

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 20TH DAY
MR. JUSTICE HAINEY) OF APRIL, 2018



KINGSETT MORTGAGE CORPORATION

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Kofman Inc., in its capacity as Court-appointed receiver and manager (in such capacity, the "**Receiver**"), without security, of all of the lands and premises municipally described as 429 and 445 Princess Street, Kingston, Ontario (collectively, the "**Lands**") and all of the present and after-acquired assets, undertaking and properties of Textbook (445 Princess Street) Inc. (the "**Debtor**") related thereto (collectively, together with the Lands, the "**Property**") for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver, as vendor, and 1975919 Ontario Inc. (the "**Purchaser**"), as purchaser, dated April 6, 2018 (the "**Sale Agreement**"), a copy of which is attached as Confidential Appendix "2" to the First Report of the Receiver dated April 13, 2018 (the "**First Report**"), and vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, all the Receiver's and the Debtor's right, title and interest in and to the property

described as the "Purchased Assets" in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Danish Afroz sworn April 13, 2018, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all the Receiver's and the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement, including without limitation the subject real property identified in **Schedule "B"** hereto (the "**Real Property**"), shall vest absolutely in the Purchaser, or as it may direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, leases, notices of lease, subleases, licences, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, levies, charges, or other financial or monetary claims, whether or not they

have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Haaney dated January 9, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser, or as it may direct, as the owner of the subject real property identified in **Schedule "B"** hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule "C"** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if

the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

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

(a) the pendency of these proceedings;

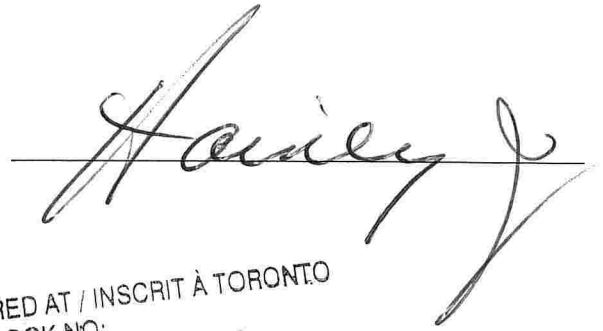
(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and

any assignment in bankruptcy made in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order.

All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read "Hainey", is written over a horizontal line.

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

APR 20 2018

PER / PAR:

NB

SCHEDULE "A"
FORM OF RECEIVER'S CERTIFICATE

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

KINGSETT MORTGAGE CORPORATION

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

RECEIVER'S CERTIFICATE

RECITALS

I. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 9, 2018, KSV Kofman Inc. was appointed as receiver and manager (in such capacity, the "**Receiver**"), without security, of all of the lands and premises municipally described as 429 and 445 Princess Street, Kingston, Ontario (collectively, the "**Lands**") and all of the present and after-acquired assets, undertakings and properties of Textbook (445 Princess Street) Inc. (the "**Debtor**") related thereto (collectively, together with the Lands, the "**Property**").

II. Pursuant to an Order of the Court dated April 20, 2018, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and 1975919 Ontario Inc. (the "**Purchaser**"), as purchaser, dated April 6, 2018 (the "**Sale Agreement**"), and provided for the vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, of all the Receiver's and the Debtor's right, title and interest in and to the Purchased Assets (as defined in

the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Receiver.

III. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The transaction has been completed to the satisfaction of the Receiver; and

4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV KOFMAN INC., in its capacity as court-appointed receiver, and manager of the real property known as 429 and 445 Princess Street, Kingston, Ontario and all other property, assets and undertakings of Textbook (445 Princess Street) Inc. related thereto, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

SCHEDULE "B"
LEGAL DESCRIPTION OF THE REAL PROPERTY

429 Princess Street, Kingston, Ontario

PIN 36071-0211 (LT)

PT LT 9 PL 135 KINGSTON CITY PT 1 13R6874; T/W FR600210; KINGSTON; THE COUNTY OF FRONTENAC

445 Princess Street, Kingston, Ontario

PIN 36071-0209 (LT)

LT 7-8 PL 135 KINGSTON CITY; PT LT 6 PL 135 KINGSTON CITY; PT LT 24 BLK Z CON 1 KINGSTON PT 1 13R9645; T/W & S/T FR396611; KINGSTON; THE COUNTY OF FRONTENAC

SCHEDULE "C"
INSTRUMENTS TO BE DELETED FROM PIN NOS. 36071-0211 (LT) and
36071-0209 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
FC223254	2016/07/18	Charge	\$7,000,000	Textbook (445 Princess Street) Inc.	KingSett Mortgage Corporation
FC223255	2016/07/18	Notice of Assignment of Rents - General	N/A	Textbook (445 Princess Street) Inc.	KingSett Mortgage Corporation
FC223256	2016/07/18	Charge	\$6,000,000	Textbook (445 Princess Street) Inc.	Textbook Student Suites (445 Princess Street) Trustee Corporation
FC223257	2016/07/18	Transfer of Charge (re: FC223256)	N/A	Textbook Student Suites (445 Princess Street) Trustee Corporation	Textbook Student Suites (445 Princess Street) Trustee Corporation Olympia Trust Company
FC225770	2016/08/22	Notice (re: amending charge FC223256 to increase principal amount to \$8,450,000)	N/A	Textbook Student Suites (445 Princess Street) Trustee Corporation Olympia Trust Company	
FC225771	2016/08/22	Transfer of Charge (re: FC223256)	N/A	Textbook Student Suites (445 Princess Street) Trustee Corporation Olympia Trust Company	Textbook Student Suites (445 Princess Street) Trustee Corporation Olympia Trust Company

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
FC228102	2016/09/28	Transfer of Charge (re: FC223256)	N/A	Textbook Student Suites (445 Princess Street) Trustee Corporation Olympia Trust Company	Textbook Student Suites (445 Princess Street) Trustee Corporation Olympia Trust Company
FC229585	2016/10/24	Postponement of Interest	N/A	Textbook Student Suites (445 Princess Street) Trustee Corporation Olympia Trust Company	KingSett Mortgage Corporation
FC254586	2018/01/10	Application for Court Order (appointing receiver)	N/A	Ontario Superior Court of Justice (Commercial List)	KSV Kofman Inc.

INSTRUMENTS TO BE DELETED FROM PIN NO. 36071-0211 (LT) ONLY

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
FC230738	2016/11/14	Application for Court Order	N/A	Ontario Superior Court of Justice	Grant Thornton Limited

INSTRUMENTS TO BE DELETED FROM PIN NO. 36071-0209 (LT) ONLY

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
FC230376	2016/11/03	Application for Court Order	N/A	Ontario Superior Court of Justice	Grant Thornton Limited

SCHEDULE "D"
PERMITTED ENCUMBRANCES

Assumed Encumbrances from PIN NOS. 36071-0211 (LT) and 36071-0209 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
FR681026	1998/08/12	Agreement re: Site Plan Control	N/A	101177 Ontario Inc. and Globular Drugs Limited	The Corporation of the City of Kingston
FC103142	2010/11/19	Application (General) (re: FR607874 and FR686777) re name change of Imasco R.I. Inc. to Shoppers Realty Inc.	N/A	Shoppers Realty Inc.	

Assumed Encumbrances from PIN NO. 36071-0211 (LT) only

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
FR686777	1999/05/21	Notice of Lease	N/A	Globular Drugs Ltd.	Imasco R. I. Inc.

Assumed Encumbrances from PIN NO. 36071-0209 (LT) only

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
FR396611	1984/10/15	Indenture	\$2.00	Dominion Stores Limited	Globular Drugs Limited
FR607874	1993/12/01	Notice of Lease	N/A	Globular Drugs Ltd.	Imasco R. I. Inc.

KINGSETT MORTGAGE CORPORATION

APPLICANT

-and-

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

TEXBOOK (445 PRINCESS STREET) INC.

RESPONDENT

ONTARIO

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

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

BENNETT JONES LLP

3400 First Canadian Place

P.O. Box 130

Toronto, Ontario M5X 1A4

Sean H. Zweig (LSUC#573071)

Tel: (416) 777-6253

Fax: (416) 863-1716

Counsel to the Receiver,
KSV Kofman Inc.