered into by the Indemnitees of any such action or matter;

10.03 The termination of this Agreement shall not relieve the Borrower from its obligations to the Lender arising prior to such termination, such as but not limited to obligations arising as a result of or in connection with any breach of this Agreement or the Security Documents, any failure to comply with this Agreement or the Security Documents or the inaccuracy of any representations and warranties made or deemed to have been made prior to such termination, and obligations arising pursuant to all indemnity obligations contained herein.

10.04 If the Borrower fails to pay when due any Expenses or other amounts paid by the Lender hereunder (other than principal or interest on any Loan Instalment), the Borrower agrees to pay interest on such unpaid amount from the time such amount is due until paid at the Loan Rate.

10.05 Without prejudice to any other method of giving notice, all communications provided for or permitted hereunder shall be in writing and delivered to the addressee by prepaid private courier or sent by telecopy to the applicable address and to the attention of the officer of the addressee as follows:

(i) to the Borrower:

Scollard Development Corporation  
51 Caldari Road, Suite M1  
Vaughan, Ontario, L4K 4G3

Attention: John Davies

with a copy to:

Harris + Harris LLP  
2355 Skymark Avenue, Suite 300  
Mississauga, Ontario, L4W 4Y6

Attention: Mr. Gregory H. Harris  
Fax Number: 905-629-4350

(ii) if to the Lender:

c/o Tier 1 Transaction Advisory Services Inc.  
3100 Steeles Avenue East, Suite 902  
Markham, Ontario, L3R 8T3

Attention: Mr. Raj Singh  
Fax Number: 647-689-2374

- 25 -

with a copy to:

Nancy Elliott, Barrister & Solicitor  
5000 Yonge Street  
Suite 1901  
Toronto, Ontario, M2N 7E9

Attention: Ms. Nancy Elliott  
Fax Number: (416) 628-5597

Any communication transmitted by prepaid private courier shall be deemed to have been validly and effectively given or delivered on the Business Day after which it is submitted for delivery. Any communication transmitted by telecopy shall be deemed to have been validly and effectively given or delivered on the day on which it is transmitted, if transmitted on a Business Day on or before 5:00 p.m. (local time of the intended recipient), and otherwise on the next following Business Day. Any party may change its address for service by notice given in the foregoing manner.

10.06 Any provision of this Agreement which is illegal, prohibited or unenforceable in any jurisdiction, in whole or in part, shall not invalidate the remaining provisions hereof; and any such illegality, prohibition or unenforceability in any such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.07 The Borrower shall from time to time at its own expense promptly execute and deliver or cause to be executed and delivered to the Lender all such other and further documents, agreements, opinions, certificates and instruments which may be requested by the Lender if necessary or desirable to more fully record or evidence the obligations intended to be entered into herein, or to make any recording, file any notice or obtain any consent.

10.08 Time shall be of the essence of this Agreement.

10.09 The Borrower may not assign any of its rights or obligations under this Agreement without the prior written consent of the Lender. The Lender may grant participations in all or any portion of its rights under this Agreement from time to time without notice to or obtaining the prior written consent of the Borrower. The Borrower agrees to co-operate fully with the Lender in connection with any assignment or participation pursuant to this section, and agrees to execute and deliver from time to time in favour of the Lender and any such assignee or participant such documents and assurances as may be reasonably required by the Lender or the assignee or participant in connection with such assignment or participation.

10.10 This Agreement and any other documents or instruments contemplated herein or therein shall constitute the entire agreement and understanding between the Borrower and the Lender relating to the subject-matter hereof. For greater certainty and without limiting the generality of the foregoing, this Agreement supersedes all discussion papers previously issued by the Lender relating to the proposed establishment of the Loan, which have no force or effect.

- 26 -

10.11 To the extent that there is any inconsistency between a provision of this Agreement and a provision of any document constituting part of the Security including the Security Documents, the provision of this Agreement shall govern. For greater certainty, a provision of this Agreement and a provision of any Security Document shall be considered to be inconsistent if both relate to the same subject-matter and the provision in the Security Document imposes more onerous obligations or restrictions than the corresponding provision in this Agreement (excluding fees and Expenses).

10.12 This Agreement shall be interpreted in accordance with the laws of the Province of Ontario. Without prejudice to the right of the Lender to commence any proceedings with respect to this Agreement in any other proper jurisdiction, the parties hereby attorn and submit to the non-exclusive jurisdiction of the courts of the Province of Ontario.

10.13 This Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original and which counterparts together shall constitute one and the same Agreement. This Agreement may be executed by facsimile, and any signature contained hereon by facsimile shall be deemed to be equivalent to an original signature for all purposes.

10.14 This Agreement shall be binding upon and shall enure to the benefit of the parties and their respective successors and permitted assigns; "successors" includes any corporation resulting from the amalgamation of any party with any other corporation.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written on the first page hereof.

SCOLLARD TRUSTEE CORPORATION

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

Name: Raj Singh  
Title: President

*I have authority to bind the corporation*

SCOLLARD DEVELOPMENT CORPORATION

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

John Davies

*I have authority to bind the corporation*

**SCHEDULE "A"**  
**THE LANDS**

**Legal Description:**

**PIN 26484-0005 (LT)**

PT LT 8 BLK 4 PL H50035 WHITBY; PT LT 9 BLK 4 PL H50035 WHITBY; PT LT 14 BLK 4 PL H50035 WHITBY; PT LT 15 BLK 4 PL H50035 WHITBY AS IN D405505; WHITBY, and municipally known as 1606 Charles Street, Whitby

**PIN 26484-0006 (LT)**

PT LT 8 BLK 4 PL H50035 WHITBY; PT LT BLK 4 PL H50035 WHITBY AS IN CO139720 & PT 18, 40R10885; S/T CO139720; WHITBY, and municipally known as 1610 Charles Street, Whitby

**PIN 26484-0007 (LT)**

PT LT 7 BLK 4 PL H50035 WHITBY; PT LT 16 BLK 4 PL H50035 WHITBY AS IN D374163; S/T CO132238; WHITBY, and municipally known as 1614 Charles Street, Whitby

**Municipal Description:**

1606, 1610 and 1614 Charles Street, Whitby, Ontario

**SCHEDULE "B"**  
**SCHEDULE OF INTEREST PAYMENTS**

Interest payments shall be calculated at an annual interest rate of EIGHT PERCENT (8%), paid quarterly in trust to the Borrower's Solicitor, commencing on or about October 1, 2014. All funds advanced after July 1, 2014 will receive an initial payment pro rated up to and including October 1, 2014 and full payments quarterly until the maturity date, anticipated to be on or about August 1, 2017.

**SCHEDULE "C"**  
**EXPENSES**

The Expenses include the following:

- a) Mortgage Brokerage Fee of \$186,000 payable to First Commonwealth Mortgage Corporation and Tier 1 Mortgage Corporation (collectively, referred to as the "Mortgage Broker"); (based on a maximum mortgage advance of \$18,600,000). The fee payable to the Mortgage Broker is 1% of the mortgage amount advanced.
- b) Referral and Related Fees of \$2,790,000 payable on account of fees and commission incurred in relation to the Loan which shall be paid as the Mortgage Broker may in writing direct (based on a maximum mortgage advance of \$18,600,000 where the actual mortgage advance is less than \$18,600,000, the referral and related fees will be proportionately reduced); and,
- c) Legal Fees. Legal Fees of \$20,000.00 plus HST plus Disbursements (which shall include Title Insurance and other Expenses) shall be payable to the Lender's Solicitors which shall be deducted from the first Loan Instalment. In the event that there is more than one (1) Loan Instalments, then additional legal fees of \$3,000 plus HST plus Disbursements shall be paid to the Lender's Solicitors on each additional Loan Instalment. The fees, taxes and disbursements of the Borrower's Solicitors shall be paid in addition to the fees, taxes and disbursements of the Lender's Solicitors. It is estimated the fees of the Borrower's Solicitors shall be \$35,000 (plus HST and disbursements) for the first Loan Instalment and \$20,000 (plus HST and disbursements) for each Loan Instalment thereafter, exclusive of the costs of preparation of any offering documents in jurisdictions where such documents are required.



**SCHEDULE "D"**  
**ADDITIONAL LOAN PAYMENT**

The Additional Loan Payment shall be an amount equal to four (4%) per cent per annum of the principal amount of the Mortgage advanced to the Borrower and shall be payable for such time as the Loan remains outstanding, as determined by the Lender (the "Additional Loan Payment"). The Additional Loan Payment shall be payable by the Borrower from the Distributable Cash Proceeds or from the proceeds being held by the Lender's Solicitor, in trust, as contemplated in Sub-Section 7.01(n) of this Agreement. The payment of the Additional Loan Payment may be paid at any time and from time to time to the Lender after the Loan, plus interest thereon in accordance with this Agreement and all Expenses are paid pursuant to this Agreement. If the principal amount advanced to the Borrower is less than \$18,600,000, the Additional Loan Payment shall be reduced accordingly. The Additional Loan Payment will be paid after the Loan, plus interest thereon in accordance with this Agreement and all Expenses are paid pursuant to this Agreement as determined by the Lender, acting reasonably.

For the sake of clarity, if the face amount of the Mortgage is \$18,600,000 and the Borrower's Liabilities have not been paid until the third anniversary of the first Loan Instalment, then the amount of the Additional Loan Payment payable by the Borrower to the Lender shall be \$2,232,000, or 4% per annum for each year the Mortgage is outstanding; which interest amount shall not be compounded from time to time. Notwithstanding the foregoing, the calculation of the Additional Loan Payment and the timing of the payments thereof shall be determined by the Lender, acting reasonably.

The Lender shall provide to the Borrower reasonable notice of any payments made on account of the Additional Loan Payment. If the Borrower exercises its right to prepay all or a portion of the Loan, then the 4% per annum Additional Loan Payment for the third year (or any additional extensions) of the term of this Loan shall continue to be payable, in full, notwithstanding any prepayment, from Distributable Cash Proceeds.

**SCHEDULE "E"**  
**PERMITTED ENCUMBRANCES**

1. Liens for municipal property taxes, local improvement assessments or taxes, or other taxes, assessments or recoveries relating to the Property which are not at the time due;
2. The reservations, limitations, exceptions, provisos and conditions, if any expressed in any original grants from the Crown including, without limitation, the reservations of any mines and minerals in the Crown or in any other person.
3. Any registered or unregistered licenses, easements, rights-of-way, rights in the nature of easements and agreements with respect thereof which relate to the provisions of utilities or services or easements or rights of way in favour of any governmental authority, any private or public utility, any railway company or any adjoining owner to the Property (including, without limitation, agreements, easements, licenses, rights-of-way and interests in the nature of easements for sidewalks, public ways, sewers, drains, gas, steam and water mains or electric light and power, or telephone and telegraphic conduits, poles, wires, and cables).
4. Title defects or irregularities, which are of a minor nature and in the aggregate will not materially adversely impair the use or marketability of the Real Property or that part thereof affected by the defect or irregularity for the purposes for which it is presently used.
5. The exceptions, limitations and qualifications of the *Land Titles Act* and any amendments thereto.

## **Appendix “C”**

## Appendix "C"

### Description of Affiliated Property Companies<sup>1</sup>

Entity	Description
Memory Care Investments (Kitchener) Ltd.	Owns property in Kitchener, Ontario.
Memory Care Investments (Oakville) Ltd.	Owns property in Oakville, Ontario.
Memory Care Investments (Burlington) Ltd.	Owner of 1703858 Ontario Inc., which owns a property in Burlington, ON
Textbook (445 Princess Street) Inc.	Owns property in Kingston, Ontario.
Textbook (555 Princess Street) Inc.	Owns property in Kingston, Ontario.
Textbook (525 Princess Street) Inc.	Owns property in Kingston, Ontario.
1703858 Ontario Inc.	Owns property in Burlington, Ontario.
Memory Care Investments Ltd.	Shareholder of Memory Care projects.
Textbook Student Suites Inc.	Management company/owns property in London, Ontario.
Textbook Suites Inc.	Management company for Textbook Group.
2375219 Ontario Ltd.	Owned retirement home and property in Kitchener, Ontario. Transferred its interest in the property to Memory Care Investments (Kitchener) Ltd.
McKenzie March Investments Ltd.	The Company was to be the developer of real property owned by this entity. It appears these monies were advanced to this entity to fund development costs. The project did not advance beyond the development stage.
Lafontaine Terrace Management Corporation	Operated retirement home owned by 2375219 Ontario Ltd.
Legacy Lane Investments Ltd.	Owned property in Huntsville, Ontario.
McMurray Street Investments Inc.	Owns property in Bracebridge, Ontario.
Textbook (774 Bronson Avenue) Inc.	Owns property in Ottawa, Ontario.

<sup>1</sup> This appendix has been prepared based on Company information and is subject to Section 1.2 of the Report.