

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

and

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*  
and Section 101 of the *Courts of Justice Act*

**APPLICATION RECORD  
(APPLICATION RET. JANUARY 9, 2018)**

January 3, 2018

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
Counsel  
Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

**Matthew P. Gottlieb** LSUC#: 32268B  
mgottlieb@counsel-toronto.com  
Tel: 416 644 5353

**Andrew Winton** LSUC#: 54473I  
awinton@counsel-toronto.com  
Tel: 416 644 5342

Fax: 416 598 3730

Lawyers for the Applicant

**TO: RUBIN & CHRISTIE LLP**  
Lawyers  
2<sup>nd</sup> Floor, 219 Finch Avenue West  
Toronto, ON M2R 1M2

**Douglas Christie**  
Tel: (416) 361-0900  
Fax: (416) 361-3459  
Email: [dchristie@rubinchristie.ca](mailto:dchristie@rubinchristie.ca)

Lawyers for Textbook Student Suites (445 Princess Street) Inc.

**AND TO: WEIRFOULDS LLP**  
66 Wellington Street West, Suite 4100  
Toronto, ON M5K 1B7

**Edmond Lamek**  
Tel: (416) 947-5042  
Fax: (416) 365-1876  
Email: [elamek@weirfoulds.com](mailto:elamek@weirfoulds.com)

**Danny Nunes**  
Tel: (416) 619-6293  
Fax: (416) 365-1876  
Email: [dnunes@weirfoulds.com](mailto:dnunes@weirfoulds.com)

Lawyers for Textbook Student Suites (445 Princess Street) Inc.

**AND TO: GRANT THORNTON LIMITED**  
19th Floor, Royal Bank Plaza  
South Tower, 200 Bay Street  
Toronto, ON M5J 2P9

**Jonathan Krieger**  
Tel: (416) 360-5055  
Email: [jonathan.krieger@ca.gt.com](mailto:jonathan.krieger@ca.gt.com)

**David Goldband**  
Tel: (416) 369-6446  
Email: [david.goldband@ca.gt.com](mailto:david.goldband@ca.gt.com)

**Arsheel Muhit**  
Tel: (416) 777-6103  
Email: [arsheel.muhit@ca.gt.com](mailto:arsheel.muhit@ca.gt.com)

Court-appointed Trustee

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

**Steven L. Graff**  
Tel: (416) 865-7726  
Fax: (416) 863-1515  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Ian Aversa**  
Tel: (416) 865-3082  
Fax: (416) 863-1515  
Email: [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)

**Jeremy Nemers**  
Tel: (416) 865-7724  
Fax: (416) 863-1515  
Email: [jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)

Lawyers for the Court-appointed Trustee

**AND TO: KSV KOFMAN INC.**  
150 King Street West, Suite 2308  
Toronto, ON M5H 1J9

**Bobby Kofman**  
Tel: (416) 932-6228  
Fax: (416) 932-6266  
Email: [bkofman@ksvadvisory.com](mailto:bkofman@ksvadvisory.com)

**Noah Goldstein**  
Tel: (416) 932-6207  
Fax: (416) 932-6266  
Email: [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com)

**Andrew Edwards**  
Tel: (416) 932-6031  
Fax: (416) 932-6266  
Email: [aedwards@ksvadvisory.com](mailto:aedwards@ksvadvisory.com)

Proposed Receiver and Manager

**AND TO: BENNETT JONES LLP**  
3400 One First Canadian Place, P.O. Box 130  
Toronto, ON M5X 1A4

**Sean Zweig**  
Tel: (416) 777-6254  
Fax: (416) 863-1716  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

**Jonathan Bell**  
Tel: (416) 777-6511  
Fax: (416) 863-1716  
Email: [bellj@bennettjones.com](mailto:bellj@bennettjones.com)

Lawyers for the Proposed Receiver and Manager

**AND TO: JOHN DAVIES**  
Email: [john@textbooksuites.com](mailto:john@textbooksuites.com)

**AND TO: WALTER THOMPSON**  
Email: [walter@textbooksuites.com](mailto:walter@textbooksuites.com)

**AND TO: TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION**  
2355 Skymark Avenue, Suite 300  
Mississauga, ON L4W 4Y6

**AND TO: SHOPPERS REALTY INC.**  
243 Consumers Road  
Toronto, ON M2J 4W8

# Index

## INDEX

<b>Tab</b>	<b>Description</b>	<b>Page No.</b>
1	Notice of Application, issued December 22, 2017	1 – 8
2	Affidavit of Daniel Pollack, sworn January 3, 2018	9 – 17
A	Exhibit A – Title Searches for 429 and 445 Princess Street, Kingston	18 – 23
B	Exhibit B – Corporation Profile Report for 445 Princess Street	24 – 29
C	Exhibit C – Commitment Letter dated May 5, 2016	30 – 48
D	Exhibit D – First Mortgage registered on July 18, 2016 as Instrument No. FC223254	49 – 77
E	Exhibit E – General Assignment of Rents	78 – 90
F	Exhibit F – Demand Letter and BIA Notice dated November 7, 2017	91 – 95
G	Exhibit G – Subordination and Standstill Agreement dated July 5, 2016	96 – 105
H	Exhibit H – Third Report of KSV Kofman Inc.	106 - 114
3	Draft Order	115 – 136
4	Blacklined Draft Order to Model Order	137 - 162

# **Tab 1**



Court File No. CV-17-589078-0001

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

BETWEEN:



KINGSETT MORTGAGE CORPORATION

Applicant

and

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*  
and Section 101 of the *Courts of Justice Act*

NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on ~~a date to be fixed by the Court~~, at January 9, 2018 10:00 a.m., before a judge presiding over the Commercial List at 330 University Avenue, 7th Floor, Toronto ON M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date December 22, 2017

Issued by \_\_\_\_\_

Local Registrar

Local Registrar

Address of court office: Superior Court of Justice  
330 University Avenue, 7th Floor  
Toronto ON M5G 1R7

TO: **SERVICE LIST**

## APPLICATION

1. The Applicant, KingSett Mortgage Corporation ("**KingSett Mortgage**") makes application for:

- (a) if necessary, an order abridging the time for service and filing of this Notice of Application and the Application Record, validating service effected to date, and an order dispensing with service thereof on any party other than the persons served;
- (b) an order appointing KSV Kofman Inc. ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**"), without security of certain real property and related assets of the Respondent further described in the supporting affidavit to this application (the "**Real Property**"), as further described below;
- (c) an order approving the Sale Process as described in the Receiver's Pre-Filing Report (the "**Pre-Filing Report**");
- (d) an order authorizing and approving the Receiver entering into an agreement with Pinchin Ltd. ("**Pinchin**") to prepare an environmental phase two assessment of the Real Property;
- (e) an order authorizing and approving the Receiver entering into an agreement with Jones Lang LaSalle Incorporated ("**JLL**") to market and sell the Property, as described in the Pre-Filing Report;
- (f) against the Respondent, the costs of this application, plus all applicable taxes, on a full indemnity basis; and

(g) such further and other relief as to this Honourable Court may seem just.

2. The grounds for the application are:

- (a) the Respondent (“**Textbook 445 Princess**”), is the registered owner of the properties municipally known as 429 and 445 Princess Street, Kingston (the “**Real Property**”);
- (b) the Real Property currently contains a Shoppers Drug Mart store – the Respondent intended to re-develop the Real Property to construct a student residence;
- (c) KingSett Mortgage provided financing to Textbook 445 Princess for the purpose of acquiring the Real Property, which is secured by a first mortgage registered against title (the “**Mortgage**”), and other security including but not limited to, a General Security Agreement;
- (d) on or about November 1, 2017, Textbook 445 Princess defaulted in meeting its payment obligations under the Mortgage;
- (e) despite written demand for payment and service of a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (“**BIA Notice**”), the Respondent has failed to pay the amounts outstanding under the Mortgage to KingSett Mortgage;
- (f) the time period provided in the BIA Notice has expired;
- (g) As of November 7, 2017, the amount outstanding under the Mortgage was \$7,061,611.48;

- (h) John Davies and Walter Thompson are officers and directors of the Respondent corporation;
- (i) certain corporations owned by Mr. Davies and Mr. Walters, including the Respondent, have been the subject of a Financial Services Commission of Ontario (“FSCO”) investigation which resulted in the appointment of a Trustee over certain of these companies known as the “Davies Developers” and ultimately the appointment of KSV as receiver and manager of certain properties owned by several of the Davies Developers (the “**Receivership Companies**”);
- (j) the Mortgage provides for the appointment of a receiver upon default;
- (k) it is appropriate that KingSett Mortgage seek the appointment of a receiver over the Property so that a judicial sale of the Real Property can be conducted;
- (l) to the extent that the Real Property is sold for an amount which is greater than the amount necessary to discharge the security of KingSett Mortgage, the receivership will provide a means for the distribution of those surplus funds to the second mortgagee;
- (m) it is in the interests of all the stakeholders that the Real Property be immediately marketed for sale;
- (n) KSV has consented to act as Receiver of the Property;
- (o) the Pre-Filing Report contains a recommended sale process for the Real Property, including the proposed retainer of JLL as the broker for the sale;

- (p) the retainer of Pinchin to conduct an environmental phase two assessment of the Real Property will facilitate diligence, which will help complete the sales process;
  - (q) subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
  - (r) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C43, as amended;
  - (s) rules 1.04, 2.03, 3.02 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
  - (t) such further and other grounds as the lawyers may advise.
3. The following documentary evidence will be used at the hearing of the application:
- (a) Affidavit of Daniel Pollack and the exhibits thereto, to be sworn;
  - (b) Consent of KSV to act as Receiver;
  - (c) Pre-Filing Report of KSV in its capacity as proposed Receiver of the Respondent (to be filed); and
  - (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

-7-

December 22, 2017

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
Counsel  
Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

**Matthew P. Gottlieb** LSUC#: 32268B  
mgottlieb@counsel-toronto.com  
Tel: 416 644 5353

**Andrew Winton** LSUC#: 54473I  
awinton@counsel-toronto.com  
Tel: 416 644 5342

Fax: 416 598 3730

Lawyers for the Applicant

KINGSETT MORTGAGE CORPORATION  
Applicant

-and-

TEXTBOOK (445 PRINCESS STREET) INC  
Respondent

Court File No.

247-589078-  
00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF APPLICATION**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**

Counsel

Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

**Matthew P. Gottlieb** LSUC#: 32268B

mgottlieb@counsel-toronto.com

Tel: 416 644 5353

**Andrew Winton** LSUC#: 54473I

awinton@counsel-toronto.com

Tel: 416 644 5342

Fax: 416 598 3730

Lawyers for the Applicant



# Tab 2

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

and

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*  
and Section 101 of the *Courts of Justice Act*

**AFFIDAVIT OF DANIEL POLLACK**

I, Daniel Pollack, of the City of Toronto, in the Province of Ontario, MAKE OATH AND  
SAY:

1. I am Director, Special Loans and Portfolio Management, of the Applicant, KingSett Mortgage Corporation (“**KingSett Mortgage**”). I have responsibility for matters pertaining to the borrowings of Textbook (445 Princess Street) Inc. (“**Textbook 445 Princess**”) from KingSett Mortgage, and, as such, have knowledge of the matters contained in this affidavit. Where I make statements based on information and belief, the source of that information is set out and I verily believe the statements to be true.

2. I am making this affidavit in support of an application by KingSett Mortgage for the appointment of a receiver and manager over the real property known as 429 and 445 Princess Street, Kingston, Ontario, the legal description of which is further set out in the title searches

attached hereto as **Exhibit “A”** (the “**Real Property**”) and all other property, assets and undertakings of Textbook 445 Princess related thereto (collectively, the “**Property**”).

### **DESCRIPTION OF THE PARTIES**

3. KingSett Mortgage is incorporated pursuant to the laws of Canada, and is a subsidiary of KingSett Capital Inc. (“**KingSett Capital**”), a private equity real estate investment firm with interests totalling over \$13 billion of Canadian assets. KingSett Mortgage is the entity through which KingSett Capital provides mortgage strategies to its clients. KingSett Mortgage is headquartered in Toronto, Ontario.

4. Textbook 445 Princess is a corporation incorporated under the laws of Ontario with a registered office at 2355 Skymark Avenue, Suite 300, Mississauga, Ontario. Attached hereto as **Exhibit “B”** is a corporation profile report which indicates that John Davies and Walter Thompson are the sole officers and directors of Textbook 445 Princess.

5. Textbook 445 Princess is the registered owner of the Real Property. Although the Real Property has two separate addresses, the addresses in effect comprise one development property. The Real Property is located near Queens University in Kingston. A Shoppers Drug Mart store is currently situated on the Real Property.

### **THE LOAN FACILITY AND SECURITY**

6. KingSett Mortgage entered into a Commitment Letter with Textbook 445 Princess on May 5, 2016, under which it agreed to provide, among other things, \$7 million in purchase financing to allow Textbook 445 Princess to buy the Real Property (the “**Commitment Letter**”). A copy of the Commitment Letter is attached hereto as **Exhibit “C”**.

7. On or about July 18, 2016, Textbook 445 Princess purchased the Real Property from Globular Drugs Ltd. (“Globular”) for a purchase price of \$9,300,000.00 (the “**Purchase Price**”).

8. Textbook 445 Princess satisfied the purchase price in part with the funds provided by KingSett Mortgage under the Commitment Letter. A further portion of the Purchase Price was funded by way of a mortgage from Textbook Student Suites (445 Princess Street) Trustee Corporation (the “**445 Trustee**”). The sale of the Real Property by Globular to Textbook 445 Princess was completed on July 18, 2016.

9. The funding provided by KingSett Mortgage under the Commitment Letter was secured by a first mortgage registered against title to the Real Property (the “**First Mortgage**”). The First Mortgage has a maturity date of August 1, 2018. Attached hereto as **Exhibit “D”** is a copy of the First Mortgage registered on July 18, 2016, as Instrument No. FC223254.

10. On July 5, 2016, Textbook 445 Princess also gave the following additional security to KingSett Mortgage:

- (a) General Assignment of Rents and Leases; and
- (b) General Security Agreement (the “**GSA**”).

11. Attached hereto as **Exhibit “E”** is a copy of the GSA. The General Assignment of Rents and Leases can be provided to the court for its review upon request. The GSA and the First Mortgage provide for the appointment of a receiver upon default.

#### **THE DEFAULT**

12. Prior to November 1, 2017, in the ordinary course, Shoppers Realty Inc., the tenant on the Real Property (the “**Tenant**”), paid rent on a monthly basis to Textbook 445 Princess. The rent

payment was deposited to Textbook 445 Princess's operating account. On the first of each month, KingSett Mortgage would debit that account in the amount of \$32,698.63 plus HST to satisfy the monthly mortgage payment due under the First Mortgage.

13. On or about November 1, 2017, KingSett Mortgage attempted to debit the operating account of Textbook 445 Princess as was its normal practice, but the debit was rejected by Textbook 445 Princess's bank on the basis that insufficient funds were in the account.

14. By letter dated November 7, 2017, KingSett Mortgage's lawyers made written demand for payment on Textbook 445 Princess of the full amount outstanding under the First Mortgage (the "**Demand Letter**") and served a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* ("**BIA Notice**"). Attached hereto and as **Exhibit "F"** to this affidavit is a copy of the Demand Letter and the BIA Notice dated November 7, 2017.

15. As of November 7, 2017, the date of the demand letter, the amount outstanding was \$7,061,611.48.

16. Textbook 445 Princess has failed to pay KingSett Mortgage the amounts outstanding under the First Mortgage and the time period provided in the BIA notice has expired. As of the date of this affidavit, KingSett has received no response to the Demand Letter and Textbook 445 Princess remains in default.

17. On or about November 20, 2017, KingSett Mortgage's lawyers wrote to the Tenant to inform it of Textbook 445 Princess's default under the First Mortgage and to direct the Tenant to pay the monthly rent directly to KingSett Mortgage. The Tenant complied with this direction and

has been paying the monthly rent directly to KingSett Mortgage, starting with the December 2017 rent.

### **OTHER SECURED CREDITORS**

18. Based on my review of a subordination and standstill agreement made as of July 5, 2016 (the "**Subordination and Standstill Agreement**"), the 445 Trustee made a loan or credit facility available to Textbook 445 Princess in the principal sum of \$8,450,000.00 secured by way of a second mortgage of the Real Property (the "**Second Mortgage**").

19. Pursuant to the Subordination and Standstill Agreement, the 445 Trustee agreed to subordinate and postpone the Second Mortgage to and in favour of KingSett's Mortgage. Attached as **Exhibit "G"** is a copy of the Subordination and Standstill Agreement.

### **TEXTBOOK and TIER 1 ISSUES**

20. Attached as **Exhibit "H"** is the Third Report of KSV Kofman Inc. ("**KSV**"), in its capacity as receiver and manager of certain property of certain companies related to Textbook 445 Princess, minus its schedules. As set out in that Third Report, certain corporations that provided financing to companies, which have been called the "Davies Developers", have been the subject of a Financial Services Commission of Ontario ("**FSCO**") investigation which resulted in the appointment of a court-appointed Trustee over certain of these companies and ultimately the appointment of KSV as receiver and manager of certain property owned by several of the Davies Developers (the "**Receivership Companies**"). The Third Report summarizes the status of those proceedings as follows:

"2. Pursuant to an order of the Ontario Superior Court of Justice ("**Court**") dated October 27, 2016, Grant Thornton Ltd. was

appointed Trustee (“Trustee”) of eleven entities<sup>1</sup> (collectively, the “Trustee Corporations”) which raised monies from investors through syndicated mortgage investments. The Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements between the Trustee Corporation and the applicable Davies Developer (as defined below).

3. On January 21, 2017, the Trustee brought a motion for an order (“Receivership Order”) appointing KSV as receiver and manager (“Receiver”) of the property owned by Scollard. On February 2, 2017, the Court made the Receivership Order.

4. On April 18, 2017, the Trustee brought a motion, inter alia, seeking orders:

a) amending and restating the Receivership Order to include the real property registered on title to include the real property registered on title as being owned by Kitchener, Oakville, Burlington, Legacy Lane, 525 Princess and 555 Princess, as well as all of the assets, undertakings and properties of these entities acquired for or used in relation to their real property (the “Amended and Restated Receivership Order”); ...

5. On April 28, 2017, the Court made the Amended and Restated Receivership Order and the Production Order...”

21. Textbook 445 Princess is not one of the Trustee Corporations or one of the Receivership Companies. As a result of the issues set out above, Textbook 445 Princess currently appears to be without management.

## **NEED FOR RECEIVERSHIP**

---

<sup>1</sup> Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation.

22. Given that the loan and security arrangements with KingSett Mortgage are in default, it is important that this matter proceed and that the Real Property be sold promptly to allow for the repayment of the indebtedness of Textbook 445 Princess to KingSett Mortgage.

23. I am advised by our counsel that the Trustee Corporations hold their mortgages on behalf of a large group of individuals who participated in syndicated mortgage investments (the “Investors”), who have allegedly lost significant funds, and who have taken an active interest in all matters related to the Trustee Corporations, including the various attempts to sell and market the properties owned by the Receivership Companies.

24. It is appropriate that KingSett Mortgage seek the appointment of a receiver and manager over the Property so that a judicial sale of the Property can be conducted. It is expected that a sale by way of a receiver will satisfy all parties, including the 445 Trustee and the Investors, that the sale will be properly conducted and that a provident result will result. The 445 Trustee and its counsel, and representative counsel for the Investors will be served with the Application to appoint the receiver.

25. Also, to the extent the Property is sold for an amount which is greater than the amount necessary to discharge the security of KingSett Mortgage, the receivership will provide an efficient means for the distribution of those surplus funds.

26. I have reviewed this matter with KSV and it has consented to act as receiver of the Property in order to conduct a sale in respect of same. Given that KSV is the receiver and manager of certain property of the Receivership Companies, it approaches this matter with a certain amount of existing knowledge and familiarity with the players and properties like the Property, which should assist it in efficiently carrying out this mandate.



## **ENVIRONMENTAL PHASE TWO**

27. Prior to the closing of its purchase of the Real Property in 2016, Pinchin Ltd. (“**Pinchin**”) prepared a Phase One Environmental Site Assessment of the Real Property. I have discussed with KSV and understand that if it is appointed to act as receiver of the Property, KSV intends to engage Pinchin to prepare a Phase Two Environmental Site Assessment (“**Phase Two ESA**”). As part of its procedures, Pinchin will need to drill holes on the Real Property in order to collect samples for testing.

28. KingSett supports KSV entering into such a retainer subject to the approval of the Court.

## **SALE PROCEDURE AND LISTING AGREEMENT**

29. In anticipation of its appointment, I have discussed with KSV its intentions with respect to the sale and marketing of the Property. KSV has prepared a draft sale process which it proposes be conducted in this matter (the “**Sale Process**”).

30. The proposed Sale Process contemplates, subject to Court approval, marketing to targeted prospects will start immediately. This is satisfactory to KingSett Mortgage, provided it is also approved by the Court.

31. In addition, we have consulted with KSV with respect to the proposed appointment of Jones Lang LaSalle (“**JLL**”) as the broker for the sale of the Property. JLL’s National Retail Investment Group specializes in commercial real estate sales and frequently represents some of Canada’s largest real estate vendors in the sale of their retail assets.

32. I am advised by KSV that JLL has been advised of the pending receivership and of the Sale Process and that it is willing to proceed in accordance with same.

33. Subject to being appointed Receiver, KSV intends to enter into a listing agreement in its capacity as proposed Receiver. I have reviewed the form of listing agreement, which I understand will be executed and provided to the court with a Pre-Filing report from KSV. Provided the execution version is substantially the same as the form reviewed, KingSett Mortgage will support it being entered into subject to the approval of the Court.

34. I swear this affidavit in support of KingSett Mortgage's application to appoint a receiver and manager over the Property, and for no improper purpose.

**SWORN BEFORE ME** at the City of Toronto, in the Province of Ontario, on January 3, 2017

\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

**ANDREW WINTON**

}

\_\_\_\_\_  
**DANIEL POLLACK**

Tab A

This is Exhibit "A" referred to in the Affidavit of Daniel Pollack  
sworn January 3, 2018



---

*Commissioner for Taking Affidavits (or as may be)*

**ANDREW WINTON**

LAND  
REGISTRY  
OFFICE #13

36071-0211 (LT)

PAGE 1 OF 3  
PREPARED FOR ABailey01  
ON 2017/12/18 AT 10:36:31

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

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

PROPERTY REMARKS:

ESTATE/QUALIFIER:  
FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:  
RE-ENTRY FROM 36071-0431

PIN CREATION DATE:  
2004/09/20

OWNERS' NAMES  
TEXTBOOK (445 PRINCESS STREET) INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2004/09/17 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2004/09/20 **						
FR145080	1964/04/28	AGREEMENT		*** COMPLETELY DELETED ***		
REMARKS: DOCUMENT DELETED APRIL 15, 2016 BY MANON LIMOGES - EXPIRED INTEREST PURSUANT TO BULLETIN 89004						
FR185337	1968/12/23	ASSGMT GEN BEN CR		*** COMPLETELY DELETED ***		
FR185846	1969/01/22	ASSIGNMENT LEASE		*** COMPLETELY DELETED ***	MATSPECK CONSTRUCTION COMPANY LIMITED	
FR185847	1969/01/22	ASSIGNMENT GENERAL		*** COMPLETELY DELETED ***		
REMARKS: SUBLEASE						
FR185849	1969/01/22	ASSIGNMENT LEASE		*** COMPLETELY DELETED ***		
FR185850	1969/01/22	ASSIGNMENT GENERAL		*** COMPLETELY DELETED ***	THE BANK OF NOVA SCOTIA	

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
<i>REMARKS: SUBLEASE</i>						
13R6874	1986/07/08	PLAN REFERENCE				C
FR600210	1993/07/22	TRANSFER		*** DELETED AGAINST THIS PROPERTY ***	1011777 ONTARIO INC.	
FR600210Z	1993/07/22	REST COV APL ANNEX		*** COMPLETELY DELETED ***		
FR681026	1998/08/12	AGREEMENT		101177 ONTARIO INC. GLOBULAR DRUGS LIMITED	THE CORPORATION OF THE CITY OF KINGSTON	C
<i>REMARKS: SITE PLAN CONTROL</i>						
FR686776	1999/05/21	CHARGE		*** DELETED AGAINST THIS PROPERTY *** GLOBULAR DRUGS LIMITED	CIBC MORTGAGE INC.	
<i>REMARKS: DOCUMENT DELETED APRIL 15, 2016 BY MANON LIMOGES</i>						
FR686777	1999/05/21	NOTICE OF LEASE		GLOBULAR DRUGS LTD.	IMASCO R.I. INC.	C
FR686778	1999/05/21	ASSIGNMENT LEASE		*** DELETED AGAINST THIS PROPERTY *** GLOBULAR DRUGS LTD.	CIBC MORTGAGES INC.	
<i>REMARKS: FR607874; FR686777; FR686776 DOCUMENT DELETED APRIL 15, 2016 BY MANON LIMOGES</i>						
FR686779	1999/05/21	ASSIGNMENT GENERAL		*** DELETED AGAINST THIS PROPERTY *** GLOBULAR DRUGS LTD.	CIBC MORTGAGES INC.	
<i>REMARKS: RENTS AS IN FR686776 DOCUMENT DELETED APRIL 15, 2016 BY MANON LIMOGES</i>						
FC83809	2009/11/03	DISCH OF CHARGE		*** COMPLETELY DELETED *** CIBC MORTGAGE INC.		
<i>REMARKS: FR686776. DOCUMENT DELETED APRIL 15, 2016 BY MANON LIMOGES</i>						
FC103142	2010/11/19	APL (GENERAL)		SHOPPERS REALTY INC.		C
<i>REMARKS: FR607874, FR686777</i>						
FC199012	2015/05/15	APL CH NAME OWNER		*** COMPLETELY DELETED *** 1011777 ONTARIO INC.	GLOBULAR DRUGS LTD.	
FC222577	2016/07/08	APL DELETE REST		*** COMPLETELY DELETED *** GLOBULAR DRUGS LTD.		
<i>REMARKS: FR600210Z.</i>						
FC222578	2016/07/08	APL (GENERAL)		*** COMPLETELY DELETED ***		

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
		REMARKS: DELETE		GLOBULAR DRUGS LTD.		
		FR185337, FR185846,		AND FR185450		
		FR185847, <del>FR185849</del>				
FC223253	2016/07/18	TRANSFER	\$9,300,000	GLOBULAR DRUGS LTD.	TEXTBOOK (445 PRINCESS STREET) INC.	C
		REMARKS: PLANNING ACT STATEMENTS.				
FC223254	2016/07/18	CHARGE	\$7,000,000	TEXTBOOK (445 PRINCESS STREET) INC.	KINGSETT MORTGAGE CORPORATION	C
FC223255	2016/07/18	NO ASSGN RENT GEN		TEXTBOOK (445 PRINCESS STREET) INC.	KINGSETT MORTGAGE CORPORATION	C
		REMARKS: FC223254.				
FC223256	2016/07/18	CHARGE	\$6,000,000	TEXTBOOK (445 PRINCESS STREET) INC.	TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION	C
FC223257	2016/07/18	TRANSFER OF CHARGE		TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION	TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	C
		REMARKS: FC223256.				
FC225770	2016/08/22	NOTICE		TEXTBOOK (445 PRINCESS STREET) INC. TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY		C
		REMARKS: FC223256				
FC225771	2016/08/22	TRANSFER OF CHARGE		TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	C
		REMARKS: FC223256.				
FC228102	2016/09/28	TRANSFER OF CHARGE		TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	C
		REMARKS: FC223256.				
FC229585	2016/10/24	POSTPONEMENT		TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	KINGSETT MORTGAGE CORPORATION	C
FC230738	2016/11/14	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	GRANT THORNTON LIMITED	C

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





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

**PROPERTY DESCRIPTION:** LT 7-8 PL 135 KINGSTON CITY; PT LT 6 PL 135 KINGSTON CITY; PT LT 24 BLK 2 CON 1 KINGSTON PT 1 13R9645; T/W & S/T FR396611; KINGSTON ; THE COUNTY OF FRONTENAC

**PROPERTY REMARKS:**

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

**RECENTLY:**  
RE-ENTRY FROM 36071-0429

**PIN CREATION DATE:**  
2004/09/20

**OWNERS' NAMES**  
TEXTBOOK (445 PRINCESS STREET) INC.

**CAPACITY SHARE**

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHRD
<p>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2004/09/17 **</p> <p>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</p> <p>** SUBSECTION 4*(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * AND ESCHEATS OR FORFEITURE TO THE CROWN.</p> <p>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.</p> <p>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</p> <p>**DATE OF CONVERSION TO LAND TITLES: 2004/09/20 **</p>						
FR396611	1984/10/19	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** DOMINION STORES LIMITED	GLOBULAR DRUGS LIMITED	
13R9645	1990/08/08	PLAN REFERENCE				C
FR562577	1991/10/11	CHARGE		*** COMPLETELY DELETED ***	BANK OF MONTREAL	
REMARKS: DISCHARGED BY FR575388 - MAY 28, 1992 - DELETED BY MARILYN MCLEAN - LAND REGISTRAR - SEPTEMBER 1, 2009						
FR607873	1993/12/01	ASSIGNMENT GENERAL		*** COMPLETELY DELETED ***		
REMARKS: RENTS, FR607872 FR607872 DISCHARGED BY FR689506 - 1999/09/13. FR607873 DELETED BY MARILYN MCLEAN - LAND REGISTRAR - 2009/09/01						
FR607874	1993/12/01	NOTICE OF LEASE			IMASCO R. I. INC.	
FR607875	1993/12/01	ASSIGNMENT LEASE		*** COMPLETELY DELETED ***		C
REMARKS: FR607872 FR607872 DISCHARGED BY FR689506 - 1999/09/13. FR607875 DELETED BY MARILYN MCLEAN - LAND REGISTRAR - 2009/09/01.						
CIBC MORTGAGE CORPORATION						

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

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
FR681026	1998/08/12	AGREEMENT		101177 ONTARIO INC. GLOBULAR DRUGS LIMITED	THE CORPORATION OF THE CITY OF KINGSTON	C
		REMARKS: SITE PLAN CONTROL				
FR686776	1999/05/21	CHARGE		*** DELETED AGAINST THIS PROPERTY *** GLOBULAR DRUGS LIMITED	CIBC MORTGAGE INC.	
FR686778	1999/05/21	ASSIGNMENT LEASE		*** DELETED AGAINST THIS PROPERTY *** GLOBULAR DRUGS LTD. APRIL 15, 2016 BY MANON LIMOGES	CIBC MORTGAGES INC.	
		REMARKS: FR607874; FR686777; FR686776 DOCUMENT DELETED				
FR686779	1999/05/21	ASSIGNMENT GENERAL		*** DELETED AGAINST THIS PROPERTY *** GLOBULAR DRUGS LTD.	CIBC MORTGAGES INC.	
		REMARKS: RENTS AS IN FR686776				
FC83808	2009/11/03	APL CH NAME OWNER		*** COMPLETELY DELETED *** GLOBULAR DRUGS LIMITED	GLOBULAR DRUGS LTD.	
FC83809	2009/11/03	DISCH OF CHARGE		*** COMPLETELY DELETED *** CIBC MORTGAGE INC.		
		REMARKS: FR686776.				
FC103142	2010/11/19	APL (GENERAL)		SHOPPERS REALTY INC.		C
		REMARKS: FR607874, FR686777				
FC223253	2016/07/18	TRANSFER	\$9,300,000	GLOBULAR DRUGS LTD.	TEXTBOOK (445 PRINCESS STREET) INC.	C
		REMARKS: PLANNING ACT STATEMENTS.				
FC223254	2016/07/18	CHARGE	\$7,000,000	TEXTBOOK (445 PRINCESS STREET) INC.	KINGSETT MORTGAGE CORPORATION	C
FC223255	2016/07/18	NO ASSGN RENT GEN		TEXTBOOK (445 PRINCESS STREET) INC.	KINGSETT MORTGAGE CORPORATION	C
		REMARKS: FC223254.				
FC223256	2016/07/18	CHARGE	\$6,000,000	TEXTBOOK (445 PRINCESS STREET) INC.	TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION	C
FC223257	2016/07/18	TRANSFER OF CHARGE		TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION	TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	C
		REMARKS: FC223256.				
FC225770	2016/08/22	NOTICE		TEXTBOOK (445 PRINCESS STREET) INC.		C

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

36071-0209 (LT)

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
				TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY		
					TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	
FC225771	2016/08/22	TRANSFER OF CHARGE		TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	C
				TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	
FC228102	2016/09/28	TRANSFER OF CHARGE		TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	C
				TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY	KINGSETT MORTGAGE CORPORATION	C
FC229585	2016/10/24	POSTPONEMENT		TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION OLYMPIA TRUST COMPANY		
FC230376	2016/11/03	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	GRANT THORNTON LIMITED	C

REMARKS: FC223256

REMARKS: FC223256.

REMARKS: FC223256.

REMARKS: 'GRANT THORNTON LIMITED' APPOINTED TRUSTEE.

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

**Tab B**

This is Exhibit "B" referred to in the Affidavit of Daniel Pollack  
sworn January 3, 2018



---

*Commissioner for Taking Affidavits (or as may be)*

**ANDREW WINTON**

Request ID: 021061549  
 Transaction ID: 66552677  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2017/12/13  
 Time Report Produced: 16:24:42  
 Page: 1

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
2512577	TEXTBOOK (445 PRINCESS STREET) INC.	2016/04/06
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>		<b>Date Amalgamated</b>
2355 SKYMARK AVENUE		NOT APPLICABLE
<b>Suite # 300</b>		<b>New Amal. Number</b>
MISSISSAUGA		NOT APPLICABLE
ONTARIO		<b>Notice Date</b>
CANADA L4W 4Y6		NOT APPLICABLE
<b>Mailing Address</b>		<b>Letter Date</b>
51 CALDARI ROAD		NOT APPLICABLE
#A1M		<b>Revival Date</b>
CONCORD		NOT APPLICABLE
ONTARIO		<b>Continuation Date</b>
CANADA L4K 4G3		NOT APPLICABLE
		<b>Transferred Out Date</b>
		NOT APPLICABLE
		<b>EP Licence Eff.Date</b>
		NOT APPLICABLE
		<b>EP Licence Term.Date</b>
		NOT APPLICABLE
	<b>Number of Directors</b>	<b>Date Commenced</b>
	<b>Minimum</b>	<b>in Ontario</b>
	<b>Maximum</b>	
	00001	NOT APPLICABLE
	00015	
<b>Activity Classification</b>		<b>Date Ceased</b>
NOT AVAILABLE		<b>in Ontario</b>
		NOT APPLICABLE

Request ID: 021061549  
 Transaction ID: 66552677  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2017/12/13  
 Time Report Produced: 16:24:42  
 Page: 2

## CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2512577	TEXTBOOK (445 PRINCESS STREET) INC.

Corporate Name History	Effective Date
TEXTBOOK (445 PRINCESS STREET) INC.	2016/04/06

Current Business Name(s) Exist:	NO
Expired Business Name(s) Exist:	NO

Administrator: Name (Individual / Corporation)	Address
JOHN DAVIES	24 COUNTRY CLUB DRIVE  KING CITY ONTARIO CANADA L7B 1M5

Date Began	First Director	
2016/04/06	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
DIRECTOR		Y

Request ID: 021061549  
 Transaction ID: 66552677  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2017/12/13  
 Time Report Produced: 16:24:42  
 Page: 3

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>
2512577	TEXTBOOK (445 PRINCESS STREET) INC.

<b>Administrator: Name (Individual / Corporation)</b>	<b>Address</b>
JOHN DAVIES	24 COUNTRY CLUB DRIVE  KING CITY ONTARIO CANADA L7B 1M5

<b>Date Began</b>	<b>First Director</b>	<b>Resident Canadian</b>
2016/04/06	NOT APPLICABLE	
<b>Designation</b>	<b>Officer Type</b>	
OFFICER	SECRETARY	

<b>Administrator: Name (Individual / Corporation)</b>	<b>Address</b>
JOHN DAVIES	24 COUNTRY CLUB DRIVE  KING CITY ONTARIO CANADA L7B 1M5

<b>Date Began</b>	<b>First Director</b>	<b>Resident Canadian</b>
2016/04/06	NOT APPLICABLE	
<b>Designation</b>	<b>Officer Type</b>	
OFFICER	OTHER	



Request ID: 021061549  
 Transaction ID: 66552677  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2017/12/13  
 Time Report Produced: 16:24:42  
 Page: 4

## CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2512577	TEXTBOOK (445 PRINCESS STREET) INC.

Administrator: Name (Individual / Corporation)	Address
JAMES GRACE	266 266 266 Suite # ORIOLE PAR TORONTO ONTARIO CANADA M5P 2H3

Date Began	First Director	Resident Canadian
2016/04/06	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
OFFICER	VICE-PRESIDENT	

Administrator: Name (Individual / Corporation)	Address
WALTER THOMPSON	1248 ATKINS DRIVE  NEWMARKET ONTARIO CANADA L3X 0C3

Date Began	First Director	Resident Canadian
2016/04/06	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
DIRECTOR		Y

Request ID: 021061549  
Transaction ID: 66552677  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2017/12/13  
Time Report Produced: 16:24:42  
Page: 5

## CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2512577	TEXTBOOK (445 PRINCESS STREET) INC.

Administrator: Name (Individual / Corporation)	Address
WALTER THOMPSON	1248 ATKINS DRIVE  NEWMARKET ONTARIO CANADA L3X 0C3

Date Began	First Director	Resident Canadian
2016/04/06	NOT APPLICABLE	
Designation	Officer Type	
OFFICER	TREASURER	

Administrator: Name (Individual / Corporation)	Address
WALTER THOMPSON	1248 ATKINS DRIVE  NEWMARKET ONTARIO CANADA L3X 0C3

Date Began	First Director	Resident Canadian
2016/04/06	NOT APPLICABLE	
Designation	Officer Type	
OFFICER	OTHER	

Request ID: 021061549  
Transaction ID: 66552677  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2017/12/13  
Time Report Produced: 16:24:42  
Page: 6

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2512577

TEXTBOOK (445 PRINCESS STREET) INC.

### Last Document Recorded

Act/Code	Description	Form	Date
BCA	ARTICLES OF AMENDMENT	3	2016/05/12

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

PLEASE NOTE THAT WHEN THE SAME INDIVIDUAL HOLDS MULTIPLE 'OTHER UNTITLED' OFFICER POSITIONS, AS INDICATED ON A FORM 1 UNDER THE *CORPORATIONS INFORMATION ACT*, ONLY ONE OF THESE 'OTHER UNTITLED' POSITIONS HELD BY THAT INDIVIDUAL WILL BE REFLECTED ON THIS REPORT.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

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

Tab C

This is Exhibit "C" referred to in the Affidavit of Daniel Pollack  
sworn January 3, 2018



---

*Commissioner for Taking Affidavits (or as may be)*

**ANDREW WINTON**



May 5, 2016

Textbook (445 Princess Street) Inc.  
51-A Caldari Road, Unit 1M  
Vaughan, Ontario  
L4K 4G3

Attention: Mr. Walter Thompson

Dear Mr. Thompson:

**Re: First Mortgage Acquisition Financing  
429 and 445 Princess Street, Kingston, Ontario**

---

We are pleased to advise that KingSett Mortgage Corporation has approved the following loan facility in connection with the above noted matter, as more particularly described below and within Schedules A, B, C, D, E and F attached hereto (the "**Commitment**" or "**Commitment Letter**").

**A. LOAN TERMS**

1. **Background** – The subject property is a +/- 10,414 square foot (NSA) Shopper's Drug Mart store situated on +/-0.58 acres of land located at 429 and 445 Princess Street, Kingston, Ontario.  
  
(Hereinafter, the "**Property**").
2. **Lender** – KingSett Mortgage Corporation (the "**Lender**")
3. **Borrower** – Textbook (445 Princess Street) Inc. (the "**Borrower**")
4. **Guarantee** – Unlimited joint and several personal guarantees from Mr. John Davies and Mr. Walter Thompson (collectively, the "**Guarantor**" and/or "**Guarantors**"), together with a postponement of shareholder loans against the Borrower (hereinafter, the "**Guarantee**").
5. **Loan Amount** – \$7,000,000 first mortgage non-revolving demand Loan (the "**Loan**" or "**Loan Amount**")
6. **Lender's Fee** - \$77,500. The Lender's Fee is earned upfront by the Lender upon the Borrower's execution of this Commitment Letter, of which \$50,000 is payable upfront by the Borrower. The Lender's Fee is non-refundable. The Lender shall deduct the unpaid



balance of the Lender's Fee from the proceeds of the advance under the Loan (the "Lender's Fee").

7. **Good Faith Deposit** - \$25,000 of the upfront payment of Lender's Fee shall be held in trust by the Lender as a good faith deposit (the "**Good Faith Deposit**"). This deposit will be used for expenses and the related HST, GST and/or PST that may be incurred by the Lender prior to the initial advance of the Loan, such as, but not limited to, the cost of property inspections, legal fees and disbursements, environmental site assessments, appraisal reports, building condition reports, insurance consultant reports and the cost of title insurance, if applicable, with the remaining balance, if any, to be credited towards the Lender's Fee at the initial advance of the Loan.

The Borrower acknowledges that such deposit is a reasonable estimate of the Lender's cost incurred in sourcing, investigating, underwriting and preparing the Loan and holding monies available to fund the Loan and that the same may be retained by the Lender should the Loan not be funded for any reason.

The portion of the Good Faith Deposit not used to pay transaction expenses incurred by the Lender shall be applied as a credit toward the Lender's Fee.

8. **Monthly Payments** – Monthly payments of interest only calculated daily, not in advance, are required to be made by the Borrower to the Lender in connection with the Loan at the Interest Rate defined below (the "**Monthly Payments**"). Monthly Payments are to be made on the first business day of every month until the Loan is repaid in full commencing on the first business day of the month next following the date of initial advance of the Loan. NSF payments will be subject to an administrative fee of \$500.00.
9. **Interest Rate** – 5.50% per annum, calculated daily, compounded and payable monthly, not in advance, both before and after maturity, default and/or judgement with respect to the Loan (the "**Interest Rate**").
10. **Term of Loan** – Twenty-four (24) months from the date of advance of the Loan if the same occurs on the first calendar day of a month otherwise twenty-four (24) months from the first calendar day of the month next following the date of initial advance of the Loan (the "**Maturity Date**"). Loan Amount repayable in full on the Maturity Date.
11. **Amortization** – Not applicable; monthly interest payments only.
12. **Prepayment** – Prepayment of the Loan is permitted on or after the twelve (12) month anniversary date of the Loan subject to the Lender's receipt of thirty (30) days prior written notice from the Borrower of its intention to prepay the Loan Amount in full, including any accrued interest thereto.
13. **Costs and Expenses** – Borrower to bear all costs and expenses incurred by the Lender from time to time in connection with the subject Loan regardless of whether or not the Loan



Amount is ever advanced and, such costs may include, but shall not be limited to, legal fees, disbursements, environmental site assessment reports, appraisal reports, building condition reports, insurance consulting reviews, reliance letters, title insurance, out-of-pocket expenses for property inspections and the HST, GST and/or PST related to all such costs and expenses.

14. **Partial Discharge** - Partial discharges of the Loan and Security are not permitted.

If the Loan is repaid in full pursuant to the terms and conditions of this Commitment including any and all accrued and unpaid interest and any and all unpaid costs for the Borrower's account incurred by the Lender, then the Lender will provide a full discharge of the Security.

The Lender shall charge a discharge fee of \$500 for the full discharge of its Security. The Borrower's solicitor shall prepare all security discharge documents for review by the Lender and its legal counsel. All legal fees, disbursements and HST, GST and/or PST related to the full discharge of the Lender's mortgage and other security shall be paid by the Borrower (the "**Discharge Fee**").

15. **Permitted Encumbrance** - The Lender hereby acknowledges and consents to a subsequent mortgage/charge of up to \$6,000,000 by a lender(s) to be satisfactory to the Lender, on terms and conditions to be satisfactory to the Lender, provided that the lender(s) enters into a postponement and standstill agreement with the Lender on Lender's prescribed form of agreement (collectively, the "**Permitted Encumbrance**").

With exception to the Permitted Encumbrance, no financing subsequent to the Loan shall be permitted without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion. Failure by the Borrower to comply with the covenant contained in the previous sentence shall constitute an event of default under the Loan and the Security therefor. The Borrower shall disclose to the Lender all existing or proposed financing related to the Project and shall not pledge or otherwise encumber its interest in the Project to any party other than as set out in this Commitment Letter.

16. **Security** - The Loan shall be secured by the following security which, prior to any advance under the Loan, shall be delivered by the Borrower to the Lender in form, scope and substance satisfactory to the Lender and its legal counsel (collectively, the "**Security**"):
  - a. Registered first mortgage/charge over the Property in the amount of \$7,000,000.
  - b. General Security Agreement registered in first priority creating a security interest over all personal property of the Borrower pertaining to the Property and registered under Personal Property Security Act (the "**PPSA**").
  - c. The following unlimited guarantee from the Guarantor, together with postponement of shareholder loans against the Borrower:





- i) a credit guarantee for the full indebtedness of the Borrower to the Lender in connection with the Loan;
  - ii) a guarantee to keep the Property free of all liens and, without limitation, a prompt payment guarantee with respect to all interest costs, fees, insurance premiums and other payments associated with the Property; and
  - iii) a guarantee for environmental issues, misrepresentations, negligence and willful misconduct.
- d. General Assignment of Rents and Leases registered in first priority on title to the Property lands.
- e. Specific and acknowledged assignment of the tenant lease with Shoppers Drug Mart.
- f. Specific and acknowledged assignment of property management agreement, if a property management agreement exists at any time prior to full repayment of the Loan.
- g. General assignment of all current and future material contracts for the Property including, without limitation, those relating to engineering specifications and drawings, architectural specifications and drawings, plans, construction contracts, licenses and permits.
- h. Specific assignment of any and all easement, access, egress, maintenance, parking and other agreements with neighbouring land owners to the Property as determined by the Lender. Such assignment to be in scope, form and content acceptable to the Lender. The assignments are to be acknowledged in writing by all parties to these agreements that are neither the assignor nor the assignee of such assignments. The requirement for an assignment shall not apply to those agreements registered on title to the Property lands in priority to the Lender's mortgage charge.
- i. Hazardous Substance Indemnity with respect to the Property.
- j. Priority, Postponement and standstill agreement between the Lender and Tier 1 with respect to the Permitted Encumbrance.
- k. Assignment of Insurance - Insurance coverage as set out Schedule "A" hereto which shall include without limitation: comprehensive general liability insurance for the Property in an amount not less than \$5,000,000 per occurrence naming the Lender as additional insured. Any other insurance coverage required by the Lender, acting reasonably. Insurance company, or companies if more than one, to be satisfactory to the Lender and its insurance consultant.



The required insurance coverages and policies shall, at the Borrower's expense, be reviewed by the Lender's independent insurance consultant.

- l. Direction, acknowledgement and security agreement from the beneficial owner with respect to its beneficial interest in the Property if the registered and beneficial interests in the Property are held by different parties (i.e., if the Borrower is not the beneficial owner of the Property).
- m. Negative Pledge by Borrower and Guarantors to not repay any shareholder loans, redeem shares, pay out dividends, or to otherwise compensate the Project sponsors and other non-arms length parties until such time as the Loan has been repaid in full, save and except for those development, marketing and/or construction fees specifically approved in writing by the Lender and included in the Project budget prepared by the Project Monitor.
- n. Acknowledgement, direction and security agreement from the beneficial owners of the Property, if the same are different than the registered owner of the Property, with respect to all of the security agreements entered into by the registered owner of the Property in favour of the Lender.
- o. Hypothecation and Pledge to the Lender of any and all issued and outstanding common shares, preferred shares and limited partnership units of the Borrower (and any and all shares of a general partner for the Property). The Lender's interest in such securities shall be perfected by possession and control by the Lender (or its legal counsel on behalf of the Lender) of the original share and unit certificates. If the registered owners of such shares and units are not a Guarantor, then such registered owners shall be required to jointly and severally guarantee the Loan; provided, however, that such guarantee shall be limited in scope to the pledge of shares/units. If the registered owners are different than the beneficial owners of such securities, the beneficial owners shall be required to enter into an acknowledgement, direction and security agreement authorizing the registered owner to pledge the shares/units to the Lender.
- p. A favourable Letter of Opinion from the Lender's solicitor ("SLO") confirming the validity of the Lender's security.
- q. Such other Security as the Lender and/or its legal counsel may reasonably require.

The Lender's mortgage and general assignment of rents and leases shall be registered on title to the Project lands. Where applicable, as determined by the Lender, PPSA registrations shall be granted in favour of the Lender with respect to the Lender's personal property security for the Loan.

## **B. CONDITIONS PRECEDENT**

The Loan shall be subject to the following pre-funding conditions which shall each have been



received, reviewed and/or met, as the context implies, to the satisfaction of the Lender in its sole, absolute, and unfettered discretion prior to any advance of the Loan (collectively, the "**Conditions Precedent**"):

1. Financial and operating due diligence on Borrower, Guarantor, Shoppers Drug Mart, and Property.
2. Satisfactory inspection of the Property by the Lender.
3. Receipt and satisfactory review by Lender of the Property's purchase and sale agreement, including all amendments and waivers thereto, confirming \$9,300,000 acquisition price.
4. Receipt and satisfactory review by the Lender of a complete copy of all agreements setting out the registered and beneficial ownership of the Property and the Borrower together with a complete organizational chart.
5. ~~Satisfactory receipt and review by the Lender of the current and past two (2) years of accountant prepared financial statements from the Borrower. (Waived by the Lender - N/A)~~
6. Current certified Guarantor personal net worth statement(s).
7. Receipt and satisfactory review of zoning documentation confirming that the Property entitled to permit the current use as herein described.
8. Receipt and satisfactory review by Lender of a certified rent roll and operating statements for the Property together with receipt of all expenses including, but not limited to, all utilities, taxes and insurance for the most recent 12 months. Said review to confirm a net operating income for the most recent 12 months of not less than \$429,473.
9. Receipt and satisfactory review by the Lender of the commitment letter, loan agreement and all amendments and/or extensions thereto with respect to the Permitted Encumbrance.
10. Receipt and satisfactory review of a firm and binding lease with Shoppers Drug Mart, along with all amendments/extension thereto, with a remaining lease term of +/-51 months (June 30, 2020 expiry) and four 5-year renewal options through to June 30, 2040, producing triple net rental income of not less than \$429,473 per annum, equating to minimum \$41.24 per leasable sq. ft. (*Deemed satisfied by the Lender*)
11. Estoppel certificates from Shoppers Drug Mart on Lender's standard form of estoppel.
12. Property management contract, if one exists.
13. Receipt and satisfactory review by the Lender of any and all cost sharing, parking, maintenance or other contracts with neighbouring land owners.



14. Receipt and satisfactory review by Lender of an A.A.C.I. appraisal from an acceptable appraisal firm confirming a minimum market value of \$8,000,000 for the Property. The appraisal must be addressed to the Lender or supported by a letter of transmittal from the appraisal firm in favour of the Lender.
15. Receipt and satisfactory review by Lender of an environmental site assessment for the Property from an acceptable environmental site assessment firm. The environmental site assessment must be addressed to the Lender or supported by a letter of transmittal from the environmental assessment firm in favour of the Lender.
16. Receipt and satisfactory review by Lender of a building condition survey for the Property from an acceptable engineering firm. The building condition survey must be addressed to the Lender or supported by a letter of transmittal from the engineering firm in favour of the Lender. Lender reserves the right to holdback from the proceeds of the Loan advance any cost of repair or replacement for identified capital improvement required to be made to the Property. Lender, at its discretion, may waive this requirement upon consultation with the Borrower and, at the Lender's option, a satisfactory inspection of the Property by the Lender.
17. Receipt and satisfactory review by the Lender and its insurance consultant, Canrisc Insurance Consulting Services, of appropriate insurance coverages for the Property. The cost of the insurance review by the Lender's insurance consultant will be for the exclusive account of the Borrower. See attached Schedule "A" for Lender's insurance requirements.
18. Receipt and satisfactory review by the Lender of a real property report / survey for the Project prepared by an accredited Ontario land surveyor confirming no encroachments, easements or rights of way, save those which the Lender may specifically accept, and setting out the relationship of the lands and proposed improvements thereon to public thoroughfares for access purposes. Alternatively, at the cost of the Borrower, title insurance may be put in place that is satisfactory in form, scope and content to the Lender and its legal counsel.
19. Receipt and satisfactory review by the Lender and its solicitors of all customary off-title searches for properties of similar nature to that of the Project including, without limitation, searches for unregistered easements, rights-of way, property tax status and environmental notices. The off-title searches are to be obtained by the Borrower's solicitors and forwarded to the Lender's solicitors for review. Alternatively, title insurance may be put in place, at the cost of the Borrower, that is deemed satisfactory to the Lender and its solicitors.
20. Evidence satisfactory to the Lender of clean title including the absence of liens and other encumbrances save and except for any encumbrances specifically approved in writing by the Lender.
21. All levies, impost fees, local improvement charges, property taxes and other charges that are due and payable in connection with the Property shall have been paid to the date of the advance of the Loan.



22. All Security to be executed by, as applicable, the Borrower, the Lender and the Guarantor and to, as applicable, be registered on title to the Property lands and/or under the PPSA at least one (1) business day prior to the initial advance of the Loan.
23. Borrower to complete and execute Lender's Pre Authorized Debit ("PAD") form which shall permit the Lender to debit the Borrower's applicable current account each month for the Monthly Payment required hereunder. See Schedule "D" attached hereto.
24. Borrower to complete and execute the Lender's Notice to Property Tax Authority for the Property which shall permit the Lender to request information from the municipality regarding the Property's property taxes. See Schedule "E" attached hereto.
25. All Conditions Precedent to be satisfied at least one (1) business day prior to the initial advance of the Loan.
26. Other usual matters involved in due diligence for a Property of this nature.

#### C. FUNDING

1. **Advance** – The advance of the Loan is subject to the prior execution and registration of the Security and the satisfaction of all terms and conditions of this Commitment Letter including, without limitation, the Conditions Precedent. The initial advance of the Loan shall be made on May 30, 2016 and in no case later than June 30, 2016.

In the event that the initial advance of the Loan has not been made by June 30, 2016, at the exclusive option of the Lender, its obligations under this Commitment shall cease and be at an end and the Lender shall be released from any and all of its present and/or future obligations under the Commitment and Security documents including, without limitation, the obligation to make any advances under the Loan. Notwithstanding the same, the Lender shall remain entitled to earn and receive full payment of the Lender's Fee and to fully recover from the Borrower and Guarantor any expenses incurred by the Lender.

#### D. SPECIAL CONDITIONS

1. **Subsequent Financing** – with exception to the Permitted Encumbrance, subsequent indebtedness to the subject Loan, secured or unsecured, is not permitted in connection with the Project without the prior written consent of the Lender, which consent may be arbitrarily withheld, delayed and/or conditioned by the Lender. Subsequent financing of the Property without the Lender's prior written consent shall be deemed an event of default under this Commitment and the Security documents.
2. **Property Manager** - Lender to be satisfied in its unfettered discretion with the Borrower's choice of leasing representative and property manager. The Borrower shall not be permitted to change the leasing representative(s) or property manager without the Lender's



prior written consent until such time as the Loan has been repaid in full and the Borrower hereby acknowledges that the Lender shall not be obligated in any way to provide such consent to the Borrower if Lender is not satisfied with the leasing representative(s) or property manager.

3. Ongoing Disclosure - at the Lender's request from time-to-time, the Borrower shall provide the Lender with ongoing information as outlined in Schedule 'C' Reporting.
4. Sale of Project – Prior to full repayment of the Loan, the Borrower may not sell the Property, in whole or in part, without the Lender's prior written consent under any scenario that involves the assumption of the Loan by a purchaser of the Project. Lender's consent to the assumption of its Loan by a purchaser of the Property may be unreasonably withheld, conditioned or delayed.
5. Real Property Taxes - Borrower shall pay when due to the taxing authority or authorities having jurisdiction all property taxes and provide to the Lender evidence of such payment at least semi-annually or as otherwise requested from time-to-time by the Lender.
6. Governing Laws - the Commitment and Loan shall be governed by and construed under laws of the Province of Ontario and the laws of Canada as applicable therein.
7. Lender's Legal Counsel:
 

Blaney McMurtry LLP  
2 Queen Street East, Suite 1500  
Toronto, Ontario, M5C 3G5  
Attention: Steven Jeffery

Direct: (416) 593-3939  
Email: [sjeffery@blaney.com](mailto:sjeffery@blaney.com)
8. Borrower's Legal Counsel:
 

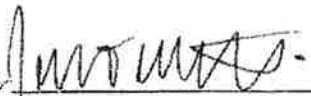
Harris & Harris LLP  
2355 Skymark Ave  
Suite 300  
Mississauga, ON  
L4W 4Y6
9. Other Conditions: See Schedule "C".
10. Reporting: See Schedule "D"
11. Privacy Act Consent: See Schedule "E"




If you are in agreement with the foregoing terms and conditions, please indicate this by signing and returning one (1) copy of this Commitment together with the \$50,000 upfront portion of the Lender's Fee payable to **KingSett Mortgage Corporation** on or before Friday, May 6, 2016, failing which this letter shall, at the Lender's option, be deemed null and void.

Yours truly,

**KINGSETT MORTGAGE CORPORATION**

Per:   
Justin Walton  
Director, Mortgage Investments

Per:   
Scott Coates  
Managing Director, Mortgage Investments


*\*\*\*Borrower and Guarantor Acknowledgement on next page\*\*\**



**ACKNOWLEDGEMENT**

The terms and conditions of this Commitment Letter are acknowledged and agreed to by the Borrower and Guarantor at Vaughan, ON this 5<sup>th</sup> day of May 2016.

**BORROWER:**  
**TEXTBOOK (445 PRINCESS STREET) INC.**

Per:   
Name: Walter Thompson  
Title: Co-President


Per:   
Name:  
Title:

I/We have the authority to bind the Corporation.

**GUARANTOR:**

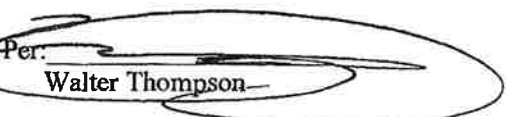
**Witness:**


Per:   
John Davies

  
Name: Dianna Cassidy  
Address: 51 Calder Road, #311  
Concord, ON L4K 4G3

**GUARANTOR:**

**Witness:**

Per:   
Walter Thompson

  
Name: Dianna Cassidy  
Address: 51 Calder Road, Suite 311  
Concord, ON L4K 4G3





**SCHEDULE "A"**

**OPERATING INSURANCE REQUIREMENTS CHECKLIST**

1. All insurance policies must be forwarded to our insurance consultant for review. The cost of such review shall be for the account of the Borrower.
2. All insurance policies shall be in form and with insurers reasonably acceptable to the Lender and contain the original signatures of the insurers.
3. KingSett Mortgage Corporation must be shown as Loss Payee AND First Mortgagee under the Property and, if applicable, Boiler and Machinery Insurance
4. The Borrower must be shown as a Named Insured or Additional Named Insured under all policies of insurance in force with respect to the Property.
5. The insurers, policy numbers, policy limits, policy term, applicable reasonable deductibles and the location of the Property as an insured location must be shown on the insurance policies.
6. The Property and, where applicable, Boiler and Machinery policies shall contain a standard mortgage clause in favour of KingSett Mortgage Corporation.
7. All policies of insurance must provide KingSett Mortgage Corporation with at least 30 days' prior written notice of adverse material change or cancellation, except for the non-payment of premium, in which case the Statutory Conditions may apply.
8. Insurance must be on an "All Risks" basis of physical loss or damage, including Earthquake and Flood Insurance and must be for 100% of the Full Replacement Cost of the Property, without deduction for foundations and footings, and including confirmation that the "same or adjacent site" clause has been deleted from the Replacement Cost wording.
9. There must be a Stated Amount clause to waive the co-insurance conditions, or confirmation that there are no co-insurance restrictions applicable to the building(s).
10. There must be evidence of full By-Laws extensions, including the increased cost of construction, cost of demolition of the undamaged portion of the Property and resultant loss of income.
11. There must be evidence of Business Interruption Insurance for a minimum indemnity period of 12 months. This coverage must be on a Gross Rental income, Gross Profits or Extended Period of Indemnity form, not on an actual loss sustained basis.
12. There must be evidence of comprehensive Boiler and Machinery insurance covering all central HVAC and miscellaneous electrical equipment (and production machinery where applicable) for explosion, electrical and mechanical breakdown. Alternatively, there needs to be satisfactory evidence that there is no Boiler and Machinery exposure at the Property.
13. If the Property is insured under a blanket insurance policy, amount of blanket limit and declared values for physical loss or damage and business interruption for the Property filed with the insurers.
14. There must be evidence of Liability Insurance, with a minimum limit of \$5,000,000.00 per occurrence covering the Property. This may be in the form of primary insurance and/or excess/umbrella insurance.
15. KingSett Mortgage Corporation must be an Additional Insured under the Liability Insurance covering the Property with respect to claims arising out of the operations of the Insured.
16. Such other insurance as KingSett Mortgage Corporation may reasonably require given the nature of the security and that which a prudent owner of similar security would purchase and maintain, or cause to be purchased and maintained.

There must be full, original, certified, endorsed copies of the insurance policies provided to KingSett Mortgage Corporation as soon as available from the insurers. (The certified policy copies should be available within 60 to 90 days). Signed Certificates or Binders of Insurance addressing the above will suffice as insurance evidence for closing purposes.

Certificates or Binders of Insurance are not acceptable if they contain the words, "This certificate is issued as a matter of information only and confers no rights upon the certificate holder" and the words "will endeavour to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" under the cancellation clause.



## SCHEDULE "B"

### OTHER CONDITIONS

1. With exception to the Permitted Encumbrance, subsequent indebtedness to the Loan, secured or unsecured, is not permitted in connection with the Property without the prior written consent of the Lender, which consent may be arbitrarily withheld. Subsequent indebtedness to the Loan other than the Permitted Encumbrance, secured or unsecured, without the Lender's prior written consent shall constitute default under the Commitment and Security documents.
2. Prior to full repayment of the Loan, the Borrower may not sell the Property, in whole or in part, without the Lender's prior written consent and the assumption of the Loan by a purchaser of the Property, or part thereof, shall be subject to the prior written approval of the Lender, which approval may be arbitrarily withheld. Sale of the Property, in whole or in part, without the Lender's prior written consent shall constitute default under the Commitment and Security documents.
3. A change in ownership of the Borrower shall not be permitted without the Lender's prior written consent, which consent may be arbitrarily withheld. A change in ownership of the Borrower without the Lender's prior written request shall constitute default under the Commitment and Security documents.
4. The Loan shall provide for monthly tax installments payable by Borrower to the Lender in amounts sufficient to allow the Lender to pay the annual real property taxes for the Property in installments to the applicable government authority, or authorities if more than one, as they become due and payable. Alternatively, the Borrower shall pay when due to the taxing authority or authorities having jurisdiction all property taxes and provide to the Lender evidence of such payment semi-annually or as otherwise requested from time-to-time by the Lender.
5. Loan disbursements shall take place only on title to the Property being acceptable to our solicitors and all matters in connection with the Security and other documentation deemed necessary or advisable by our solicitors being complied with by the Borrower and all Security and other instruments and agreements to evidence and secure the Loan being duly executed with evidence of registration where applicable.
6. The Lender shall require a satisfactory opinion and report from its solicitors regarding any encumbrances, financial charges or claims registered or to be registered against the Property.
7. The Lender shall require evidence of all corporate authorities together with an opinion of the Borrower's counsel as to usual matters such as: corporate authorities, absence of litigation, delivery of security and execution of all security listed herein.
8. The Borrower and Guarantor(s) shall indemnify and save harmless the Lender and its officers, agents, trustees, employees, contractors, licensees or invitees from and against any and all losses, damages, injuries, expenses, suits, actions, claims and demands of every nature whatsoever arising out of the provisions of this Commitment and the Security, any letters of credit or letters of guarantee issued or indemnified, sale or lease of the Property and/or the use or occupation of the Property including, without limitation, those arising from the right to enter the Property from time to time and to carry out the various tests, inspections and other activities permitted by the Commitment and the Security.
9. In addition to any liability imposed on the Borrower and Guarantor(s) under any instrument evidencing or securing the Loan indebtedness, the Borrower and Guarantor(s) shall be jointly and severally liable for any and all of the Lender's costs, expenses, damages or liabilities, including,



without limitation, all reasonable legal fees, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Property of any hazardous or noxious substances. The representations, warranties, covenants and agreements of the Borrower and Guarantor(s) set forth in this subparagraph:

- a) are separate and distinct obligations from the Borrower's and Guarantor(s)' other obligations;
  - b) survive the payment and satisfaction of the Borrower's and Guarantor(s)' other obligations and the discharge of the Security from time to time taken as security therefore;
  - c) are not discharged or satisfied by foreclosure of the charges created by any of the Security; and
  - d) shall continue in effect after any transfer of the land including, without limitation, transfers pursuant to foreclosure proceedings (whether judicial or non-judicial) or by any transfer in lieu of foreclosure.
10. The Lender's Commitment Letter and the Security may not be assigned, transferred or otherwise disposed of by the Borrower without the Lender's prior written consent. However, the Commitment and Security or any interest therein may be assigned or participated by the Lender (and its successors and assigns), in whole or in part, without the consent of, but with notice to, the Borrower. Except as hereinafter provided, the Borrower consents to the disclosure by the Lender to any such prospective assignee or participant of all information and documents regarding the Loan, the Property and the Borrower within the possession or control of the Lender provided that such party receive such information on a confidential basis as required by the Borrower's agreement with the vendor of the Property.
  11. The Borrower accepts full responsibility for remittance and payment of any and all GST/HST & PST due and the submission of GST/HST & PST credits or claims.
  12. The Borrower acknowledges that the Lender may inspect the Property at any time at the expense of the Borrower subject to the tenant's rights under the lease.
  13. In the event of the Borrower failing to pay any amount when due or being in breach of any covenant, condition or term of the commitment or the Security, or if any representation made by the Borrower and any Guarantor or their respective agents, or any information provided by them is found to be untrue or incorrect, or if any Event of Default as defined in the Security occurs, or if in the sole opinion of the Lender, a material adverse change occurs relating to the Borrower, the Property, any Guarantor of the Loan or the risk associated with the Loan, the Borrower shall, at the option of the Lender, be in default of its obligations to the Lender and the Lender may cease or delay further funding or may exercise any and/or all remedies available to it at law and/or in equity. Further, the Lender may, at its option, on notice to the Borrower, declare the principal and interest on the Loan, and any other amount due under the commitment forthwith due and payable, whereupon the same shall be and become immediately due and payable in full.
  14. The waiver by the Lender of any breach or default by the Borrower of any provisions contained herein shall not be construed as a waiver of any other or subsequent breach or default by the Borrower. In addition, any failure by the Lender to exercise any rights or remedies hereunder or under the Security shall not constitute a waiver thereof.
  15. The Borrower agrees that if any one or more of the provisions contained in this Commitment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Lender, not affect any or all other provisions

## KingSett

of this Commitment and this Commitment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

16. If the Borrower is comprised of more than one person or corporation, the obligations shall be the joint and several obligations of each such person or corporation comprising the Borrower unless otherwise specifically stated herein.
17. Time is of the essence in this Commitment.
18. The Borrower will repay all indebtedness to the Lender on or before the Maturity Date, if so permitted pursuant to this Commitment letter, and, prior to the repayment of the Loan in full, hereby covenants to promptly pay its taxes, protect its property by contest of adverse claims, maintain required insurance, perform its obligations under contracts and agreements, obtain, where applicable, all necessary approvals for construction and use of the Property, comply with all governmental rules and regulations, permit reasonable inspections by the Lender and its agents of the Property and of all records pertaining to the Property.
19. The representations, warranties, covenants and obligations herein set out shall not merge or be extinguished by the execution or registration of the Security but shall survive until all obligations under this Commitment and the Security have been duly performed and the Loan, interest thereon and any other moneys payable to the Lender are repaid in full. In the event of any inconsistency or conflict between any of the provisions of the Commitment and any provision or provisions of the Security, the provisions of the Commitment will prevail.
20. The Borrower will provide the usual warranties and representations respecting: accuracy of financial statements and that there has been no material adverse change in the Borrower's financial condition or operations, as reflected in the financial statements used to evaluate this credit; title to the Property charged by the Security; power and authority to execute and deliver documents; accuracy of documents delivered and representations made to Lender; no pending adverse claims; no outstanding judgments; no defaults under other agreements relating to the Property; preservation of assets; no undefended material actions, suits or proceedings; payment of all taxes; no consents, approvals or authorizations necessary in connection with documentation; compliance of any construction related to the Property with all laws; no other charges against mortgaged lands except permitted encumbrances; all necessary services available to the Property; no hazardous substances used, stored, discharged or present on the mortgaged lands and will warrant such other reasonable matters as Lender or its legal counsel may require.
21. No term or requirement of this Commitment may be waived or varied orally or by any course of conduct of the Borrower or anyone acting on his behalf or by any officer, employee or agent of the Lender. Any alteration or amendment to this Commitment must be in writing and signed by a duly authorized officer of the Lender and accepted by a duly authorized officer of the Borrower.
22. The headings and section numbers appearing in this Commitment are included only for convenience of reference and in no way define, limit, construe or describe the scope or intent of any provision of this Commitment.
23. The parties agree that this Commitment and the Security documents and the acceptance (thereof by all parties may be made by facsimile transmission or by certified electronic signature and electronic transmission.
24. In the event of any inconsistency or conflict between any of the provisions of the Commitment and any provision or provisions of the Security, the provisions of the Commitment will prevail.

---

(end of Schedule "B")

**SCHEDULE "C"****REPORTING**

Borrower shall provide the Lender with copies of the following:

1. Any and all insurance policy renewals and/or amendments within ten (10) business days of the issuance thereof. Lender will require its insurance consultant to conduct an insurance review.
2. Property tax statements supported by proof of payment on a quarterly basis or as otherwise requested by the Lender from time to time.
3. Each year, annual financial statements and/or updated personal net worth statements from the Borrower and Guarantor once per annum within 90 days of the Borrower's fiscal year end.
4. All offers to lease, agreements to lease, leases, and any and all other agreements (e.g., amendments) related to any of the forgoing rents, income and profits arising from or in connection with the Property.
5. Annual certified rent roll and operating statements.

At the Lender's request from time-to-time, the Borrower shall provide the Lender with any other relevant updates regarding the Project.

---

(end of Schedule "C")



**SCHEDULE "D"**

**PRE-AUTHORIZED DEBIT ("PAD") FORM**

I/we authorize KingSett Mortgage Corporation ("KingSett") and the financial institution designated (or any other financial institution I/we may authorize at any time) to begin deductions as agreed under the KingSett loan agreement(s) for monthly regular recurring payment and/or one-time payments from time to time. Regular monthly interest payments will be debited from my/our specific account on the 1st business day of each month. KingSett will provide five (5) days written notice of the amount of each regular monthly debit. KingSett will obtain my/our authorization for any other one-time or irregular debits.

This authority is to remain in effect until KingSett has received written notification from me/us of its change or termination. This change or termination notification must be received by KingSett at least ten (10) business days before the next debit is scheduled at the address provided below.

KingSett may not assign this authorization, whether directly or indirectly, by operation of law, change of control or otherwise, without providing at least ten (10) days prior written notice to me/us.

I/we have certain recourse rights if any debit does not comply with this agreement. For example, I/we have the right to receive reimbursement for any debit that is not authorized by the KingSett loan agreement(s) or is inconsistent with this PAD agreement. To obtain more information on my/our recourse rights, I/we may contact your financial institution or visit [www.cdnpay.com](http://www.cdnpay.com).

**PAD Category:** *Personal* \_\_\_\_\_ *Business* \_\_\_\_\_ *Fund Transfer* \_\_\_\_\_

**PLEASE PRINT**

**DATE:** \_\_\_\_\_

Name(s): \_\_\_\_\_

Loan Number: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Purpose: *Personal* \_\_\_\_\_ *Business* \_\_\_\_\_

Address: \_\_\_\_\_

City/Town: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_

FI Name: \_\_\_\_\_ FI Transit Number: \_\_\_\_\_  
*(branch-5 digits, FI-3 digits)*

FI Account Number: \_\_\_\_\_

Address: \_\_\_\_\_

City/Town: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_

**Authorized Signature(s):** \_\_\_\_\_

Name: \_\_\_\_\_

c/o KingSett Capital  
Toronto-Dominion Centre, TD Bank Tower  
66 Wellington Street West, Suite 4400  
Toronto, Ontario M5K 1H6

[www.kingsettcapital.com](http://www.kingsettcapital.com)



**SCHEDULE "E"**  
**NOTICE TO PROPERTY TAX AUTHORITY**

**Re: Borrower:** \_\_\_\_\_  
**Property:** \_\_\_\_\_  
**Loan No.:** \_\_\_\_\_

To Whom It May Concern:

Approval is being given to release any information verbally or in writing as requested by our mortgage company, KingSett Mortgage Corporation, regarding all matters related to taxes for the above-noted property. This is including but not limited to taxes outstanding, status of tax account, payments received and/or outstanding or copies of tax statements.

This approval will remain in full force and effect until the mortgage is paid in full.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**BORROWER:**  
\_\_\_\_\_

**Per:** \_\_\_\_\_  
\_\_\_\_\_ **Witness**

Property Civic Address:  
  
Roll Number:  
(Please complete in full)



## SCHEDULE "F"

### PRIVACY ACT CONSENT

By signing this Commitment, each of you, being the parties signing (including all mortgagors and, if applicable, Guarantor) agrees that the Lender is authorized and entitled to:

- a) Use your Personal Information (as hereinafter defined) to assess your ability to obtain your loan and to evaluate your ability to meet your financial obligations. This use includes disclosing and exchanging your Personal Information on an on-going basis with credit bureaus, credit reporting agencies and financial institutions or their agents, or to service providers, in order to determine and verify, on an on-going basis, your continuing eligibility for your loan and your continuing ability to meet your financial obligations. This use, disclosure and exchange of your Personal Information will continue as long as your loan is outstanding and will help protect you from fraud and will also protect the integrity of the credit-granting system; and
- b) Use, disclose and exchange, on an on-going basis, all the personal information collected by us or delivered by you to us from time to time in connection with your loan and any information obtained by us from time to time pursuant to paragraphs (a) above (collectively your "**Personal Information**") to other organizations which may fund all or any part of your loan and/or own all or any part of your loan and the security securing your loan from time to time and permit prospective investors in your loan to inspect your Personal Information.

---

(end of Schedule "F")



**Tab D**

This is Exhibit "D" referred to in the Affidavit of Daniel Pollack  
sworn January 3, 2018



---

*Commissioner for Taking Affidavits (or as may be)*

**ANDREW WINTON**

LRO # 13 Charge/Mortgage

Received as FC223254 on 2016 07 18 at 11:54

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 29

**Properties**

<i>PIN</i>	36071 - 0209 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	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		
<i>Address</i>	445 PRINCESS STREET KINGSTON		
<i>PIN</i>	36071 - 0211 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 9 PL 135 KINGSTON CITY PT 1 13R8874; T/W FR600210; KINGSTON ; THE COUNTY OF FRONTENAC		
<i>Address</i>	429 PRINCESS ST KINGSTON		

**Chargor(s)**

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

*Name* TEXTBOOK (445 PRINCESS STREET) INC.  
*Address for Service* 51 Caldari Road  
 Unit A1M  
 Vaughan, ON L4K 4G3

I, JOHN EVAN DAVIES, Co-President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

<b>Chargee(s)</b>	<b>Capacity</b>	<b>Share</b>
-------------------	-----------------	--------------

<i>Name</i>	KINGSETT MORTGAGE CORPORATION
<i>Address for Service</i>	Toronto-Dominion Centre TD Bank Tower, 66 Wellington Street West Suite 4400, P.O. Box 163 Toronto, ON M5K 1H6

**Statements**

Schedule: See Schedules

**Provisions**

<i>Principal</i>	\$ 7,000,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>	See schedule		
<i>Balance Due Date</i>	See schedule		
<i>Interest Rate</i>	5.50% per annum		
<i>Payments</i>			
<i>Interest Adjustment Date</i>	2016 08 01		
<i>Payment Date</i>	See schedule		
<i>First Payment Date</i>	2016 09 01		
<i>Last Payment Date</i>	2018 08 01		
<i>Standard Charge Terms</i>			
<i>Insurance Amount</i>	full insurable value		
<i>Guarantor</i>			

LRO # 13 Charge/Mortgage

Received as FC223254 on 2016 07 18 at 11:54

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 29

**Signed By**

Steven Peter Jeffery	2 Queen Street East Suite 1500 Toronto M5C 3G6	acting for Chargor(s)	Signed	2016 07 15
Tel	416-593-1221			
Fax	416-593-5437			

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

**Submitted By**

BLANEY MCMURTRY LLP	2 Queen Street East Suite 1500 Toronto M5C 3G6	2016 07 18
Tel	416-593-1221	
Fax	416-593-5437	

**Fees/Taxes/Payment**

Statutory Registration Fee	\$62.85
Total Paid	\$62.85

**File Number**

Chargor Client File Number : 14229

Chargee Client File Number : 1028550041/TEXTBOOK445PRINCESS

## SCHEDULE - ADDITIONAL PROVISIONS

ARTICLE 1  
INTERPRETATION1.1 Definitions

Capitalized terms used in this Charge shall have the respective meanings assigned to them in Appendix I attached hereto.

1.2 Interpretation and Headings

The Chargor acknowledges that this Charge and each of the other Loan Documents are the result of negotiations between the parties and shall not be construed in favour of or against any party by reason of the extent to which any party or its legal counsel participated in its preparation or negotiation. The words "hereto", "herein", "hereof", "hereby", "hereunder" and similar expressions refer to the whole of this Charge including, without limitation, these additional provisions, and not to any particular Section or other portion thereof or hereof and extend to and include any and every document supplemental or ancillary hereto or in implementation hereof. The words "Article", "Section", and "Subsection", and similar expressions refer to the specified article, section, subsection or other portion of this Schedule. Words in the singular include the plural and words in the plural include the singular. Words importing the masculine gender include the feminine and neuter genders where the context so requires. Words importing the neuter gender include the masculine and feminine genders where the context so requires. The headings do not form part of this Charge and have been inserted for convenience of reference only. Any reference to "including" shall mean "including without limitation" whether or not expressly provided. If more than one Person is named as, or otherwise becomes liable for or assumes the obligations and liabilities of the Chargor, then all such Persons shall be jointly and severally liable for all such obligations and liabilities.

ARTICLE 2  
CHARGE, PAYMENT AND INTEREST2.1 Charge

To secure the full and timely payment and performance of the Indebtedness, the Chargor hereby charges the Charged Property to the Chargee. The Charge shall operate until all Indebtedness is fully paid and performed to the Chargee in the manner contemplated by the Charge and the other Loan Documents.

2.2 Covenant to Pay

The Chargor hereby acknowledges itself indebted and covenants with the Chargee to pay the Indebtedness to the Chargee as and when provided in this Charge without any deduction, set-off, abatement, or counterclaim.

2.3 Interest Rate

The Principal Amount shall bear and accrue interest at the Interest Rate both before and after default, demand, maturity and judgment until paid.

2.4 Payment

The Chargor shall pay the Indebtedness to the Chargee as follows:

- (a) interest at the Interest Rate on the Principal Amount or such portion as may be advanced from time to time, calculated daily from the respective dates of such advances, shall become due and payable in monthly installments on the first day of each calendar month following the date of advance and on the first day of each and every month thereafter and, at the option of the Chargee, may be deducted from any advance;
- (b) any part of the Indebtedness that is not principal or interest on principal will be payable on demand with interest thereon at the Interest Rate; and

- 2 -

(c) the Principal Amount will become due and payable on the Maturity Date.

#### **2.5 Prepayment**

The Chargor shall not have the right to prepay all or any part of the Principal Amount of the Loan prior to the date that is the one (1) year anniversary date of the date of the first advance of the Principal Amount hereunder. Thereafter, the Chargor shall be entitled to prepay the full amount of the Principal Amount, including any accrued interest thereto, on thirty (30) days prior written notice to the Chargee.

#### **2.6 Timing and Place of Payment**

Notwithstanding any other provision of this Charge, all payments under this Charge shall be made to the Chargee or as it may direct in writing by electronic direct-debit transfer before 1:00 o'clock in the afternoon (Eastern Standard Time) on any day on which payment is to be made. The Chargor shall provide all written authorizations and sample cheques as the Chargee may require from time to time. If for any reason the electronic direct-debit transfer for any payment is made after 1:00 o'clock in the afternoon (Eastern Standard Time) on any particular day, such payment will be deemed to have been made on the next following Business Day for the purpose of calculating interest. If an electronic direct-debit transfer is not made on the day such payment is required to be made, the Chargor will immediately pay the Chargee a reasonable servicing fee as determined by the Chargee or its servicer to cover the administration costs and expenses arising therefrom. Until paid, such servicing fee, together with interest thereon at the Interest Rate shall be added to the Indebtedness and be secured by this Charge.

#### **2.7 Compound Interest**

If the Chargor defaults in any payment of interest, or other payment due pursuant to this Charge, compound interest at the Interest Rate will accrue and be payable on the sum in arrears (including all arrears of interest) from time to time, both before and after default, demand, maturity and judgment until paid and shall be paid forthwith. If the arrears and the compound interest are not paid within the interest calculation period provided in the Provisions section of the electronic Charge/Mortgage to which the Schedule is attached from the time of default, a rest will be made and compound interest at the Interest Rate will be payable on the aggregate amount then due, both before and after maturity, default and judgment, and so on from time to time until paid. All such compound interest shall be added to the Indebtedness and shall be secured by this Charge.

#### **2.8 Application of Payment**

Prior to an Event of Default, all payments received by the Chargee on account of the Indebtedness shall be applied as follows, regardless of any other designation of such payments as principal, interest or other charges: first, to the repayment of sums advanced by the Chargee pursuant to this Charge or any of the other Loan Documents for any reason (other than the Principal Amount), including sums advanced to pay Realty Taxes, Costs, insurance premiums or other charges against the Charged Property (together with interest thereon at the Interest Rate from the date of advance until paid), then to the payment of accrued but unpaid interest which is then due and payable, and finally, to reduction of the Principal Amount. Notwithstanding the foregoing, from and after an Event of Default, all payments received by the Chargee pursuant to the Loan shall be applied by the Chargee to principal, interest and such other charges due hereunder or under the other Loan Documents in such order as the Chargee shall determine in its sole discretion.

#### **2.9 Advances and Costs**

Neither the preparation, execution nor registration of this Charge or the other Loan Documents shall bind the Chargee to advance all or any part of the Principal Amount. The Chargor covenants to pay all Costs to the Chargee forthwith on demand whether or not all or any part of the Principal Amount is advanced. Until paid, all Costs together with interest thereon at the Interest Rate shall be added to the Indebtedness and secured by this Charge.

#### **2.10 Proof of Outstanding Amounts**

The records maintained by the Chargee of the amounts of the Loan advanced to the

- 3 -

Chargor and secured by this charge, the amount of advances of the Loan which are outstanding and the amount of interest and other fees and costs payable or secured under this Charge shall constitute *prima facie* proof thereof in any legal proceedings or action in respect of the Loan or this Charge.

**ARTICLE 3  
REPRESENTATIONS, WARRANTIES AND COVENANTS**

**3.1 Representations, Warranties and Covenants**

The Chargor represents, warrants to and covenants with the Chargee that:

(a) **Organization, Power and Authority**

The Chargor (i) is a duly organized and validly existing corporation under the laws of its governing jurisdiction; (ii) has full power, authority and legal right to own the Charged Property and to carry on its business thereon in compliance with all Applicable Laws and is duly licensed, registered or qualified in all jurisdictions where the character of its undertaking, property and assets or the nature of its activities makes such licensing, registration or qualification necessary or desirable; (iii) has full power, authority and legal right to enter into each of the Loan Documents to which it is a party and to do all acts and execute and deliver all other documents as are required to be done, observed or performed by it in accordance with their respective terms; (iv) has taken all necessary action and proceedings to authorize the execution, delivery and performance of the Loan Documents to which it is a party and to observe and perform the provisions of each in accordance with its terms; and (v) shall maintain in good standing its existence, capacity, power and authority as a corporation and shall not liquidate, dissolve, wind-up, terminate, merge, amalgamate, consolidate, reorganize or restructure or enter into any transaction or take any steps in connection therewith.

(b) **Enforceability of Loan Documents**

The Loan Documents constitute valid and legally binding obligations of the Chargor, enforceable against it in accordance with their terms, and are not subject to any right of rescission, right of set-off, counterclaim or defence of any nature or kind. Neither execution and delivery of the Loan Documents, nor compliance with the terms and conditions of any of them (i) has resulted or will result in a violation of the constating documents governing the Chargor, including any unanimous shareholders' agreement, or any resolution passed by the board of directors or shareholders of the Chargor, (ii) has resulted or will result in a breach of or constitute a default under Applicable Laws or any agreement or instrument to which the Chargor is a party or by which it or the Charged Property or any part thereof is bound, or (iii) requires any approval or consent of any Person except such as has already been obtained.

(c) **Title**

The Chargor has good and marketable title in fee simple to the Charged Property free and clear of all Liens except Permitted Encumbrances and the Lien of this Charge. The Chargor is the sole legal and beneficial owner of the Charged Property. The Chargor shall defend title to the Charged Property for the benefit of the Chargee from and against all actions, proceedings and claims of all Persons. No Person has any option, right of first refusal or other right to acquire the Charged Property or any part thereof or interest therein.

(d) **Priority**

This Charge and the other Loan Documents are and shall be a valid first Lien or Liens on the Charged Property at all times, subject only to Permitted Encumbrances.

(e) **Transfer or Encumbrance of Charged Property**

Neither the Chargor nor any other Person having a beneficial or ownership interest in the Chargor, the Charged Property, or any part thereof (which shall include, without limitation, a partnership interest in any partnership that has an interest in the Charged Property) shall directly or indirectly sell, transfer, convey, dispose, or assign any legal or beneficial interest in the Chargor, the Charged Property or any part thereof (whether voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration of record), except with the

- 4 -

prior written consent of the Chargee, which consent may be arbitrarily withheld. No Liens shall be created, issued, incurred or permitted to exist (by operation of law or otherwise) on any part of the Charged Property or any interest therein, other than the security of this Charge and the other Loan Documents, and Permitted Encumbrances. If any other Lien is asserted against the Charged Property, the Chargor shall promptly, and at its expense, (i) give the Chargee a detailed written notice of such Lien (including origin, amount and other terms), and (ii) pay the underlying claim in full or take such other action so as to cause it to be released and discharged or, in the Chargee's discretion, provide a bond or other security satisfactory to the Chargee for the payment of such claim.

(f) **Realty Taxes and Utility Charges**

All Realty Taxes have been paid when due. Except to the extent sums sufficient to pay all Realty Taxes have been previously deposited with the Chargee as required in the Commitment, the Chargor shall pay all Realty Taxes when due and, within 15 days after the end of each calendar year or upon request by the Chargee from time to time, shall provide the Chargee with evidence satisfactory to the Chargee that all Realty Taxes have been paid when due. The Chargor shall not suffer or permit the joint assessment of the Charged Property with any other real property constituting a separate tax lot or with any other real or personal property. The Chargor shall promptly pay for all utility services provided to the Charged Property when due.

(g) **Litigation**

The Chargor has no judgments or orders of any court or tribunal outstanding against it. There is no litigation, administrative proceeding, investigation or other legal action or claims (including any proceeding under any applicable bankruptcy or insolvency laws) pending or, to the knowledge of the Chargor, threatened, against the Charged Property or the Chargor, including any dispute between the Chargor and any governmental authority affecting the Chargor or the Charged Property. Upon becoming aware of any such matters, the Chargor shall promptly notify the Chargee of same and shall provide the Chargee with reasonable information in respect thereof as the Chargee may require from time to time, provided that in doing so, the Chargor shall not be deemed to have cured the fact that its representation set out in this Subsection has become incorrect.

(h) **Rights of Way, Easements, Permits, Services and Access**

The Chargor has obtained and shall maintain in good standing at all times all rights of way, easements, grants, privileges, licenses, certificates, permits, approval entitlements, franchises and other similar property and rights necessary for the lawful construction, occupancy, operation and use of the Charged Property. The Charged Property has unrestricted and unconditional rights of access to public highways at all existing access points and is served by all services and utilities necessary or convenient to the full use and enjoyment of the Charged Property. All such services and utilities are located in the public highway(s) abutting the Land, and are connected so as to serve the Charged Property without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting the Charged Property. All roads necessary for the full utilization of the Charged Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities.

(i) **Management**

There shall be no change in the day-to-day control and management of the Chargor or the Charged Property. The Chargor shall not terminate, replace or appoint any manager or terminate or amend the management agreement for the Chargor or the Charged Property without the Chargee's prior written approval, which approval shall not be unreasonably withheld. Any change in ownership or control of the manager shall be cause for the Chargee to re-approve such manager and the applicable management agreement. Each manager shall hold and maintain all necessary licenses, certifications and permits required by law. The Chargor shall fully perform all of its covenants, agreements and obligations under the management agreement.



- 5 -

(j) Inspection

The Chargee, its servicer, agents, representatives and employees, upon reasonable prior notice to the Chargor, may inspect the Charged Property and conduct such environmental and engineering studies as the Chargee may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Charged Property.

(k) Operation; Maintenance

The Chargor shall diligently maintain, use, manage, operate and repair the Charged Property in a good, safe and insurable condition in accordance with all Applicable Laws, Permitted Encumbrances and all Property Agreements, so as to preserve and protect the Charged Property and maximize the earnings, incomes, rents, issues and profits therefrom. The Chargor has complied and will hereafter at all times comply with all of its obligations under the Property Agreements, the Permitted Encumbrances and all other Liens and agreements relating to the Charged Property. The Chargor shall promptly make all necessary repair and replacements to the Charged Property. All repairs, replacements and work done under this Subsection 3.1(k) or under Subsection 3.1(n), or otherwise, shall be made in good and workmanlike manner, shall (if applicable) be of equal or better in quality to the original work, shall be free of all Liens and shall comply with all Applicable Laws, Permitted Encumbrances and Property Agreements. The Chargor shall preserve and keep in full force and effect its corporate status, franchises, rights and privileges under the laws of the jurisdiction of its formation, and all qualifications, licenses and permits applicable to the ownership, use and operation of the Charged Property.

(l) Compliance with Law

The Charged Property, including the construction thereof, complies with all Applicable Laws, Permitted Encumbrances and all Property Agreements. The present use and location of the Improvements are legal conforming uses under all Applicable Laws. No Improvements have been made or removed from the Land since the date of the survey of the Land and Improvements delivered by the Chargor prior to the Loan advance and such survey accurately shows the location of all Improvements. The Chargor shall not change the use of the Charged Property, abandon the Charged Property, commit or permit any waste on or of the Charged Property, apply for or consent to any public restriction (including any zoning by-law or amendment or minor variance) or private restriction, or permit the removal of any Improvements or Fixtures from the Charged Property (other than a tenant's improvements removable by a tenant in accordance with its Lease) other than in accordance with the proposed development plans which the Chargor has disclosed to the Chargee.

The Charged Property is free of structural defects, and all building systems contained therein are in good working order and repair subject to ordinary wear and tear. No proceedings have been commenced or, to the Chargor's knowledge are contemplated with respect to the expropriation of all or any portion of the Charged Property or for the relocation of roadways providing access to the Charged Property.

(m) Representations and Warranties on Environmental Matters

To the Chargor's knowledge, (i) no Hazardous Material is now or was formerly used, stored, generated, manufactured, installed, treated, discharged, disposed of or otherwise present at or about the Charged Property or any property adjacent to the Charged Property (except for cleaning and other products currently used in connection with the routine maintenance or repair of the Charged Property in full compliance with Environmental Laws) and no Hazardous Material was removed or transported from the Charged Property, (ii) all permits, licenses, approvals and filings required by Environmental Laws have been obtained, and the use, operation and condition of the Charged Property does not, and did not previously, violate any Environmental Laws, (iii) no civil, criminal or administrative action, suit, claim, hearing, investigation or proceeding has been brought or been threatened, nor have any settlements been reached by or with any parties or any Liens imposed in connection with the Charged Property concerning Hazardous Materials or Environmental Laws; and (iv) no underground storage tanks exist on any part of the Charged Property.

- 6 -

(n) Covenants on Environmental Matters

The Chargor shall (i) comply strictly and in all respects with applicable Environmental Laws; (ii) notify the Chargee immediately upon the Chargor's discovery of any spill, discharge, release or presence of any Hazardous Material at, upon, under, within, contiguous to or otherwise affecting the Charged Property; (iii) promptly remove such Hazardous Materials and remediate the Charged Property in full compliance with Environmental Laws or as reasonably required by the Chargee based upon the recommendations and specifications of an independent environmental consultant approved by the Chargee; and (iv) promptly forward to the Chargee copies of all orders, notices, permits, applications or other communications and reports in connection with any spill, discharge, release or the presence of any Hazardous Materials or any other matters relating to the Environmental Laws or any similar laws or regulations, as they may affect the Charged Property or the Chargor.

The Chargor shall not cause, shall prohibit any other Person within the control of the Chargor from causing, and shall use prudent, commercially reasonable efforts to prohibit other Persons (including tenants) from causing (i) any spill, discharge or release, or the use, storage, generation, manufacture, installation, or disposal, of any Hazardous Materials at, upon, under, within or about the Charged Property or the transportation of any Hazardous Materials to or from the Charged Property (except for cleaning and other products used in connection with routine maintenance or repair of the Charged Property in full compliance with Environmental Laws), (ii) installing any underground storage tanks at the Charged Property, or (iii) conducting any activity that requires a permit or other authorization under Environmental Laws.

The Chargor shall provide to the Chargee, at the Chargor's expense promptly upon the written request of the Chargee, acting reasonably, from time to time, documents, records, permits, licences, certificates, approvals, orders, agreements, environmental audits, reports, assessments and inspections to assess the presence or absence of any Hazardous Materials and the potential costs in connection with abatement, cleanup or removal of any Hazardous Materials found on, under, at or within the Charged Property.

The Chargee or an agent of the Chargee may conduct on-site inspections and other investigations of the Charged Property and of the current and past uses of the Charged Property and, at the sole option of the Chargee, may require an environmental assessment by a qualified environmental consultant acceptable to the Chargee at any time during the term of this Charge or any renewal or extension hereof. Without in any way limiting the generality of the foregoing, the Chargee or its agent may enter upon the Charged Property upon reasonable notice to the Chargor to conduct environmental testing, site assessment, investigation or study determined necessary by the Chargee, in its sole discretion. The exercise of any of the powers enumerated in this clause shall not deem the Chargee or its agents to be in possession, management or control of the Charged Property.

The results of all such inspections, investigations, tests, studies and assessments shall be satisfactory to the Chargee and, without limitation, evidence the absence of any Hazardous Substance at the Charged Property and the absence of any contamination of any part of the Charged Property by any Hazardous Substance. If the results of an environmental assessment, inspection, test, study or investigation conducted during the term of the Charge or any renewal or extension thereof are not satisfactory to the Chargee, acting reasonably, then, at the option of the Chargee, the entire Indebtedness shall become immediately due and payable. In this regard, the acceptance of any payments by the Chargee at any time during or after the term of the Charge or any renewal or extension thereof shall not constitute a waiver of or otherwise prejudice the right of the Chargee to demand and receive full repayment of the Charge.

All costs of such inspections, investigations and environmental assessments shall be borne by the Chargor, shall be paid on demand by the Chargee and shall be secured by this Charge.

(o) Environmental Indemnity

As between the Chargor and the Chargee, all risk of loss associated with non-compliance with Environmental Laws, or with the presence of any Hazardous Materials at, upon, within, contiguous to or otherwise affecting the Charged Property, shall lie solely with the Chargor. Accordingly, the Chargor shall bear all risks and costs associated with any loss (including any

loss in value attributable to Hazardous Materials), damage or liability therefrom, including all costs of removal of Hazardous Materials or other remediation required by the Chargee or by law. The Chargor shall indemnify, defend and hold the Chargee and its shareholders, directors, officers, employees and agents harmless from and against all loss, liabilities, damages, claims, costs and expenses (including reasonable costs of defence and consultant fees, investigation and laboratory fees, court costs, and other litigation expenses) arising out of or associated, in any way, with (i) the non-compliance with Environmental Laws, (ii) the existence of Hazardous Materials in, on, or about the Charged Property, (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to Hazardous Materials, (iv) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, (v) a breach of any representation, warranty or covenant contained in Subsections 3.1(m), (n) or (o) whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, or (vi) the imposition of any environmental lien encumbering the Charged Property; provided, however, the Chargor shall not be liable under such indemnification to the extent such loss, liability, damage, claim, cost or expense results solely from the Chargee's gross negligence or wilful misconduct. The Chargor's obligations under this Subsection 3.1(o) shall arise whether or not any governmental authority has taken or threatened any action in connection with the presence of any Hazardous Materials, and whether or not the existence of any such Hazardous Materials or potential liability on account thereof is disclosed and shall continue notwithstanding the repayment of the Loan or any transfer or sale of any right, title and interest in the Charged Property (by foreclosure, deed in lieu of foreclosure or otherwise). Additionally, if any Hazardous Materials affect or threaten to affect the Charged Property, the Chargee may (but shall not be obligated to) give such notices and take such actions as it deems necessary or advisable at the expense of the Chargor in order to abate the discharge of any Hazardous Materials or remove the Hazardous Materials. Any amounts payable to the Chargee by reason of the application of this Subsection 3.1(o) shall become immediately due and payable and shall bear interest at the Interest Rate from the date loss or damage is sustained by the Chargee until paid. The obligations and liabilities of the Chargor under this Subsection 3.1(o) shall survive the making of any advance or replacement of the Loan, any full or partial release, termination or discharge of any Loan Document or the security thereof and any remedial proceedings taken by or on behalf of the Chargee under any Loan Document or otherwise at law or in equity.

(p) **Full and Accurate Disclosure**

None of the Loan Documents, Property Agreements, Permitted Encumbrances and other documents and materials provided by or on behalf of the Chargor to the Chargee contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. No statement of fact made by or on behalf of the Chargor in this Charge or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to the Chargor which has not been disclosed to the Chargee which adversely affects in a material manner, nor as far as the Chargor can foresee, might adversely affect in a material manner, the Charged Property or the business, operations or condition (financial or otherwise) of the Chargor.

(q) **Financial Statements, Reports and Budgets**

- (i) The financial statements and net worth statements (if any) delivered by the Chargor to the Chargee in connection with the Loan, any guarantor, indemnifier or beneficial owner and the Loan are true and correct with no material change since the date of preparation to the date of the Loan advance. Except as disclosed in such financial statements and net worth statements, there are no liabilities (fixed or contingent) affecting the Charged Property or the Chargor.
- (ii) The Chargor shall furnish to the Chargee:
  - (a) copies of all management reports, if any, provided to the Chargor from time to time, within ten (10) days after the same are provided to the Chargor;

- 8 -

- (b) within fifteen (15) days before each anniversary of the Loan advance, a detailed rent roll and detailed operating statement (showing yearly activity and year-to-date) stating operating revenues, operating expenses, operating income and net cash flow for the preceding calendar year; and
- (c) within ninety (90) days after the end of each fiscal year of the Chargor, the Chargor shall furnish to the Chargee a current (as of the end of such fiscal year) balance sheet, a detailed rent roll and a detailed operating statement stating operating revenues, operating expenses, operating income and net cash flow for each of the Chargor, any guarantor, or beneficial owner of the Charged Property and the Charged Property, and, if required by the Chargee, prepared on a review basis and certified by an officer of same and an independent public accountant reasonably satisfactory to the Chargee.

All financial statements shall be in scope and detail reasonably satisfactory to the Chargee and certified by the chief financial representative of the Chargor. All financial statements shall be prepared in accordance with generally accepted accounting principles in Canada in effect on the date so indicated and consistently applied (or such other accounting basis reasonably acceptable for the Chargee).

- (iii) The Chargor shall deliver to the Chargee such additional information regarding the Chargor, its subsidiaries, its business, any guarantor, indemnifier or beneficial owner and the Charged Property promptly after the Chargee's request therefor. The Chargor shall permit the Chargee to examine such records, books and papers of the Chargor which reflect upon its financial condition and the income and expenses of the Charged Property.
- (iv) At least thirty (30) days prior to the commencement of each of its fiscal years, the Chargor will provide to the Chargee its proposed annual operating and capital improvements budget for such fiscal year for the Charged Property (the "Annual Operating Budget") for review and approval by the Chargee. Each operating budget shall contain such usual, proper and reasonable categories and breakdowns for items of revenue, expenses and cash flow as dictated by reasonable and prudent practice, and as would be prepared by reasonable and prudent building owners and managers similar to the Charged Property, with monthly and year-to-date columns. The Chargee shall be entitled to advise as to whether or not it is satisfied with the Annual Operating Budget and, if it is not satisfied, its proposals as to modification or amendment. The Annual Operating Budget as revised and approved by the Chargee shall become the Chargee approved operating budget for the Charged Property for the next succeeding fiscal period. If the Chargee has areas of dissatisfaction upon which it and the Chargor are unable to agree, then the balance of the Annual Operating Budget shall be deemed to be approved by the Chargee and the areas in dispute shall be governed by the most recent Chargee approved operating budget until the dispute is resolved. If any such dispute is not resolved within 30 days after the Chargee has identified the areas of dissatisfaction, then either the Chargor or the Chargee may commence arbitration proceedings under the *Arbitrations Act* (Ontario) to resolve the dispute, and the result of such arbitration shall be binding on the parties hereto.

(r) **Tax Returns**

The Chargor has filed all federal, provincial and municipal tax returns required to be filed and have paid or made adequate provision for the payment of all federal, provincial and municipal taxes, charges and assessments payable by the Chargor. The Chargor believes that its tax returns properly reflect the income and taxes of the Chargor for the periods covered thereby,

subject only to reasonable adjustments required by the Canada Revenue Agency or other applicable tax authority upon audit. As of the date of the Loan advance, the Chargor has no liability (fixed or contingent) for any taxes, surtaxes, duties, rates, and other similar charges or statutory trusts imposed by Applicable Laws or any governmental authority (including all related interest, penalties and fines), except as reflected in its financial statements delivered to the Chargee.

(s) **Notice of Certain Events**

Upon becoming aware of same, the Chargor shall promptly notify the Chargee of any Event of Default or other events which, with the giving of notice, lapse of time or both, would constitute an Event of Default. The Chargor represents and warrants to the Chargee that no such Event of Default or other event has occurred as of the date of the Loan advance.

(t) **Estoppel Certificates**

The Chargor, within 10 days after request, and without charge, shall furnish to the Chargee a written statement, duly acknowledged, setting forth the amount due on the Loan, the terms of payment of the Loan, the date to which interest has been paid, whether any offsets or defences exist against the Loan and, if any are alleged to exist, the nature thereof in detail, and such other matters as the Chargee reasonably may request.

(u) **Further Assurances**

The Chargor shall promptly (i) cure any defects in the execution and delivery of the Loan Documents and (ii) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as the Chargee may reasonably request to further evidence and more fully describe the collateral for the Loan, to correct any omissions in the Loan Documents, to perfect, protect or preserve any liens created under any of the Loan Documents or to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith.

(v) **No Changes to Second Mortgage**

The Chargor shall not amend or change the terms and conditions of the Second Mortgage or of any commitment letter or loan agreement relating thereto or of any other security granted in connection therewith except with the prior written consent of the Chargee, which consent may not be arbitrarily withheld.

(w) **Leasing**

All Major Leases and Leases with Persons not at arm's length from the Chargor entered into after the date of registration of this Charge and all terminations or surrenders of Major Leases proposed to be done or agreed to after such date shall first be approved by the Chargee, acting in a commercially reasonable manner, in writing. All other Leases shall be on a standard lease form approved by the Chargee. For purposes of this Section, "Major Lease" means any Lease (i) for 5,000 or more square feet of gross leasable area in the Chargee Property or (ii) under which the base or minimum rent payable represents 10% or more of the total base or minimum rents payable under all Leases of space in the Charged Property. Within ten (10) days after the entering into thereof, the Chargor shall provide the Chargee with copies of all Leases entered into after the date of registration hereof, including without limitation of all amendments, renewals and extensions thereof and all letters of intent to lease and offers to lease.

(x) **Condominium**

- (i) The Chargor shall at all times and from time to time observe and perform all duties and obligations imposed on it by the Condominium Act, the Declaration, the by-laws and the rules of the condominium in effect from time to time. The Chargor agrees to transmit to the Chargee forthwith upon the demand of the Chargee, satisfactory proof that all Common Expenses assessed against the Units have been paid as assessed.

- 10 -

- (ii) Without limiting the generality of the preceding paragraph (i), the Chargor shall pay promptly when due any contributions to Common Expenses required of it as an owner of the Charged Property, including any amounts added to Common Expenses or otherwise payable by him to the Condominium Corporation and, in the event of his default in doing so, the Chargee shall be entitled but shall not be obliged to pay the same whether or not any payment in default has priority over the mortgage or any part of the moneys secured thereby, and the amount thereof shall be without demand, payable forthwith with interest at the Interest Rate and shall be secured by this Charge.
- (iii) The Chargor shall deliver by mailing to the Chargee, by prepaid registered mail, a copy of each and every:
  - (a) notice of any meeting of members of the Condominium Corporation called for the purpose of, or at which there may be the taking of, a vote of the members of the Condominium Corporation at least ten clear days prior to the date upon which such meeting is fixed to convene;
  - (b) claim or demand for payment by the Chargor to the Condominium Corporation or to any person, firm or corporation duly authorized to receive monies otherwise payable to the Condominium Corporation at least five clear days prior to the date upon which such claim or demand;
  - (c) notice of any breach of any of the provisions of the Condominium Act, or of the Declaration or any By-law or By-laws of the Condominium Corporation and made pursuant to the provisions of the Condominium Act, within five days of the date upon which such notice is received by the Chargor; and
  - (d) request or demand for the consent of the Chargor to any matter affecting the unit herein or the common elements included in the Condominium Corporation within five days of the date upon which such request or demand is received by or made of the Chargor; and
- (iv) The Chargor shall pay any and all monies due and payable by the Chargor in accordance with the provisions of the Condominium Act, or the Declaration or the by-law or by-laws of the Condominium Corporation from time to time on or before the dates for payment thereof.
- (v) The Chargor hereby assigns to the Chargee the right of the Chargor as owner of the Units to vote at a meeting of owners in the place of the Chargor or to consent in the place of the Chargor in all matters relating to the affairs of the Condominium Corporation, and the Chargee is hereby irrevocably authorized and empowered to exercise such right, whether or not the Chargor is in default or in breach of any of the covenants or provisions contained in this Charge. The Chargee shall be entitled to give written notice of its rights provided for in this Paragraph to the Condominium Corporation in accordance with subsection 47(1)(c)(i)(B) of the Condominium Act.
- (vi) Any exercise by the Chargee of the right of the Chargor to either vote or consent shall not have the effect of constituting the Chargee a mortgagee in possession in respect of the Charged Property or any part thereof.
- (vii) The Chargee shall not be in any way responsible to protect the interest of the Chargor when exercising the right to vote or consent assigned herein, and the Chargee shall not be responsible for any exercise of the right to vote or consent assigned herein or any failure to exercise the right to vote or consent assigned herein.

- 11 -

- (viii) If there is any charge or mortgage of the Units subsequent in priority to this Charge, the Chargor agrees to obtain a covenant from the holder of such charge or mortgage (the "Subsequent Chargee"), benefitting the Chargee, whereby the Subsequent Chargee agrees that, if the Chargee has not exercised its right to vote or consent under this Section, the Subsequent Chargee will not exercise its right (if any) to vote or consent.
- (ix) The Chargor shall not amend the Declaration, register condominium plan, or the description of the Units without first obtaining the Chargee's written consent thereto, which consent may be arbitrarily withheld at the Chargee's sole discretion.

### 3.2 Due on Sale or Encumbrance

If, without the prior written consent of the Chargee, the Chargor or any beneficial or unregistered owner of the Charged Property:

- (a) directly or indirectly sells, conveys, transfers, or disposes of all or any part of the Charged Property or any interest therein or agrees to do so; or
- (b) is a corporation or company and the effective voting control of such corporation or company changes, or if such corporation or company merges or amalgamates with any other corporation or company; or
- (c) creates, assumes or permits to exist any Lien (whether prior or subordinate to the security of this Charge and the other Loan Documents) on all or any part of the Charged Property;

then, the Chargee may, at its option, declare the Indebtedness to be immediately due and payable and all powers conferred by the Charge and the other Loan Documents, at law or in equity shall become exercisable, including the power of sale herein contained. This provision shall apply to every sale, conveyance, transfer, disposition or Lien of the Charged Property regardless of whether voluntary or not. The Chargee's consent to one sale, conveyance, transfer, disposition or Lien of the Charged Property or any interest in the Chargor shall not be deemed to be a waiver of the Chargee's right to require such consent to any future occurrence of same.

### 3.3 Survival of Representations, Warranties and Covenants

The representations, warranties, covenants and obligations of the Chargor in each of the Loan Documents are now and will continue to be true and correct at all times until the Loan is repaid in full and shall survive the making of any advance or partial repayment of the Loan, any full or partial release, termination or discharge of any Loan Document or security, and any remedial proceedings taken by the Chargee under any Loan Document or otherwise at law or in equity and shall be fully effective and enforceable by the Chargee notwithstanding any due diligence performed by or on behalf of the Chargee or any breach or other information (to the contrary or otherwise) known to the Chargee at any time.

## ARTICLE 4 INSURANCE, DAMAGE AND DESTRUCTION

### 4.1 Insurance

The Chargor shall maintain insurance as follows:

- (a) Property and Business Interruption Insurance The Chargor shall keep the Charged Property insured against damage by fire and the other hazards covered by a standard extended coverage and all-risk insurance policy for the full insurable value thereof (including footings and foundation) on a replacement cost claim recovery basis (without reduction for depreciation or co-insurance and with such endorsements as the Chargee may require), and shall maintain such other property insurance as required by the Chargee from time to time. The Chargee reserves the right to require from time to time the following additional insurance: boiler and machinery; flood; earthquake/sinkhole; worker's compensation and/or building law or ordinance. The Chargor shall maintain use and occupancy

insurance covering, as applicable, rental income or business interruption, with coverage in an amount not less than 12 months anticipated gross rental income or gross business earnings, as applicable in each case, attributable to the Charged Property. The Chargor shall not maintain any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise reasonably satisfactory to the Chargee in all respects. The proceeds of insurance paid on account of any damage or destruction to the Charged Property shall be paid to the Chargee to be applied as provided in Subsection 4.2.

- (b) Condominium Insurance If all or any part of the Charged Property is or becomes a condominium unit pursuant to the provisions of the *Condominium Act, 1998* (Ontario), the Chargor shall cause the Condominium Corporation to obtain and maintain insurance on the buildings and improvements forming part of the Charged Property, excluding improvements and betterments made or acquired by the Chargor or any tenant, against major perils as defined in the Condominium Act and the other perils that the Declaration or the by-laws of the Condominium Corporation specify, to the replacement cost of such property, and liability, boiler, machinery and pressure vessel, motor vehicle and other insurance as it may be required to be obtained and maintained by the Condominium Act, the Declaration or the by-laws of the Condominium Corporation.
- (c) Improvements Insurance The Chargor shall obtain and maintain insurance on improvements and betterments to the Units owned by the Chargor, or cause any tenants of such Units to obtain and maintain the same, and, in the event of termination of the government of the Charged Property by the Condominium Act, will to the extent the Charged Property is insurable, obtain insurance on the Chargor's interest therein for the full insurable value thereof or, if the Chargee so requires, the replacement cost thereof, in lawful money of Canada, against loss or damage by fire, lightning and tempest and such other risks as the Chargee may require, including risks and perils covered by an all risks policy. In the case of a Unit used for commercial purposes, this covenant shall in addition include boiler, plate glass, rental and public liability insurance in amounts and on terms satisfactory to the Chargee.
- (d) Liability The Chargor shall maintain "Comprehensive General Liability Form" of commercial general liability insurance coverage with the "Broad Form CGL" endorsement (or a comparatively worded form of coverage) with respect to the Charged Property providing for limits of liability of not less than \$5,000,000 for both injury to or death of a person and for property damage per occurrence, and such other liability insurance as reasonably required by the Chargee from time to time.
- (e) Construction During the period in which construction of the Improvements is taking place, the Chargor shall maintain (i) builder's "all risk" (including coverage for the perils of earthquake, flood, and sewer backup) insurance on a replacement cost, no co-insurance basis, for an amount covering insured physical loss or damage representing not less than 100% of the total hard costs of the project plus at least 25% of total soft costs of the project (each as approved by the Chargee), with loss payable to the Chargee, as its interest may appear, including an Insurance Bureau of Canada approved mortgage clause acceptable to the Chargee and (ii) wrap-up liability insurance in an amount per occurrence that is satisfactory to the Chargee from time to time, for third party bodily injury and/or property damage liability and in the aggregate for products and completed operations liability, in which policy or policies of insurance the definition of insured shall include, in addition to the Chargor, all contractors, sub-contractors and trades engaged in the project with respect to work or operations at the project, provided that such work or operations directly relate to the Charged Property. The architects and engineers engaged in any project at the Charged Property will maintain professional liability insurance for an amount satisfactory to the Chargee per claim and in the annual aggregate.
- (f) Form and Quality All insurance policies shall be in form and substance acceptable to the Chargee and shall name the Chargee as a first mortgagee, an



additional insured, and loss payee or chargee thereunder, as its interest may appear, with loss payable to the Chargee, without contribution, under a standard Canadian mortgage clause. All such insurance policies and endorsements shall be fully paid for and shall have a term of not less than one year. All insurers shall be acceptable to the Chargee in its sole discretion. Each policy shall provide that such policy may not be cancelled or materially changed except upon 30 days' prior written notice of intention of non-renewal, cancellation or material change to the Chargee and that no act or thing done by the Chargor shall invalidate any policy as against the Chargee. Original or certified copies of all insurance policies shall be delivered by the Chargor to and held by the Chargee prior to the Loan advance, provided that if insurance certificates or binders evidencing such insurance and acceptable to the Chargee are delivered prior to the Loan advance, such insurance policies may be delivered to the Chargee within 60 days thereafter. Upon renewal or amendment of any policy from time to time, the Chargor shall provide the Chargee with a copy of the renewal or amendment within 10 Business Days of it being issued. Blanket policies shall be permitted only if the Chargee receives appropriate endorsements and/or duplicate policies containing the Chargee's right to continue coverage on a *pro rata* pass-through basis and that coverage will not be affected by any loss on other properties covered by the policies. The Chargor shall pay or cause to be paid all the premiums for such policies as the same become due and payable in advance except to the extent provision for such payment has been made from a reserve fund established under the Commitment. If the Chargor fails to pay such premiums when due, the Chargee may obtain such insurance and pay the premium therefor and the Chargor shall, on demand, immediately reimburse the Chargee for all expenses incurred in connection therewith. The Chargor shall assign the policies and proceeds of insurance to the Chargee, in such manner and form that the Chargee and its successors and assigns shall at all times have and hold the same as security for the payment of the Loan. The Chargor hereby authorizes and directs the issuer of any such insurance or awards to make payment directly to the Chargee. The proceeds of insurance policies coming into the possession of the Chargee shall not be deemed trust funds, and the Chargee shall be entitled to apply such proceeds as herein provided.

- (g) Adjustments The Chargor shall give immediate written notice of any loss to the insurance carrier and to the Chargee. The Chargor hereby irrevocably authorizes and empowers the Chargee, as attorney-in-fact for the Chargor coupled with an interest, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom the Chargee's reasonable expenses incurred in the collection of such proceeds. Nothing contained in this Section 4.1(g), however, shall require the Chargee to incur any expense or take any action hereunder.
- (h) Compliance with Insurance Policies The Chargor promptly shall comply with, and shall cause the Charged Property to comply with, all the terms of each insurance policy required by this Charge and all requirements of the insurer of each such policy. The Chargor shall not by any action or omission invalidate any insurance policy required to be carried hereunder or materially increase the premiums on any such policy above the normal premium charged by the carrier of such policy.

#### 4.2 Use and Application of Insurance Proceeds

If the Charged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, the Chargor shall give prompt notice thereof to the Chargee. All insurance proceeds and expropriation awards arising in respect of the Charged Property shall, at the option of the Chargee in its sole discretion, be applied in reduction of the Indebtedness, whether or not the Indebtedness is at that time due and payable and whether or not any Event of Default has occurred. Following the occurrence of such damage or destruction, the Chargor, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with Applicable Laws.

**ARTICLE 5  
EVENTS OF DEFAULT**

**5.1 Events of Default**

Each of the following shall constitute an Event of Default under this Charge:

- (a) the failure of the Chargor or any guarantor, joint debtor, indemnifier, beneficial owner or other obligor of or in respect of the Indebtedness or the Charged Property (collectively, with the Chargor, the "Covenantors") to pay any regularly scheduled instalment of principal, interest or other amount due under the Loan Documents when due, or the Covenantors' failure to pay the Loan at the Maturity Date, whether by acceleration or otherwise;
- (b) the Covenantors default in performing or observing any covenant or obligation on its part to be observed and performed in this Charge or in any of the other Loan Documents;
- (c) any representation or warranty of any Covenantor in any Loan Document or in any financial statement, rent roll or other document at any time delivered by or on behalf of any Covenantor in connection with the Loan is or becomes incorrect or misleading in any material respect;
- (d) proceedings are commenced by any Person seeking the dissolution, liquidation, winding-up or termination of any Covenantor or a resolution is passed or an order is made for the dissolution, liquidation or winding-up of any Covenantor or other cancellation or suspension of its incorporation or termination of its existence;
- (e) a decree or order of a court of competent jurisdiction is entered adjudging any Covenantor a bankrupt or insolvent or approving as properly filed a petition seeking the winding-up, reorganization, reconstruction or arrangement of any Covenantor under the *Companies' Creditors Arrangement Act (Canada)*, the *Bankruptcy and Insolvency Act (Canada)* or the *Winding-Up and Restructuring Act (Canada)* or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against any Covenantor or against all or any part of the assets of any Covenantor or ordering the winding up or liquidation of its affairs, or appointing a trustee, receiver, receiver and manager, interim receiver, custodian, liquidator or other person with similar powers of any Covenantor or all or any part of its assets;
- (f) any Covenantor becomes insolvent, commits an act of bankruptcy, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act (Canada)* or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act (Canada)*, the *Winding-Up and Restructuring Act (Canada)* or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal in bankruptcy, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other person with similar powers of itself or of all or any part of its assets, or files a petition or application or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditor's rights or consents to, or acquiesces in, the filing of such petition;
- (g) a receiver, receiver-manager or receiver and manager of any Covenantor of any material part of its properties, assets or undertakings is appointed, or if a monitor is appointed in respect of any Covenantor;
- (h) an encumbrancer takes possession of the Charged Property or any other property of any Covenantor, or any distress or analogous process is levied upon any Covenantor;

- 15 -

- (i) all or any part of the Charged Property becomes subject to any Lien, other than the Permitted Encumbrances, the Lien of this Charge and the other Loan Documents;
- (j) any default by the Chargor under any of the Permitted Encumbrances or under any other security or agreement made or assumed by any Covenantor (or by which it is bound) in favour of any person in connection with the Charged Property or made or assumed by any Covenantor (or by which it is bound) in favour of the Chargee whether or not such security or agreement is in connection with the Charged Property;
- (k) any sale, transfer, conveyance, or assignment of any part or all of the Charged Property, or any interest therein, or of any interest in the Chargor, except as permitted by this Charge;
- (l) a final judgment or decree for the payment of money due shall have been obtained or entered or any writ of execution, distress, attachment or other similar process shall have been issued or levied against any Covenantor in an amount which, in the opinion of the Chargee, acting reasonably, would materially and adversely affect the ability of such Covenantor to fulfil its obligations to the Chargee under the Loan or any of the Loan Documents;
- (m) any material part of the Charged Property is condemned or expropriated;
- (a) if the Chargor fails to pay any Common Expenses that it is required to contribute with respect to the Units owned by it or the Condominium Corporation obtains a lien or registers a certificate of lien against the Chargor's Units or any of them; or
- (n) any other Event of Default under any other Loan Document.

## ARTICLE 6 REMEDIES

### 6.1 Acceleration

Upon an Event of Default, the entire Indebtedness shall, at the option of the Chargee in its sole discretion, immediately become due and payable, with interest thereon at the Interest Rate to the date of actual payment thereof, all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, each of which are hereby expressly waived, and all the Chargee's rights and remedies under this Charge, the other Loan Documents, and otherwise at law and in equity shall immediately become enforceable.

### 6.2 Power of Sale

Upon the Chargee's rights and remedies hereunder becoming enforceable, the Chargee may sell the Charged Property or any part thereof by public auction or private sale and on such terms as to credit and otherwise as may appear to it most advantageous, and for such price as can be reasonably obtained therefor. The Chargee shall be entitled to buy in or rescind or vary any contract for sale of any of the Charged Property, and resell without being answerable for any loss occasioned thereby. In the case of a sale on credit, the Chargee shall only be accountable for monies actually received in cash as and when so received. For such purposes, the Chargee may make and execute all agreements and assurances which it shall think fit. The purchaser shall in no case be bound to enquire whether notice of intention to sell has been given or default made, or otherwise as to the regularity or validity of any sale made hereunder, and any sale by the Chargee shall be valid as regards the purchaser and shall not in any way be affected thereby. The Chargee shall be entitled to apply the proceeds of any sale hereunder first in payment of all costs, charges and expenses incurred in respect of such sale, as more particularly described below, and secondly in payment of all amounts of interest and principal owing hereunder. If any surplus remains after the Chargee has fully satisfied its claims, such surplus shall be paid to the party then entitled by law to receive such surplus. The powers conferred on the Chargee hereunder are in addition to and not in limitation of any other rights or powers of the Chargee under this Charge, or at law or in equity.

The costs of any sale proceedings hereunder, whether such sale proves abortive or not, including all commissions and other fees payable to real estate agents and brokers in connection with any such sale, and all costs, charges and expenses (including, without limitation, legal fees on a substantial indemnity basis) incurred in inspecting the Charged Property, which the Chargee shall be entitled to do, or about taking, recovering or keeping possession of the Charged Property, or in enforcing the remedies of the Chargee under this Charge, or by reason of non-payment or in procuring payment of the monies hereby secured, shall be added to the Indebtedness and bear interest at the Interest Rate provided for in this Charge as well after as before maturity, and shall be a charge on the Charged Property and shall be payable immediately with interest as aforesaid, and in default of payment, may be paid from the proceeds of any sale of the Charged Property.

### 6.3 Possession

Upon the Chargee's rights and remedies hereunder becoming enforceable, the Chargee may enter into and take possession of the Charged Property and shall be entitled to:

- (a) have, hold, use, occupy, possess and enjoy the Charged Property without let, suit, hindrance, interruption or denial of the Chargor or any other Person;
- (b) maintain, repair and complete the construction of the Improvements;
- (c) inspect, manage, take care of, collect Rents and lease the Charged Property or any part thereof for such terms and for such rents (which may extend beyond the Maturity Date) and on such conditions and provisions (including providing any leasehold improvements and tenant inducements) as the Chargee may determine in its sole discretion, which leases shall have the same effect as if made by the Chargor; and
- (d) pay from such Rents received all expenses of maintaining, preserving, protecting and operating the Charged Property, making any additions and replacements thereto and all charges payment of which may be necessary to preserve or protect the Charged Property and the Chargee shall have and enjoy and may exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including without limitation power to advance its own monies at the Interest Rate and to enter into contracts and undertake obligations for the foregoing purposes upon the security hereof,

and all costs, charges and expenses incurred by the Chargee in the exercise of such rights (including allowances for the time, service or effort of any Person appointed by the Chargee for the above purposes, and all reasonable legal fees and disbursements incurred and all commissions and other fees payable to real estate agents and brokers in connection with any lease), together with interest thereon at the Interest Rate, shall be payable forthwith by the Chargor to the Chargee, and until paid shall be added to the Indebtedness and shall be secured by this Charge. Each lease or renewal of lease made by the Chargee while in possession of the Charged Property shall continue for its full term notwithstanding the termination of the Chargee's possession. The Chargee shall not be liable for any loss or damage sustained by the Chargor or any other Person resulting from any lease entered into by the Chargee, any failure to lease the Charged Property, or any part thereof, or from any other act or omission of the Chargee or any receiver in managing the Charged Property, nor shall the Chargee be obligated to perform or discharge any obligation or liability of the Chargor under any Lease, Loan Document or otherwise at law or in equity.

### 6.4 Exercise Rights of Chargor; Distraint

Upon the Chargee's rights and remedies hereunder becoming enforceable, the Chargee shall have, enjoy and exercise all of the powers and rights of and enjoyed by the Chargor with respect to the Charged Property or incidental, ancillary, attaching or deriving from the ownership by the Chargor of the Charged Property, including without limitation the powers of the receiver set out in Section 6.5 and the power to enter into agreements, to grant or agree to mortgages and other encumbrances, and to grant or reserve easements, rights-of-way, rights in the nature of easements and licences, in each case over or pertaining to the whole or any part of the Charged Property. If the Chargor shall make default in payment of any part of the interest payable under

- 17 -

this Charge at any of the dates or times fixed for payment thereof, it shall be lawful for the Chargee to distrain therefor upon the Charged Property or any part thereof, and by distress warrant, to recover by way of rent reserved, as in the case of a demise of the Charged Property, so much of such interest as shall from time to time be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress for rent. The Chargee may distrain for arrears of principal or other monies owing hereunder in the same manner as if the same were arrears of interest.

#### 6.5 Receiver

Upon the Chargee's rights and remedies hereunder becoming enforceable, the Chargee may, in its sole discretion, at such time and from time to time and with or without entry into possession of the Charged Property or any part thereof by writing appoint a receiver or receiver and manager (hereinafter referred to as a "Receiver") of the Charged Property or any part thereof and with or without security and may from time to time by similar writing remove any Receiver and appoint another in his stead and that, in making any such appointment or removal, the Chargee shall be deemed to be acting as the agent or attorney for the Chargor. Upon the appointment of any such Receiver or Receivers from time to time the following provisions shall apply:

- (a) the statutory declaration of an officer of the Chargee as to default under the provisions of this Charge shall be conclusive evidence thereof;
- (b) every such Receiver shall be the irrevocable agent or attorney of the Chargor for the collection of all rents falling due in respect of the Charged Property or any part thereof whether in respect of any tenancies created in priority to these presents or subsequent thereto;
- (c) every such Receiver may, in the discretion of the Chargee and by writing, be vested with all or any of the powers and discretions of the Chargee under this Charge and the other Loan Documents, including without limitation the power to:
  - (i) exercise the powers of the Chargee set out in Sections 6.2, 6.3 and 6.4, as if the word "Chargee" in those Sections was replaced with the word "Receiver", and every such Receiver shall have authority to execute any lease of any premises in the Charged Property in the name of and on behalf of the Chargor, and the Chargor undertakes to ratify and confirm whatever any such Receiver may do on the Charged Property;
  - (ii) complete any unfinished construction upon the Charged Property or any part thereof, including without limitation the power to:
    - (A) appoint and engage superintendents, architects, engineers, decorators, planners, consultants, managers, advisors and such other personnel which, in the discretion of the receiver, may be required to complete the construction, furnishing and operation of the Charged Property or any part thereof;
    - (B) enter into contracts for the supply of materials and services which the receiver deems necessary for the completion and operation of the Charged Property or any part thereof;
    - (C) enter into and enforce and take the benefit of contracts and arrangements in respect of the Charged Property or any part thereof which provide loans, grants, licences, concessions or franchises from municipal or other governmental authorities or from any other source whatsoever;
    - (D) enforce, use and take the benefit of construction contracts, contracts for services or materials, performance bonds, insurance contracts, development agreements, plans, studies, reports, information or any other matter, material or arrangement in respect of the Charged Property or any part thereof;

- 18 -

- (E) arrange financing and borrow money on such terms as the receiver deems reasonable in the circumstances and which the receiver deems necessary, to pay for any of the matters herein mentioned which financing may be secured against the Charged Property or any part thereof in priority to this Charge or otherwise; and
  - (F) terminate any contracts or arrangements made by the Chargor in connection with the Charged Property on such terms as the receiver deems reasonable;
- (iii) mortgage, operate, use, amend, repair, alter or extend the Charged Property or any part thereof in the name of the Chargor; and
  - (iv) grant extensions of time, take and perfect or abstain from taking and perfecting security, give up security, accept compositions or compromises, grant releases and discharges, and release any part of the Charged Property or otherwise deal with the Chargor, debtors of the Receiver, sureties and others and with the Charged Property and other security as the Receiver sees fit without prejudice to the liability of the Chargor to the Chargee or the Chargee's rights hereunder;
- (d) the Chargee may from time to time by such writing fix the remuneration of every such Receiver who shall be entitled to deduct the same out of the Charged Property or the proceeds thereof;
  - (e) every such Receiver shall, so far as concerns responsibility for his acts or omissions, be deemed the agent or attorney of the Chargor and in no event the agent of the Chargee;
  - (f) the appointment of every such Receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the Receiver in any respect and such appointment or anything which may be done by any such receivership shall not have the effect of constituting the Chargee a mortgagee in possession in respect of the Charged Property or any part thereof; and
  - (g) no such Receiver shall be liable to the Chargor to account for monies or damages other than cash received by him in respect of the Charged Property or any part thereof and out of such cash so received every such Receiver shall in the following order pay:
    - (i) its remuneration aforesaid;
    - (ii) all payments made or incurred by it in connection with the management, operation, repair, alteration or extension of the Charged Property or any part thereof;
    - (iii) in payment of interest, principal and other monies which may, from time to time, be or become charged upon the Charged Property in priority to this Charge, and all taxes, insurance premiums and every other proper expenditure made or incurred by it in respect of the Charged Property or any part thereof,
    - (iv) in payment to the Chargee of all Indebtedness and all reserves payable under the Commitment, to be applied by the Chargee in such order as the Chargee may determine, and
    - (v) thereafter any surplus remaining in the hands of every such Receiver after payments made as aforesaid shall be accountable to the party entitled by law to receive such surplus.

The Chargee may at any time and from time to time terminate any such receivership by notice in writing to the Chargor and to any such Receiver. Save as to claims for accounting under subsection (g) of this Section, the Chargor hereby releases and discharges the Chargee and every such Receiver from every claim of every nature, whether sounding in damages or not, which

- 19 -

may arise or be caused to the Chargor or any person claiming through or under him by reason or as a result of anything done by the Chargee or any successor or assign claiming through or under it or any such Receiver under the provisions of this Section unless such claim be the direct and proximate result of its gross negligence or wilful misconduct.

#### **6.6 Chargee's Right to Perform Obligations**

If the Chargor shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then while any Event of Default exists, and without notice to or demand upon the Chargor and without waiving or releasing any other right, remedy or recourse the Chargee may have because of such Event of Default, the Chargee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of the Chargor, and shall have the right to enter upon the Charged Property for such purpose and to take all such action thereon and with respect to the Charged Property as it may deem necessary or appropriate. If the Chargee shall elect to pay any sum due with reference to the Charged Property, the Chargee may do so in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, the Chargee shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. The Chargor shall indemnify the Chargee for all losses, expenses, damages, claims and causes of action, including legal fees (on a solicitor and client basis), incurred or accruing by reason of any acts performed by the Chargee pursuant to the provisions of this Subsection 6.6. All sums paid by the Chargee pursuant to this Subsection 6.6, and all other sums expended by the Chargee to which it shall be entitled to be indemnified, together with interest thereon at the Interest Rate from the date of such payment or expenditure until paid, shall be added to the Indebtedness, shall be secured by the Loan Documents and shall be paid by the Chargor to the Chargee upon demand.

#### **6.7 Concurrent Remedies**

The Chargee may exercise all remedies provided for in this Charge or otherwise at law or in equity concurrently or in such order and at such times as it may see fit and will not be obligated to exhaust any right or remedy before exercising any of its other rights or remedies pursuant to any other provisions contained in this Charge, any other Loan Document or otherwise at law or in equity.

#### **6.8 Judgments**

The taking of a judgment or judgments against the Chargor or any other Person for breach of its obligations contained in this Charge or any other Loan Document will not merge or extinguish such obligations or affect the Chargee's rights to interest on the Indebtedness at the Interest Rate. Any such judgment may provide that interest thereon will be computed at the Interest Rate until such judgment is fully paid and satisfied.

#### **6.9 Remedies Cumulative**

The rights and remedies of the Chargee under the Loan Documents are cumulative and are in addition to and not in substitution for any rights or remedies otherwise provided at law or in equity. No right or remedy of the Chargee shall be exclusive of or dependent on any other right or remedy and any one or more of such rights and remedies may be exercised independently or in combination from time to time. Any single or partial exercise by the Chargee of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in any Loan Document shall not waive, alter, affect or prejudice any other right or remedy to which the Chargee may be lawfully entitled for such default or breach.

#### **6.10 Extension of Time and Waiver**

Neither any extension of time given by the Chargee to the Chargor or any Person claiming through the Chargor, nor any amendment to this Charge or other dealing by the Chargee with a subsequent owner of the Charged Property will in any way affect or prejudice the rights of the Chargee against the Chargor or any other Person or Persons liable for payment of the Indebtedness. The Chargee may waive any Event of Default in its sole discretion. No waiver

will extend to a subsequent Event of Default, whether or not the same as or similar to the Event of Default waived, and no act or omission by the Chargee will extend to, or affect, any subsequent Event of Default or the rights of the Chargee arising from such Event of Default. Any such waiver must be in writing and signed by the Chargee. No failure on the part of the Chargee or the Chargor to exercise, and no delay by the Chargee or the Chargor in exercising, any right pursuant to this Charge will operate as a waiver of such right. No single or partial exercise of any such right will preclude any other or further exercise of such right.

#### 6.11 Discharge of Charge and Release

The Chargee will have a reasonable period of time after full payment and satisfaction of the Indebtedness to prepare and execute a discharge of this Charge. Interest at the Interest Rate will continue to run and accrue on all Indebtedness until full payment has been received by the Chargee. All reasonable legal and other expenses for the preparation, execution, delivery and registration of the discharge shall be paid by the Chargor upon demand. The Chargor shall register such discharge. The Chargee may release in its discretion and at any time any Person or any part or parts of the Charged Property from all or any part of the Indebtedness or the security either with or without any consideration and without releasing any other part of the Charged Property or any other Person from this Charge or from any of the covenants contained in this Charge, and without being accountable to the Chargor for the value of the Charged Property released or for any money except that actually received by the Chargee. Every part or lot into which the Charged Property is or may hereafter be divided will stand charged with the entire Indebtedness. The Chargee may grant time, renewals, extensions, indulgences, releases and discharges, may take securities from and give the same up, may abstain from taking securities from or from perfecting securities, may accept compositions and proposals, and may otherwise deal with the Chargor and all other Persons and securities as the Chargee may see fit without prejudicing the rights of the Chargee under the Loan or the Loan Documents.

### ARTICLE 7 MISCELLANEOUS

#### 7.1 Notice

Any notice, demand or other communication required or permitted to be given or made to the Chargor pursuant to this Charge may be given or made in any manner permitted or provided by the laws applicable thereto, notwithstanding any provision of any other Loan Document to the contrary. Subject to the foregoing, any such notice, demand or communication may be given or made, at the option of the Chargee by personal delivery, by prepaid ordinary or registered mail (to the address for service of the Chargor set out in this Charge or to the last known address of the Chargor as shown in the Chargee's records) or by facsimile transmission to the facsimile number of the Chargor set out herein or the last known facsimile number of the Chargor as shown in the Chargee's records. Such notice will be sufficient although not addressed to any Person by name or designation and notwithstanding that any Person to be affected thereby may be unknown, unascertained or under a disability. Subject to Applicable Laws, the giving of such notice in the manner aforesaid will be as effective as if the notice had been personally served on all Persons required to be served therewith.

Subject to this Section 7.1, any demand, notice or communication to be made or given in connection with this Charge or any of the Loan Documents shall be in writing and may be made or given by personal delivery, by registered mail or by facsimile transmission addressed to the recipient as follows: (i) to the Chargor 51 Caldari Road, Unit A1M, Vaughan, Ontario L4K 4G3, Attention: Co-President, with a copy to the Chargor's solicitors (which shall not constitute notice): Harris + Harris LLP, 2355 Skymark Avenue, Suite 300, Mississauga, Ontario, L4W 4Y6, Attention: Gregory H. Harris, Facsimile No. (905) 629-4350; (ii) to the Chargee: Toronto-Dominion Centre, TD Bank Tower, 66 Wellington Street West, Suite 4400, Box 163, Toronto, Ontario M5K 1H6, Attention: Scott Coates, Facsimile No.: (416) 687-6701, or to such other address, individual or facsimile number as any party may designate by notice given to the other(s) in accordance with this Section. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, and if made or given by registered mail, on the third Business Day following the deposit thereof in the mail, and if made or given by facsimile transmission, on the first Business Day following the transmittal thereof. If the party giving any demand, notice or other communication knows or reasonably ought to know of any difficulties with the postal



- 21 -

system that might affect the delivery of mail, such demand, notice or other communication shall not be mailed, but shall be given by personal delivery or by facsimile transmission.

#### **7.2 General Indemnity**

The Chargor shall protect, defend, indemnify and save harmless the Chargee its shareholders, directors, officers, employees and agents from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable legal fees and expenses), imposed upon or incurred by or asserted against the Chargee by reason of (a) ownership of the Charge, the Charged Property or any interest therein or receipt of any rents; (b) any accident, injury to or death of persons or loss of or damage to the Charged Property occurring in, on or about the Charged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent Charged Property or adjacent parking areas, streets or ways; (c) any use, non-use or condition in, on or about the Charged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent Charged Property or adjacent parking areas, streets or ways; and (d) performance of any labour or services or the furnishing of any materials or other property in respect of the Charged Property or any part thereof. Any amounts payable to the Chargee by reason of the application of this subsection shall become immediately due and payable and shall bear interest at the Interest Rate from the date loss or damage is sustained by the Chargee until paid.

#### **7.3 Disclosure**

The Chargor acknowledges that the Chargee and its successors and assigns may sell or transfer or grant a participation in all or any interest in the Loan and Loan Documents to a third party, without further notice to or consent of the Chargor. The Chargor shall co-operate with the Chargee in any such sale, transfer or grant. The Chargor shall provide such information, legal opinions and documents relating to the Chargor, the Charged Property and any tenants of the Charged Property as the Chargee may reasonably request in connection with such sale, transfer or grant at no cost or expense to the Chargee. The Chargee and each Person having an interest in the Loan from time to time may release, disclose, exchange, share, transfer and assign as it may determine in its sole discretion, all information and materials (including financial statements and information concerning the status of the Loan, such as existing or potential Loan defaults, Lease defaults or other facts or circumstances which might affect the performance of the Loan) provided to or obtained by the Chargee relating to the Chargor, any guarantor, indemnitor or beneficial owner, the Charged Property or the Loan (both before and after the Loan advance and/or default) without notice to or the consent of the Chargor or any other Person to any prospective purchaser, transferee or grantee of the Loan and their respective employees, third party advisors and agents.

#### **7.4 Amendments and Waivers**

No amendment or waiver of any provision of the Loan Documents shall be effective unless in writing and signed by the party against whom enforcement is sought.

#### **7.5 Time of the Essence**

Time is of the essence with respect to this Agreement.

#### **7.6 Waivers**

No course of dealing on the part of the Chargee, its officers, employees, consultants or agents, nor any failure or delay by the Chargee with respect to exercising any right, power or privilege of the Chargee under the any of the Loan Documents, shall operate as a waiver thereof.

#### **7.7 Governing Law**

This Charge and the Loan Documents shall be governed by and construed in accordance with the laws of the Province in which the Charged Property is located and the applicable laws of Canada.

#### 7.8 Successors and Assigns

This Charge shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. This Charge may be assigned by the Chargee at any time without prior notice to or consent of the Chargor.

#### 7.9 No Merger

Notwithstanding the execution and delivery of this Charge and the other Loan Documents and the advance of all or part of the Loan, the Commitment shall remain in full force and effect and the provisions thereof are intended not to merge or be extinguished. In the event of any conflict or inconsistency between the provisions of this Charge and the provisions of the Commitment, the provisions of the Commitment shall prevail to the extent of any such conflict or inconsistency. In the event of any conflict or inconsistency between the provisions of this Charge and the provisions of any other Loan Document (other than the Commitment), the provisions of this Charge shall prevail to the extent of any such conflict or inconsistency. This Charge is intended to supplement and not derogate from the other Loan Documents.

#### 7.10 Currency

All dollar references in this Charge are expressed in Canadian dollars.

#### 7.11 Obligations as Covenants

Each obligation of the Chargor expressed in this Charge, even though not expressed as a covenant, is deemed for all purposes to be a covenant made with the Chargee.

#### 7.12 Land Registration Reform Act

The parties hereby exclude from this Charge all of the covenants deemed to be included by section 7(1) of the *Land Registration Reform Act* (Ontario) (the "Act"), which covenants are hereby replaced by the covenants and agreements contained herein.

#### 7.13 Severability

If any one or more of the provisions contained in this Charge shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Chargee, be severable from and shall not affect any other provision of this Charge, but this Charge shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Charge.

#### 7.14 Limit on Rate of Interest

- (a) If any provision of the Charge would oblige the Chargor to make any payment of interest or other amount payable to the Chargee in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Chargee of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)), then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the Chargee of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows:
  - (i) firstly, by reducing the amount or rate of interest required to be paid to the Chargee under Section 2.3; and
  - (ii) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to the Chargee which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada).
- (b) Notwithstanding the provisions of this Section 7.14, and after giving effect to all adjustments contemplated thereby, if the Chargee shall have received an amount in excess of the maximum permitted by Subsection 7.14(a), then the Chargor shall be entitled, by notice in writing to the Chargee, to obtain reimbursement from the

- 23 -

Chargee in an amount equal to such excess, and pending such reimbursement, such amount shall be deemed to be an amount payable by the Chargee to the Chargor.

- (c) Any amount or rate of interest referred to in this Section 7.14 shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term of the Loan on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the date of the first advance of the Loan to the Maturity Date and, in the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Chargee shall be conclusive for the purposes of such determination.

#### **7.15 Credit and Personal Information Investigations**

Each of the Covenantors and their respective principal(s) each acknowledges that for credit purposes the Chargee (including its agents and those to whom the Chargee may assign all of any portion of its interest in the Loan) will collect, use and, where necessary, disclose information in connection with the Commitment and this Charge and will consult its existing files about each of them. Credit purposes include, without limitation, (i) assessing and processing the Commitment and this Charge; (ii) administering the Loan; (iii) enforcing any obligation owed by any Covenantor under or in respect of the Loan or any principal; (iv) fraud prevention; and (v) credit reporting. Each of the Covenantors and their respective principal(s) each hereby authorizes the Chargee, now or at any time in the future, to the extent necessary for credit purposes, to collect, use and disclose information about each of them and each of their creditworthiness, including, without limitation, information collected and exchanged with third parties (such as references, personal information agents, credit reporting bureaus and other institutions with whom any of the Covenantors or any principal may have financial dealings). Such third parties are hereby authorized to disclose to the Chargee any information it requests pursuant to this Section.

## APPENDIX I

As used herein, the following terms have the following meanings unless there is something in the subject matter or context inconsistent therewith:

**"Act"** has the meaning set out in Section 7.12.

**"Applicable Laws"** means, in respect of any Person, property, transaction or event, all applicable federal, provincial or municipal laws, statutes, regulations, rules, by-laws, policies and guidelines, orders, permits, licenses, authorization, approvals and all applicable common laws or equitable principles whether now or hereafter in force and effect.

**"Business Day"** means a day other than a Saturday, a Sunday, or a statutory or civic holiday in the Province of Ontario.

**"Charge"** means collectively, the electronic Charge/Mortgage to which the Schedule is attached, the Schedule and all other Schedules and Appendices to the Charge/Mortgage or to the Schedule.

**"Charged Property"** means all legal and beneficial right, title, estate and interest in (a) the land described in the Properties section of the electronic Charge/Mortgage to which the Schedule is attached, together with any greater estate therein as hereafter may be acquired by the Chargor (the "Land"), (b) all buildings, structures and other improvements, now or hereafter situated, placed or constructed upon the Land from time to time (the "Improvements"), (c) all fixtures, materials, supplies, machinery, equipment, apparatus and other items of personal property now owned or hereafter acquired by the Chargor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, including without limitation, water, gas, electrical, heating, cooling, ventilation, storm and sanitary sewer fixtures, equipment and facilities and all other utilities whether or not situated in easements (the "Fixtures"), (d) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans"), (e) all leases, subleases, licenses, concessions, occupancy agreements, rental contracts, or other agreements (written or oral) now or hereafter existing relating to the use or occupancy of all or any part of the Land and the Improvements, together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof and all related security and other deposits (the "Leases"), (f) all rents, revenues, issues, income, proceeds, profits, and all other payments of any kind under the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying all or any part of the Land and the Improvements (the "Rents"), (g) all other agreements, including without limitation property management agreements, construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, franchise agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Charged Property (the "Property Agreements"), (h) all rights, privileges, tenements, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (i) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above Charged Property now or hereafter acquired by the Chargor, (j) all of the Chargor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements or Fixtures and (k) all renewals, substitutions, improvements, accessions, attachments, additions, replacements and proceeds to, of or from each of the foregoing, and all conversions of the security constituted thereby so that the foregoing shall immediately and automatically be deemed a part of the Charged Property and subject to the security of the Charge as fully and completely and with the same priority and effect as those now owned by the Chargor and specifically described herein, without any further mortgage or assignment or conveyance by the Chargor. As used in this Charge, the term "Charged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

**"Chargee"** means the Person or Persons named as Chargee in the Chargee(s) section of the electronic Charge/Mortgage to which the Schedule is attached and their respective successors and assigns.

- 2 -

**“Chargor”** means the Person or Persons named as Chargor in the Chargor(s) section of the electronic Charge/Mortgage to which the Schedule is attached and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

**“Commitment”** means the commitment letter, dated May 5, 2016, issued by the Chargee to the Chargor and accepted by the Chargor and others, as it may be amended, restated or reissued from time to time.

**“Common Expenses”** means the expense of the performance of the objects and duties of the Condominium Corporation and any expenses identified to be common expenses in either the Condominium Act or in the Declaration.

**“Condominium Act”** means the *Condominium Act, 1998*, S.O. 1998, ch. 19, as amended and supplemented from time to time.

**“Condominium Corporation”** means the condominium corporation to be incorporated with respect to the Charged Property.

**“Costs”** means all fees, costs, charges and expenses incurred by or on behalf of the Chargee for or incidental to (a) preparing, executing and registering the Loan Documents, (b) collecting payments due to the Chargee under the Loan Documents, (c) enforcing and realizing on this Charge and the other Loan Documents, including power of sale, foreclosure, execution, judicial sale, court appointed or private receivership, possession and/or management of the Charged Property and other enforcement proceedings, (d) inspecting, protecting, securing, completing, insuring, repairing, equipping, taking and keeping possession of, managing, selling or leasing the Charged Property, including all protective disbursements and curing any defaults under or renewing any leasehold interests, (e) exercising any rights of a receiver appointed under this Charge or otherwise and such receiver’s fees and expenses (including all legal fees and disbursements and agents’ costs and expenses), (f) obtaining any environmental audits or other inspections, tests or reports with respect to the Charged Property, (g) complying with any notices, orders, judgments, directives, permits, licenses, authorizations or approvals with respect to the Charged Property, (h) performing the obligations of the Chargor under the Loan Documents, (i) all legal fees and disbursements in connection with the Loan, on a substantial indemnity basis, and (j) any other fees, costs, charges or expenses payable to the Chargee under the Commitment or any of the Loan Documents or otherwise at law or in equity. “Costs” will also include interest at the Interest Rate on all such fees, costs, charges and expenses.

**“Covenantors”** has the meaning set out in Subsection 5.1(a).

**“Declaration”** means the declaration to be registered under the Condominium Act or its predecessor in the Registry Office.

**“Environmental Laws”** means all Applicable Laws, now or hereafter enacted, governing the environment or natural resources, occupational health and safety matters and/or Hazardous Materials, including, without limitation, such laws governing or regulating (a) the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, release, discharge of, or exposure to, Hazardous Materials, (b) requiring notification or disclosure of releases of Hazardous Materials or other environmental conditions whether or not in connection with a transfer of title to or interest in Charged Property, or (c) the presence of Hazardous Materials on or at the Charged Property.

**“Event of Default”** has the meaning set out in Article 5.

**“First Mortgage”** has the meaning set out in the definition of Permitted Encumbrances in this Appendix.

**“Fixtures”** has the meaning set out in the definition of Charged Property in this Appendix.

**“Hazardous Materials”** means (a) petroleum or chemical products, whether in liquid, solid, or gaseous form, or any fraction or by-product thereof, (b) asbestos or asbestos-containing materials, (c) polychlorinated biphenyls (PCBs), (d) radon gas, (e) underground storage tanks, (f) any explosive or radioactive substances, (g) lead or lead-based paint, or (h) any other substance, material, waste or mixture which is or shall be listed, defined, or otherwise determined by any

governmental authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any Environmental Laws.

**"Improvements"** has the meaning set out in the definition of Charged Property in this Appendix.

**"Indebtedness"** means all existing and future indebtedness and other covenants, obligations and liabilities owing by the Chargor to the Chargee from time to time pursuant to the Loan and the Loan Documents, matured or not, direct or indirect, absolute or contingent, including (a) the Principal Amount, (b) all interest and compound interest at the Interest Rate, (c) Costs, (d) any amount, cost, charge, expense or interest which has been added to the Indebtedness under the Loan Documents or which is otherwise due and payable thereunder or secured thereby, and (e) the payment, performance, discharge and satisfaction of all other obligations of the Chargor to the Chargee under or in respect of the Loan, the Indebtedness and/or Loan Documents.

**"Interest Adjustment Date"** means the Interest Adjustment Date specified in the Provisions section of the electronic Charge/Mortgage to which the Schedule is attached.

**"Interest Rate"** means the rate of five and one-half percent (5.50%) per annum, which rate of interest shall be calculated daily, compounded and payable monthly, not in advance, both before and after maturity, demand, default and judgment.

**"Land"** has the meaning set out in the definition of Charged Property in this Appendix.

**"Leases"** has the meaning set out in the definition of Charged Property in this Appendix.

**"Lien"** means any mortgage, charge, pledge, hypothec, assignment, lien, lease, sublease, easement, right of way, security interest, restrictions, covenants or encroachments of any kind or nature affecting all or any part of the Charged Property.

**"Loan"** means the loan made by the Chargee to the Chargor in the original principal amount equal to the Principal Amount and all other amounts secured by this Charge and the other Loan Documents.

**"Loan Documents"** means, collectively, all documents, instruments, agreements and opinions now or hereafter evidencing, securing, guaranteeing and/or relating to the Loan and the Indebtedness or any part thereof, including the Commitment, this Charge, and the Security referred to in the Commitment. Reference in this Charge to any Loan Document or other instrument or agreement shall include all amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto or thereof from time to time.

**"Maturity Date"** means the Balance Due Date specified in the Provisions section of the electronic Charge/Mortgage to which the Schedule is attached.

**"Payment Date"** means the first day of each calendar month in each and every year commencing on the first day of the first calendar month following the Interest Adjustment Date and ending on the Maturity Date.

**"Permitted Encumbrances"** means as of any particular time any of the following encumbrances, provided that the Chargee is satisfied in its sole discretion that same do not, in the aggregate, materially impair the servicing, development, construction, operation, management or marketability of the Charged Property, or the validity, enforceability or priority of security of this Charge and the other Loan Documents: (a) Liens for Realty Taxes or utility charges in either case only if same are not yet due or payable; (b) registered easements, rights of way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any governmental authority or public utility, or any registered subdivision, development, servicing, site plan or other similar agreement with any governmental authority or public utility provided in each case that (i) same has been complied with and (ii) the Chargee is satisfied in its sole discretion with the nature, scope and cost of any outstanding obligations thereunder and security has been posted to ensure performance of all such obligations; (c) any subsisting reservations contained in the original grant of the Land from the Crown; (d) Leases which are either disclosed by the Chargor to the Chargee prior to the Loan advance in a rent roll or other document, or entered into after the Loan advance in accordance with the Loan Documents; (e) the

charge/mortgage in favour of Textbook Student Suites (445 Princess Street) Trustee Corporation to be registered in the Registry Office against title to the Charged Property on the date of registration of this Charge (the "Second Mortgage"); and (f) such other Liens consented to in writing by the Chargee in its sole discretion.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

"Principal Amount" means, on the date of registration of this Charge, the amount set out as the Principal amount in the Provisions section of the electronic Charge/Mortgage to which this Appendix is attached (as an appendix of the Schedule to such Charge/Mortgage) and, thereafter, the balance thereof which remains outstanding from time to time, together with all money that is later added to the Principal Amount under the terms of this Charge.

"Property Agreements" has the meaning set out in the definition of Charged Property in this Appendix.

"Realty Taxes" means all taxes, duties, rates, imposts, levies, assessments and other similar charges, whether general or special, ordinary or extraordinary, or foreseen or unforeseen and all related interest, penalties and fines which at any time may be levied, assessed, imposed or be a Lien on, against or in respect of the Charged Property or any part thereof, the Chargor or any beneficial or unregistered owner with respect to its interest in the Charged Property, or any leasing, occupancy, operation, use or possession of the Charged Property.

"Registry Office" means the Land Registry Office for the Land Titles Division of Frontenac (No. 13).

"Rents" has the meaning set out in the definition of Charged Property in this Section.

"Schedule" means the Schedule - Additional Provisions to which this Appendix is attached and includes this Appendix and all other Appendices attached to such Schedule.

"Units" means the condominium unit or units and its or their appurtenant common interests which comprise part of the Charged Property.

Tab E



This is Exhibit "E" referred to in the Affidavit of Daniel Pollack  
sworn January 3, 2018



---

*Commissioner for Taking Affidavits (or as may be)*

**ANDREW WINTON**

GENERAL ASSIGNMENT OF RENTS AND LEASES

THIS AGREEMENT made as of the 5<sup>th</sup> day of July, 2016.

BETWEEN:

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

(hereinafter called the "Assignor")

- and -

**KINGSETT MORTGAGE CORPORATION**

(hereinafter called the "Lender")

**WHEREAS** as additional security for the Assignor's covenants and obligations as set out in the Mortgage and set out in all other agreements, documents, instruments, undertakings and assignments entered into between the Assignor and the Lender, made by the Assignor in favour of the Lender or assigned by the Assignor to the Lender, the Assignor agreed to assign, to the Lender, the Rents and the Leases, together with all benefits, powers and advantages of the Assignor to be derived therefrom.

**NOW THEREFORE** in consideration of the sum of Ten Dollars (\$10.00) paid by the Lender to the Assignor (the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree with each other as follows:

1. **Recitals Correct:**

The Assignor confirms the validity and truth of the above-noted recital, which has the same force and effect as if repeated herein at length.

2. **Definitions:**

In this Agreement, the following capitalized terms have the respective meanings set out below:

- (a) "Agreement", "this Agreement", "the Agreement", "hereto", "hereof", "hereby", "hereunder" and similar expressions mean or refer to this entire agreement as amended from time to time and any agreement or instrument supplemental or ancillary hereto or in implementation hereof;
- (b) "Buildings" means all buildings, improvements, installations, facilities, erections or structures now or hereafter located on, made to, placed upon or erected in, under or on the Lands, any additions and alterations thereto, and any expansions, improvements and replacements thereof and all equipment, chattels and fixtures which may be owned by or on behalf of the Assignor and may now or hereafter be located on the Lands;
- (c) "Commitment" means the commitment letter from the Lender to the Assignor dated the 5<sup>th</sup> day of May, 2016, as it may be amended, modified, restated or consolidated from time to time;
- (d) "Default" has the meaning ascribed thereto in Section 8;
- (e) "Dispute" has the meaning ascribed thereto in Subsection 8(c);
- (f) "Event of Default" has the meaning ascribed thereto in the Mortgage;
- (g) "Indebtedness" has the meaning ascribed thereto in Section 3;
- (h) "Lands" means the lands described in Schedule "A" attached hereto;

- (i) **"Leases"** means all leases, subleases, agreements to lease or sublease, offers to lease or sublease, agreements to use or occupy and licenses in respect of the whole or any part or parts of the Property and all revisions, alterations, modifications, amendments and changes thereto, extensions, renewals and replacements thereof or substitutions therefor which have been or may hereafter be effected or entered into; and **"Lease"** means any one of the Leases;
- (j) **"Mortgage"** means the charge/mortgage of the Property granted by the Assignor in favour of the Lender and registered on the date of registration of this Agreement in the Land Registry Office for the Land Titles Division of Frontenac (No. 13), as it may be amended or supplemented from time to time;
- (k) **"Property"** means the Lands and Buildings;
- (l) **"Rents"** means all present and future income, rents, issues, profits and any other monies, including without limitation security deposits, rental deposits (including for rent for the last month or any other future period in the term of a Lease), rental insurance proceeds and expropriation awards, to be derived from, reserved or payable under the Leases; and
- (m) **"Tenant"** means any person (other than the Assignor) who is hereafter a party to a Lease; and **"Tenants"** means all such persons.

3. **Assignment:**

As continuing and additional security for:

- (a) the repayment to the Lender of all indebtedness and liability (the **"Indebtedness"**) from time to time of the Assignor to the Lender pertaining to the Property under, in connection with or arising out of or from the Mortgage, the Commitment and all other agreements, documents, instruments, undertakings and assignments entered into by the Assignor with the Lender pertaining to the Property, made by the Assignor in favour of the Lender with respect to the Property or assigned by the Assignor to the Lender with respect to the Property; and
- (b) the due performance by the Assignor of the terms, agreements, provisions, conditions, obligations and covenants on the part of the Assignor to be performed under the Mortgage, the Commitment and all other agreements, documents, instruments, undertakings and assignments entered into by the Assignor with the Lender pertaining to the Property, made in favour of the Lender with respect to the Property or assigned to the Lender with respect to the Property;

the Assignor, upon and subject to the terms of this Agreement, assigns, sets over and transfers to the Lender all its rights, benefits, title and interest under, in and to, and all claims of whatsoever nature or kind which the Assignor now has or may hereafter have under or pursuant to:

- (c) the Leases;
- (d) the Rents;
- (e) the benefit of any and all present and future guarantees of and indemnities with respect to any Lease and the performance of any or all of the obligations of any Tenant thereunder;
- (f) the benefit of any and all present and future letters of credit and security documents provided to secure the obligations of any Tenant under any of the Leases;
- (g) the benefit of any and all present and existing assignments of Leases by the Tenants thereunder and agreements to assume the obligations of the Tenants thereunder; and

- (h) all books, accounts, invoices, letters, papers, drawings and documents in any way evidencing or relating to the Leases, the Rents and any guarantees or indemnities of any Lease;

all of the foregoing described in Subsections 3(c) to and including 3(h) together with all agreements pertaining thereto and all proceeds therefrom being hereinafter collectively called the "Premises Hereby Assigned".

4. **Acknowledgment of Assignor:**

The Assignor acknowledges that none of this Agreement, the assignment constituted hereby or the enforcement by the Lender of any of its rights and remedies hereunder:

- (a) shall in any way lessen or relieve the Assignor from:
- (i) the obligation of the Assignor to observe, satisfy and perform each and every term, agreement, provision, condition, obligation and covenant set out in, or required to be observed by the Assignor in order to fulfil its obligations under, any of the Premises Hereby Assigned; and
  - (ii) any liability of the Assignor to each Tenant, the Lender or to any other person, firm or corporation;
- (b) imposes any obligation on the Lender to assume any liability or obligation under, or to observe, perform or satisfy any term, agreement, provision, condition, obligation or covenant set out in any of the Premises Hereby Assigned;
- (c) imposes any liability on the Lender for any act or omission on its part in connection with this Agreement or the assignment constituted hereby including, without limitation, the fulfilment or non-fulfilment by the Lender of the obligations, covenants and agreements of the Assignor set out in the Premises Hereby Assigned;
- (d) obligates the Lender to give notice of this Agreement and the assignment constituted hereby to any Tenant or any other person, firm or corporation whatsoever; provided that the Lender may, in its absolute discretion, give any such notice at any time or from time to time without further notice to the Assignor;
- (e) shall cause the Lender to be or be deemed to be a mortgagee in possession;
- (f) shall delay, prejudice, impair, diminish or adversely affect the rights and remedies of the Lender pursuant to the Mortgage or any other agreement (including, without limitation, any loan agreement) entered into by the Assignor with the Lender, made by the Assignor in favour of the Lender or assigned by the Assignor to the Lender; or
- (g) authorizes the Assignor to dispose of or transfer by way of conveyance, mortgage, lease, assignment or otherwise, the Property, the interest of the Assignor in the Property or any part of either.

5. **Positive Covenants of Assignor:**

The Assignor covenants and agrees:

- (a) to observe, perform and satisfy each and every term, agreement, provision, condition, obligation and covenant set out in, or required to be observed, performed and satisfied by the Assignor pertaining to or under or pursuant to, the Premises Hereby Assigned;
- (b) to deliver to the Lender a copy of all written notices, demands or requests given under, in connection with or pursuant to the Premises Hereby Assigned that are:
- (i) received by the Assignor, forthwith upon receipt of same; and

- (ii) delivered by the Assignor, contemporaneously with the delivery of same;
- (c) to indemnify and save the Lender harmless from and against any liabilities, losses, costs, charges, expenses (including legal fees and disbursements on a solicitor and his own client basis), damages, claims, demands, actions, suits, proceedings, judgments and forfeitures (collectively referred to hereinafter as the "Liabilities") suffered, incurred or paid by the Lender in connection with, on account of or by reason of:
  - (i) the assignment to the Lender of the Premises Hereby Assigned;
  - (ii) any alleged obligation of the Lender to observe, perform or satisfy any term, agreement, provision, condition, obligation or covenant set out in any of the Premises Hereby Assigned;
  - (iii) any failure of the Assignor to observe, perform or satisfy its covenants, agreements, warranties and representations set out in this Agreement; and
  - (iv) the enforcement of the assignment constituted by this Agreement or any of its rights and remedies hereunder;
- (d) to notify the Lender in writing as soon as the Assignor becomes aware of any Dispute (as hereinafter defined), claim or litigation in respect of any of the Premises Hereby Assigned or of any breach of default by the Assignor or any other person, firm or corporation in the observance, performance or satisfaction of any of the terms, agreements, provisions, conditions, obligations or covenants set out in the Premises Hereby Assigned;
- (e) to keep, with regard to the Property, separate, up-to-date, detailed and accurate records of all revenues, including, without limitation, all Rents, and expenditures;
- (f) to obtain such consents from third parties including, without limitation, Tenants as may be necessary or required pursuant to any of the Premises Hereby Assigned in connection with the assignment constituted by this Agreement and, in addition, such other consents and acknowledgments from third parties as the Lender may require or desire;
- (g) upon the request of the Lender from time to time, to execute and deliver to the Lender specific assignments of any of the Leases duly acknowledged by the respective Tenants under such Leases, which specific assignments and acknowledgements shall be in form and substance acceptable to the Lender;
- (h) the Assignor will obtain in any new Lease a covenant of the respective Tenant whereby such Lease and all of the rights of the Tenant thereunder are subject and subordinate to this Agreement, the Mortgage and all other security agreements, mortgages, charges, assignments and security interests securing the Indebtedness or any part thereof and whereby such Tenant, at the request of the Lender, will attorn to and become the Tenant of the Lender for the then unexpired residue of the term of such Lease;
- (i) to deliver to the Lender, at the request of the Lender from time to time, a notarial copy of any Lease and of any guarantee or indemnity in respect of the obligations of any Tenant under a Lease;
- (j) to execute and deliver to each Tenant and the Lender, at the request of the Lender from time to time, a written notice to each Tenant directing such Tenants to pay the Rents and all other sums owing under the Leases to the Lender;
- (k) if requested to do so by the Lender, from time to time, it will enforce any or all of its rights and remedies under the Premises Hereby Assigned;
- (l) that each of its warranties and representations set out in this Agreement is now and will continue to be true and correct; and

- (m) that it will pay or cause to be paid to the Lender or pursuant to the Lender's direction, upon demand, all costs, charges, fees and expenses, including, without limitation, legal fees and disbursements on a solicitor and his own client basis, court costs and any other out-of-pocket costs and expenses, incurred by the Lender in connection with or arising out of or with respect to this Agreement including, without limitation, any one or more of the following:
  - (i) the negotiation, preparation, execution and enforcement of this Agreement and all documents, agreements and other writings incidental or ancillary hereto;
  - (ii) any act done or taken pursuant to this Agreement including, without limitation, recovering the Indebtedness and registering, discharging and reassigning this Agreement;
  - (iii) the preservation, protection, enforcement or realization of the Premises Hereby Assigned including, without limitation, retaking, holding, repairing, preparing for disposition and disposing of the Premises Hereby Assigned;
  - (iv) any action or other proceeding instituted by the Assignor, the Lender, any Tenant or any other person, firm or corporation in connection with or in any way relating to:
    - (1) this Agreement or any part hereof;
    - (2) the preservation, protection, enforcement or realization of the Premises Hereby Assigned; or
    - (3) the recovery of the Indebtedness;
  - (v) all Liabilities suffered, incurred or paid by the Lender as set out in Subsection 5(c) hereof; and
  - (vi) all amounts incurred or paid by the Lender pursuant to Section 8 hereof;

together with interest thereon from the date of the incurring of such expenses at the rate provided for in the Mortgage, calculated daily and compounded monthly. Whether any action or any judicial proceedings to enforce the aforesaid payments has been taken or not, the amount owing to the Lender under this Subsection shall be added to the Indebtedness and secured by the Mortgage, this Agreement and all other security agreements entered into by the Assignor in favour of the Lender and relating to the Property.

6. **Negative Covenants of Assignor:**

The Assignor covenants and agrees that it shall not:

- (a) sell, assign, transfer, dispose of, collect, receive or accept any of the Premises Hereby Assigned including, without limitation, the Rents, except as may be permitted in this Agreement, nor do, nor permit to be done, any act or thing whereby the Lender may be prevented or hindered from so doing, in each case, without the prior written consent of the Lender;
- (b) pledge, charge, mortgage, hypothecate, create a security interest in or otherwise encumber the Premises Hereby Assigned or any part thereof in any manner whatsoever other than to the Lender without the prior written consent of the Lender;
- (c) enter into, terminate, accept a surrender of, amend or vary any Lease other than with the Lender's prior written consent;
- (d) accept payment of any Rents under any Lease in advance except for the current monthly rental period and except for security deposits provided for in such Lease;

- (e) suffer or permit anything allowing any Tenant under any Lease to cancel, terminate, forfeit any of the Premises Hereby Assigned, or suffer or permit anything allowing the surrender of any of the Premises Hereby Assigned, in each case without the prior written approval of the Lender;
- (f) waive, amend, modify or vary materially any of the terms, agreements, provisions, conditions, obligations and covenants set out in the Premises Hereby Assigned, or otherwise agree or consent to any material waiver, amendment, modification or variation of any of them, whether by way of collateral agreement or otherwise, in each case without the prior written approval of the Lender;
- (g) waive or agree to waive any material failure of any party to any of the Premises Hereby Assigned including, without limitation, any Tenants, to observe, perform or satisfy any of the terms, agreements, provisions, conditions, obligations or covenants set out in any of the Premises Hereby Assigned, in each case without the prior written approval of the Lender;
- (h) give any consent or approval contemplated by, or required or permitted to be given pursuant to, any of the Premises Hereby Assigned, without the prior written consent of the Lender; or
- (i) settle or resolve any Dispute, without the prior written consent of the Lender.

7. **Representations and Warranties of Assignor:**

The Assignor represents and warrants to the Lender that:

- (a) each of the Premises Hereby Assigned including, without limitation, each of the Leases in effect as of the date hereof, is valid and subsisting, is in full force and effect, unamended, in good standing and there are no defaults thereunder;
- (b) the Assignor has good, valid and legal right to absolutely assign and transfer to the Lender the Premises Hereby Assigned, free and clear of all assignments, mortgages, charges, pledges, security interest and other encumbrances;
- (c) the Assignor has not performed any act or executed any agreement that might prevent the Lender from operating under, or exercising its rights and remedies under, any of the provisions of this Agreement or that would limit the Lender in any such operation or exercise;
- (d) the Assignor has the corporate power, authority and capacity to enter into this Agreement, to make the assignment constituted hereby and to perform its obligations hereunder;
- (e) the Assignor has taken all necessary action, corporate or otherwise, to authorize the execution and delivery of this Agreement and the performance of its obligations set out in this Agreement and in each of the Leases;
- (f) neither the execution nor the delivery of this Agreement by the Assignor, nor the consummation by it of the transactions herein contemplated, nor the compliance by it with the terms, conditions and provisions hereof will conflict with or result in a breach of any terms, conditions or provisions of:
  - (i) the constating documents of the Assignor;
  - (ii) any agreement, instrument or arrangement to which the Assignor is a party or by which the Assignor or any of its property is, or may be bound, or constitute a default thereunder, or result thereunder in the creation or imposition of any security interest, mortgage, lien, charge or encumbrance of any nature whatsoever upon the Property or upon any of the other properties or assets of the Assignor;
  - (iii) any judgment, order, writ, injunction or decree of any court, relating to the Assignor; or

- (iv) any applicable law or governmental regulation relating to the Property;
- (g) this Agreement has been duly executed and, when delivered, will be in full force and effect and constitutes a legal, valid and binding obligation of the Assignor, enforceable in accordance with its terms, subject to applicable laws relating to bankruptcy, insolvency and other similar laws affecting creditors' rights generally and subject to the qualification that equitable remedies, including specific performance and injunction, may only be granted in the discretion of a court of competent jurisdiction;
- (h) there is no pending or threatened litigation, action, claim or fact known to the Assignor and not disclosed to the Lender in writing which adversely affect or could adversely affect any of the Premises Hereby Assigned or the rights of the Assignor or any other party thereunder or the rights of the Lender under this Agreement;
- (i) none of the Premises Hereby Assigned in existence on the date hereof is incapable of assignment to the Lender in accordance with the provisions of this Agreement, nor is any of the Premises Hereby Assigned incapable of further assignment by the Lender or by any receiver or receiver and manager, nor is the consent of any third party required for any assignment set out in this Agreement or in connection with any further assignment by the Lender; and
- (j) no Rents, payments, proceeds, receipts or other distributions due or to become due on any date subsequent to the date of this Agreement have been collected or paid in advance of the time when the same become due under the terms of any of the Premises Hereby Assigned.

8. **Enforcement Upon Default:**

Without limiting in any manner whatsoever the Lender's rights, remedies, and recourses pursuant to this Agreement, by operation of law or otherwise, upon a default by the Assignor in the observance or performance of any of its covenants and agreements hereunder or upon the occurrence of an Event of Default (hereinafter collectively called a "Default"), the Lender and any receiver or any receiver and manager appointed by the Lender, may from time to time and at any time, in its own name or in the name of the Assignor and without notice to the Assignor, do any one or more of the following:

- (a) observe, perform or satisfy any term, agreement, provision, condition, obligation or covenant which, pursuant to any of the Premises Hereby Assigned, could or should be observed, performed or satisfied by the Assignor;
- (b) enforce, realize, sell or otherwise deal with the Premises Hereby Assigned upon such terms and conditions and at such time or times as to the Lender seems advisable;
- (c) exercise any of the rights, powers, authority and discretion which, pursuant to any of the Premises Hereby Assigned, by operation of law or otherwise, could be exercised, observed, performed or satisfied by the Assignor, including, without limitation, entering into, terminating, amending, renewing and assigning the Leases and otherwise dealing with the Tenants and others, making other agreements or granting waivers and consents and giving notices in respect of any of the Leases or any part or parts thereof for such consideration and on such terms as the Lender may deem appropriate, and participating in all settlement negotiations and arbitration proceedings resulting from a dispute (the "Dispute") arising out of, in connection with or pursuant to any of the Premises Hereby Assigned;
- (d) collect any Rents, proceeds, receipts or income arising from or out of the Premises Hereby Assigned including, without limitation, demanding the same, instituting proceedings for the collection thereof, accepting reductions therein or compromises with respect thereto, and recovering, receiving and giving receipts therefor, whether in the name of the Assignor or the Lender or both;



- (e) manage generally the business and operations of the Assignor and deal with the Leases and the Tenants to the same extent as the Assignor could do; and
- (f) by instrument in writing appoint any person to be a receiver (which term shall include a manager and a receiver and manager) in respect of the Leases or any part thereof and may remove any receiver so appointed and appoint another in its stead; and any receiver so appointed shall have the authority to do any of the acts specified in Subsections 8(a), (b), (c), (d) and (e) hereof and further to take possession of and collect the Rents and other moneys of all kinds payable to the Assignor in respect of the Leases and pay therefrom all reasonable expenses in connection therewith and all charges, the payment of which may be necessary to preserve and protect the Leases. Any such receiver shall be deemed to be the agent of the Assignor for all purposes.

The Assignor agrees that the Lender shall be entitled to charge on its own behalf for services rendered, and retain such agents as the Lender wishes to assist the Lender, in doing, or to effect, any of the foregoing. The Assignor acknowledges and agrees that all costs, charges and expenses incurred or charged by the Lender in connection with doing anything permitted in this Section 8, including, without limitation, legal fees and disbursements on a solicitor and his own client basis, and the fees and disbursements of any agent as aforesaid, shall be added to the Indebtedness and be forthwith paid by the Assignor to the Lender.

9. **Lender Not Liable:**

The Lender shall not be bound to exercise any of the rights afforded to it hereunder nor to collect, dispose of, realize, preserve or enforce any of the Premises Hereby Assigned. The Lender shall not be liable or responsible to the Assignor or any other person for the fulfilment or non-fulfilment of this Agreement or the terms, obligations, covenants or agreements set out in this Agreement or for any loss or damage incurred or suffered by the Assignor or any other person, firm or corporation as a result of:

- (a) any delay by, or any failure of, the Lender to:
  - (i) exercise any of the rights afforded to it under this Agreement; or
  - (ii) collect, dispose of, realize, preserve or enforce any of the Premises Hereby Assigned; or
- (b) the negligence of any receiver, receiver and manager, officer, servant, agent, counsel or other attorney employed or appointed by the Lender in the exercise of the rights afforded to the Lender hereunder, or in the collection, disposition, realization, entering into, terminating, preservation or enforcement of the Premises Hereby Assigned

provided, however, the Lender shall be liable when any such loss or damage incurred or suffered by the Assignor or any other person, firm or corporation results solely from the Lender's gross negligence or wilful misconduct.

10. **Application of Funds:**

The Lender shall be entitled (in the sole discretion of the Lender) to utilize any amount received by the Lender arising out of or from the collection, disposition, realization or enforcement of any of the Premises Hereby Assigned in any one or more of the following ways:

- (a) to pay all costs, charges and expenses incurred by the Lender in connection with the collection, disposition, realization or enforcement of the same, including without limitation the fees and disbursements of any agents retained by the Lender to assist or effect such collection, disposition, realization or enforcement;
- (b) to pay any prior mortgages, charges, assignments or encumbrances of or against the Premises Hereby Assigned or the Property or any part thereof;

- (c) to pay any costs, charges or expenses arising from the Property or any part thereof or the operation thereof, including without limitation realty and other taxes, utilities costs and charges, ground rent (if any), repair, maintenance and replacement costs, management fees and costs and employees' salaries and costs; and
- (d) to apply such amount or any part thereof in reduction of the Indebtedness.

Notwithstanding the generality of the foregoing, the Lender shall be entitled to apply all or any part of such amounts received by it on account of such part or parts of the Indebtedness, in such manner and at such times or from time to time, as the Lender deems best and the Lender may at any time and from time to time change any such application.

11. **Further Assurances:**

The Assignor covenants and agrees to execute all such further assignments and other documents and to do all such further acts and things including, without limitation, obtaining any consents which are required by the Lender, from time to time, to more effectively assign, set over and transfer the Premises Hereby Assigned to the Lender including, without limitation, execute and deliver one or more specific assignments of the Assignor's rights, benefits, title and interest in any of the agreements, documents, commitments and other writings that constitute the Premises Hereby Assigned in form, substance and execution satisfactory to the Lender, to perfect and keep perfected the security interest constituted hereby and to assist in the collection, disposition, realization or enforcement thereof, and the Lender is hereby irrevocably constituted the true and lawful attorney of the Assignor, with full power of substitution, to execute in the name of the Assignor any assignment or other document for such purposes.

12. **Information:**

The Assignor covenants and agrees that from time to time forthwith, upon the request of the Lender, it shall furnish to the Lender in writing all information requested by the Lender relating to the Premises Hereby Assigned.

13. **Dealing with Leases:**

The Assignor confirms and agrees that the Lender, as assignee hereunder, has the authority to exercise all of the rights, powers, authority and discretion of the Assignor pursuant to the Premises Hereby Assigned, including without limitation to collect any Rents and other monies payable or arising out of or from the Premises Hereby Assigned. Notwithstanding the foregoing sentence, the Assignor shall have the authority, subject to Section 6 hereof:

- (a) to collect any Rents and other monies properly payable or arising out of or from the Premises Hereby Assigned; and
- (b) to exercise in good faith all of the benefits, advantages and powers as landlord under the Premises Hereby Assigned,

unless and until such authority is revoked in writing by the Lender, which revocation may be made only after the occurrence of a Default, provided, however, that any monies received by the Assignor arising out of or from any of the Premises Hereby Assigned shall be received and held in trust for the Lender and forthwith upon request by the Lender, after the occurrence of a Default, remitted to the Lender. The Lender may, after the occurrence of a Default, at any time or times by notice to any Tenant, direct such Tenant to pay Rent and other monies to the Lender and such notice shall be good and sufficient authority for any Tenant so doing. Any payment of Rents and other monies by a Tenant to the Lender shall not constitute a default under such Tenant's Lease. The receipt by the Lender of Rent or other monies from a Tenant shall constitute and be deemed receipt thereof by the Assignor.

14. **No Novation:**

This Assignment and transfer to the Lender of the Premises Hereby Assigned:

- (a) is continuing security granted to the Lender without novation or impairment of any other existing or future security held by the Lender in order to secure payment

to the Lender of the Indebtedness and the due performance of the Assignor's obligations under the Mortgage and all other agreements (including, without limitation, any loan agreement), documents, instruments, undertakings and commitments entered into between the Assignor and the Lender, made by the Assignor in favour of the Lender or assigned by the Assignor to the Lender;

- (b) is in addition to and not in substitution for any other security now or hereafter granted to or held by the Lender in connection with the Indebtedness; and
- (c) shall remain in full force and effect without regard to and shall not be affected or impaired by:
  - (i) any amendment or modification of or addition or supplement to the Mortgage, this Agreement or any other security or securities (the "Additional Securities") now or hereafter held by or on behalf of the Lender in connection with the Indebtedness or any part thereof;
  - (ii) any exercise or non-exercise of any right, remedy, power or privilege in respect of the Mortgage, this Agreement or the Additional Securities;
  - (iii) any waiver, consent, extension, indulgence or other action, inaction or omission under or in respect of the Mortgage, this Agreement or the Additional Securities;
  - (iv) any default by the Assignor under, or any invalidity or unenforceability of, or any limitation on the liability of the Assignor or on the method or terms of payment under, or any irregularity or other defect in, the Mortgage, this Agreement or the Additional Securities;
  - (v) any merger, consolidation or amalgamation of the Assignor into or with any other company or corporation; or
  - (vi) any insolvency, bankruptcy, liquidation, reorganization, arrangement, composition, winding-up, dissolution or similar proceeding involving or affecting the Assignor.

15. **Re-assignment:**

Upon the Indebtedness being paid in full, the Lender shall, within a reasonable time following its receipt of a written request from the Assignor and at the sole cost and expense of the Assignor, reassign the Premises Hereby Assigned to the Assignor.

16. **Enurement:**

Subject to Section 6 and the other provisions hereof, this Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

17. **Notices:**

Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if delivered to the party for whom it is intended, or (except in the case of an actual or pending disruption of postal service) mailed by registered mail to the address of the addressee provided for in the Mortgage, and shall be deemed to have been received by such addressee after the time periods with respect thereto in the Mortgage.

18. **Waiver:**

No consent or waiver, express or implied, by the Lender to or of any breach or default by the Assignor in the performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by the Assignor of its obligations hereunder. Failure on the part of the Lender to complain of any act or failure to act of the Assignor or to declare the Assignor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Lender of its rights hereunder.

19. **Amendments:**

This Agreement may not be modified or amended except with the written consent of the Lender and the Assignor.

20. **Entire Agreement:**

This Agreement constitutes the entire agreement between the Lender and the Assignor pertaining to the assignment of the Premises Hereby Assigned and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, relating thereto.

21. **Assignment:**

The Lender may assign, transfer, negotiate, pledge or otherwise hypothecate this Agreement, any of the Premises Hereby Assigned, any of its rights hereunder or any part thereof and all rights and remedies of the Lender in connection with the interest so assigned shall be enforceable against the Assignor as the same would have been by the Lender but for such assignment.

22. **No Agency, Joint Venture or Partnership:**

The Lender is not the agent, representative, partner of or joint-venturer with the Assignor, and the Assignor is not the agent, representative, partner of or joint-venturer with the Lender, and this Agreement shall not be construed to make the Lender liable to any person or persons for goods or services furnished to, on behalf of or for the benefit of the Assignor nor for debts, liability or claims accruing therefrom against the Assignor.

23. **Rights, Powers and Remedies:**

Each right, power and remedy of the Lender provided for herein or available at law or in equity or in any other agreement shall be separate and in addition to every other such right, power and remedy. Any one or more or any combination of such rights, remedies and powers may be exercised by the Lender from time to time and no such exercise shall exhaust the rights, remedies or powers of the Lender or preclude the Lender from exercising any one or more of such rights, remedies and powers or any combination thereof from time to time thereafter or simultaneously. Without limiting the foregoing provisions of this Section 23, the Lender in its discretion may exercise its rights, powers and remedies hereunder in respect of each of the Premises Hereby Assigned separately and whether or not the Lender exercises such rights, powers and remedies in respect of any or all of the other Premises Hereby Assigned.

24. **Survival:**

All covenants, undertakings, agreements, representations and warranties made by the Assignor in this Agreement and any instruments delivered pursuant to or in connection herewith, shall survive the execution and delivery of this Agreement and any advances made by the Lender to the Assignor, and shall continue in full force and effect until the Indebtedness is paid in full. All representations and warranties made by the Assignor shall be deemed to have been relied upon by the Lender.

25. **Severability:**

Any term, condition or provision of this Agreement which is or is deemed to be void, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be severable herefrom, be ineffective to the extent of such avoidance, prohibition or unenforceability without invalidating the remaining terms, conditions and provisions hereof and any such avoidance, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such term, condition or provision in any other jurisdiction.

26. **Governing Law:**

This Agreement and the interpretation, construction, application and enforcement of this Agreement shall be governed by and construed in all respects, exclusively in accordance with the laws of the Province of Ontario.

27. **Headings:**

The insertion in this Agreement of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

28. **Number and Gender:**

All nouns and personal pronouns relating thereto shall be read and construed as the number and gender may require and the verb shall be read and construed as agreeing with the noun and pronoun.

29. **Registrations:**

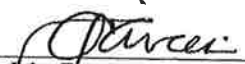
Neither the preparation, execution nor any registrations or filings with respect hereto, in and of itself, shall bind the Lender to make an advance under the Mortgage.

30. **Receipt of Copy:**

The Assignor acknowledges receipt of a copy of this Agreement and of any financing statement registered under the *Personal Property Security Act* (Ontario) with respect hereto.

IN WITNESS WHEREOF the Assignor has executed this Agreement as of the date and year first above-written.

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

Per:   
Name: John Evan Davies  
Title: Co-President and Secretary

I have authority to bind the corporation.

## SCHEDULE "A"

## LEGAL DESCRIPTION OF LANDS

Firstly: Part of Lot 6 and Lot 7-8, Plan 135 Kingston City  
Part of Lot 24 Block Z Concession 1 Kingston  
designated as Part 1 13R9645;  
together with and subject to Instrument No. FR396611  
City of Kingston; County of Frontenac  
Land Titles Division of Frontenac County (No. 13)  
being the whole of PIN 36071-0209(LT).

Secondly: Part of Lot 9, Plan 135 Kingston City  
designated as Part 1 13R6874;  
together with Instrument No. FR600210  
City of Kingston; County of Frontenac  
Land Titles Division of Frontenac County (No. 13)  
being the whole of PIN 36071-0211(LT).

Municipally known as 429 and 445 Princess Street, Kingston, Ontario.

# Tab F

This is Exhibit "F" referred to in the Affidavit of Daniel Pollack  
sworn January 3, 2018



---

*Commissioner for Taking Affidavits (or as may be)*

**ANDREW WINTON**



Steven Jeffery  
D: 416-593-3939 F: 416-593-2966  
sjeffery@blaney.com

November 7, 2017

**BY COURIER AND EMAIL**

Textbook (445 Princess Street) Inc.  
51-A Caldari Road  
Unit 1M  
Vaughan, Ontario L4K 4G3

Attention: President

Dear Sir:

Re: **KingSett Mortgage Corporation loan to Textbook (445 Princess Street) Inc.  
429 & 445 Princess Street, Kingston, Ontario (the "Property")**

We are solicitors for KingSett Mortgage Corporation. The above-referenced loan (the "**Loan**") secured by, among other things, a mortgage in favour of our client and registered against title to the Property (the "**Mortgage**") is in default, in that: (i) there has been a default under the charge registered against title to the Property in favour of Textbook Student Suites (445 Princess Street) Trustee Corporation and Olympia Trust Company; and (ii) you have failed to make the interest payment under the Loan due on November 1, 2017. As a result of these Events of Default (as defined in the Mortgage), the entire Indebtedness (as defined in the Mortgage) has, at the option of our client, become immediately due and payable.

Accordingly, on behalf of our client, we hereby demand payment, by no later than 10 days from the date of this letter, of the amount owing by you to our client in respect of the Loan, which as of November 7, 2017 is \$7,061,611.48, comprised of the following:

Outstanding Loan Balance as at November 1, 2017	\$7,000,000.00
Interest Payment Due November 1, 2017	\$32,698.63
KingSett NSF Fee	\$500.00
6 Days Accrued Interest at 5.5% interest rate (November 1, 2017 - November 7, 2017)	\$6,328.77
KingSett Discharge Fee (Section A.14 of the Commitment Letter dated May 5, 2016)	\$500.00
KingSett Legal Fees, Disbursements and HST (estimate)	\$21,584.08
Required Discharge Proceeds	<u>\$7,061,611.48</u>

Additional interest will accrue on this amount from the date it was due until the date it is paid in full at the interest rate set out in the Mortgage. You are responsible for our client's legal costs and all other expenses incurred in sending this letter to you and any further steps our client may take, plus interest thereon at the interest rate set out in the Mortgage.

Please be advised that unless payment is made within the 10 day period referred to above, our client shall be entitled, and intends, to enforce the Mortgage and its other security. A Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act* (Canada) is enclosed herewith.

- 2 -

In addition, our client reserves its rights to take such further steps as are necessary to recover the indebtedness and liabilities owing by you to our client. Should you wish to discuss the contents on this letter further, please contact, or have your counsel contact, the undersigned using the contact particulars set out above.

Yours very truly,

**Blaney McMurtry LLP**



Steven Jeffery  
SPJ/ik

*c. KingSett Mortgage Corporation*



## FORM 86

**NOTICE OF INTENTION TO ENFORCE A SECURITY**  
**(Rule 124)**

**TO: TEXTBOOK (445 PRINCESS STREET) INC.**, an insolvent person

**TAKE NOTICE THAT:**

1. KingSett Mortgage Corporation, a secured creditor, intends to enforce its security on the insolvent person's property described below:

- (a) the lands and premises described in Exhibit "1" hereto (collectively, the "**Lands**");
- (b) all buildings, structures and improvements built upon or made to the Lands from time to time, all erections, buildings, improvements, machinery, plant, furnaces, boilers, oil burners, stokers, electric light fixtures, plumbing and heating equipment, refrigeration equipment, air conditioning and cooling equipment, screen doors and windows, gas and electric stoves and water heaters, floor coverings, window coverings, and all apparatus and equipment appurtenant thereto, which are now or which shall hereafter be placed or installed upon the Lands and all appurtenances thereto (collectively, the "**Improvements**");

(which Lands and Improvements are hereinafter collectively referred to as the "**Property**");

- (c) all rents and other sums payable from time to time under leases of the Property or any part thereof whether presently existing or arising in the future, together with the benefit of all covenants, guarantees and/or indemnities contain in the said leases or collateral thereto in favour of the insolvent person (collectively, the "**Leases**"); and
- (d) all chattels, furnishings, equipment, appliances and all other personal property owned now or in the future by the insolvent person (collectively the "**Personal Property**").

2. The security that is to be enforced is the following:

- (a) a charge/mortgage of land executed by the insolvent person in favour of KingSett Mortgage Corporation and registered in the Land Registry Office for the Land Titles Division of Frontenac (No. 13) (the "**Registry Office**") on July 18, 2016 as Instrument No. FC223254;
- (b) an assignment of leases and rents executed by the insolvent person in favour of KingSett Mortgage Corporation and registered on July 18, 2016 as Instrument No. FC223255 in the Registry Office;

- 2 -

- (c) a general security agreement executed by the insolvent person in favour of KingSett Mortgage Corporation;
  - (d) a general assignment of the benefit of material agreements executed by the insolvent person in favour of KingSett Mortgage Corporation; and
  - (e) an assignment of insurance executed by the insolvent person in favour of KingSett Mortgage Corporation.
3. The total amount of indebtedness secured by the security is \$7,000,000.00 principal plus \$32,698.63 for interest due on November 1, 2017 plus interest accrued to November 7, 2017 of \$6,328.77 plus \$22,584.08 for legal and other fees, for a total of \$7,061,611.48 as at November 7, 2017, plus any legal and other costs incurred by the secured creditor.
4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement.

**DATED** this 7<sup>th</sup> day of November, 2017.

**KINGSETT MORTGAGE CORPORATION,**  
**By its solicitors**  
**Blaney McMurtry LLP**

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

Steven Jeffery

**EXHIBIT "1"****LEGAL DESCRIPTION OF LANDS**

Firstly: Part of Lot 6 and Lot 7-8, Plan 135 Kingston City  
Part of Lot 24 Block Z Concession 1 Kingston  
designated as Part 1 13R9645;  
together with and subject to Instrument No. FR396611  
City of Kingston; County of Frontenac  
Land Titles Division of Frontenac County (No. 13)  
being the whole of PIN 36071-0209(LT).

Secondly: Part of Lot 9, Plan 135 Kingston City  
designated as Part 1 13R6874;  
together with Instrument No. FR600210  
City of Kingston; County of Frontenac  
Land Titles Division of Frontenac County (No. 13)  
being the whole of PIN 36071-0211(LT).

Municipally known as 429 and 445 Princess Street, Kingston, Ontario.

# Tab G

This is Exhibit "G" referred to in the Affidavit of Daniel Pollack  
sworn January 3, 2018



---

*Commissioner for Taking Affidavits (or as may be)*

**ANDREW WINTON**



## SUBORDINATION AND STANDSTILL AGREEMENT

THIS AGREEMENT made as of July 5, 2016 between KingSett Mortgage Corporation (the "**Lender**"), Textbook Student Suites (445 Princess Street) Trustee Corporation and Olympia Trust Company (collectively, the "**Subordinate Lender**") and Textbook (445 Princess Street) Inc. (the "**Borrower**").

Whereas the Lender agreed to make a loan (the "**Loan**") to the Borrower in the original principal sum of \$7,000,000.00 on the security of a first mortgage (the "**Mortgage**") of the lands and premises described in Schedule "A" hereto (the "**Lands**") and other property more particularly described in the Mortgage (collectively, the "**Property**"). All existing and future indebtedness and other obligations and liabilities owing by the Borrower to the Lender from time to time pursuant to the Loan, including but not limited to the principal sum, all interest thereon, all future advances and all other amounts owing to the Lender thereunder from time to time, and including all reserves payable to the Lender relating to the Loan, are herein called the "**Prior Indebtedness**". The Mortgage and all other additional or collateral security now or hereafter securing the Prior Indebtedness, including without limitation an assignment of all rents and leases from or relating to the Property and a general security agreement with respect to all equipment and other personal property of the Borrower comprising or used in connection with the operation of the Property, are herein collectively called the "**Prior Security**".

And whereas the Subordinate Lender has made a loan or credit facility (the "**Subordinate Loan**") available to the Borrower in the principal sum of up to \$8,450,000.00 secured by a mortgage of the Lands (the "**Subordinate Mortgage**"). The Subordinate Loan and all existing and future indebtedness and other obligations and liabilities owing by the Borrower to the Subordinate Lender thereunder from time to time are herein called the "**Subordinate Indebtedness**" and the Subordinate Mortgage and all other additional or collateral security now or hereafter securing the Subordinate Indebtedness, are herein collectively called the "**Subordinate Security**";

And whereas the Subordinate Lender has agreed to subordinate and postpone the Subordinate Indebtedness and the Subordinate Security to and in favour of the Prior Indebtedness and the Prior Security. Reference herein to the Subordinate Indebtedness, Subordinate Security, Prior Indebtedness and Prior Security includes all renewals, extensions, amendments, modifications, and restatements thereof or thereto from time to time.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties agree as follows:

1. **Covenants, Representations and Warranties of Subordinate Lender.** The Subordinate Lender consents to the Prior Indebtedness and the Prior Security and represents and warrants to the Lender that (i) the Subordinate Indebtedness and the Subordinate Security are in good standing and the Borrower is not in default thereunder, (ii) it holds no security of any kind against the Property other than the Subordinate Security, (iii) it is the sole owner of the Subordinate Indebtedness and the Subordinate Security and has full power, authority and legal right to enter into this agreement, (iv) the total amount owing to the Subordinate Lender under the Subordinate Indebtedness is \$6,000,000.00 as of July 11, 2016, and (v) the Subordinate Indebtedness bears interest at 8%, calculated daily, compounded

quarterly, not in advance, and is due and payable to the Subordinate Lender as follows: by quarterly payments of interest only due on the first day of each month during such quarterly period and the balance of the Subordinate Indebtedness is due and payable to the Subordinate Lender on July 11, 2019. Upon request by the Lender from time to time, the Subordinate Lender shall provide to the Lender copies of the Subordinate Security or a statement of the Subordinate Indebtedness then outstanding.

2. **Subordination and Postponement.** The Subordinate Lender hereby subordinates and postpones the Subordinate Security and the Subordinate Indebtedness to the Prior Security and the Prior Indebtedness and agrees with the Lender that the Prior Security shall be a first priority lien and charge against the Property for the full amount of the Prior Indebtedness in full priority to the Subordinate Security, which shall be a second priority lien and charge against the Property. No discharge, release or waiver by the Lender of any of the Prior Security against or in respect of the Property or any person or any amendment (other than amendments increasing the principal amount of the Prior Indebtedness or interest rate charged thereon, which shall require the consent of the Subordinate Lender, not to be unreasonably withheld or delayed), renewal, extension, replacement, modification, supplement or restatement of any Prior Indebtedness and/or the Prior Security shall require notice to or the consent of the Subordinate Lender or otherwise affect the subordination and postponement of the Subordinate Security and the Subordinate Indebtedness hereby granted by the Subordinate Lender. The Subordinate Lender agrees to execute and deliver, upon request by the Lender, such further instruments and agreements as may be reasonably required by the Lender to confirm and give effect to the provisions of this agreement and to register and record or file notice of this agreement and/or this subordination and postponement of the Subordinate Security in any office of public record as the Lender may consider necessary or desirable from time to time.

3. **Amendment.** Prior to a default under the Prior Security or the Prior Indebtedness, the Lender shall not increase the principal amount or the interest rate or change the amortization period (including, for greater certainty, any changes in the amount or timing of any principal payments) under the Prior Security or the Prior Indebtedness without the consent of the Subordinate Lender, acting reasonably. Notwithstanding the foregoing, following a default under the Prior Security or the Prior Indebtedness that has not been cured within the cure period therefor (if any), nothing in this Agreement nor in the Subordinate Security or in any other arrangements or agreements between the Borrower, the Subordinate Lender or any other person shall restrict, limit or otherwise prevent the Lender from taking any such action or making any other amendment, renewal, extension, replacement, modification, supplement or restatement of the Prior Indebtedness or the Prior Security without the consent of the Subordinate Lender and without otherwise affecting the subordination and postponement of the Subordinate Security and Subordinate Indebtedness hereby granted, provided that the Lender shall give five (5) business days prior written notice of any such amendment to the Subordinate Lender. The Subordinate Lender shall not amend, extend, renew, modify, replace, supplement or restate the Subordinate Indebtedness or the Subordinate Security without the prior written consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion, other than an increase in the amount of the Subordinate Indebtedness and Subordinate Security to \$8,450,000.00 should the Subordinate Mortgage be registered initially for a lesser amount, but provided that such increase in the

Subordinate Indebtedness and Subordinate Security shall be, and is hereby, subordinated to the Prior Indebtedness and Prior Security.

4. **Notice of Default** Each of the Lender and the Subordinate Lender shall give to the other, contemporaneously with the giving thereof to the Borrower, copies of any notices given by it of any defaults, breaches or events of default under the Prior Loan or Subordinate Loan, as the case may be, and any notices of events that with the giving of notice or the passage of time and failure to cure, would result in a default, breach or event of default under the Loan or Subordinate Loan, as the case may be, provided that failure by either the Lender or Subordinate Lender to give such notice to the other shall not affect the rights and benefits of the party failing to give such notice under this agreement or its security or give rise to a claim of any kind against the party failing to give such notice.

5. **Rights of Subordinate Lender to Payout Prior Indebtedness** The Lender agrees to accept payout by the Subordinate Lender of all of the Prior Indebtedness after any default by the Borrower under the Loan and acceleration of the full amount of the Loan by the Lender, provided that the Subordinate Lender delivers: (i) written notice (the "Payout Notice") to the Lender of its intention to do same within five (5) days after it has received notice of such default; and (ii) repayment of the Prior Indebtedness in full to the Lender within 15 business days after the Lender has received the Payout Notice, such repayment to be in accordance with the terms of the Prior Security and commitment letter dated the 5<sup>th</sup> day of May, 2016, from the Lender to the Borrower.

6. **Payments**. For so long as the Prior Security remains registered against title to any portion of the Property, in the event of default under the Loan, the Subordinate Lender shall not be entitled to receive any payments (including of principal, interest or any other amounts) under the Subordinate Security when due, until the default under the Loan is cured. The Subordinate Lender agrees that (i) all proceeds from sales of Units, rents, revenue, income, cash flow and other proceeds arising from or relating to the Property shall not be applied to any payment on account of the Subordinate Indebtedness until the Prior Indebtedness is paid in full, and (ii) it shall not accept any payment on account of the Subordinate Indebtedness, and if any such payments are received, the Subordinate Lender shall immediately pay such amount to the Lender. The Lender and the Subordinate Lender shall provide reasonable cooperation to each other to ensure the provisions of this section are complied with.

7. **Partial Discharges**. As sales of units of the condominium to be registered in the future against title to the Property (the "Units") are closed, the Subordinate Lender agrees to execute and deliver, without payment of any monies whatsoever, partial discharges of such closed unit or units from the Subordinate Security. On execution of this agreement, and thereafter from time to time, the Subordinate Lender shall execute such acknowledgments and directions, partial discharges and other documents as the Lender may require and deliver the same to the Lender, to be held by the Lender and used by the Lender in the future to partially discharge the Subordinate Security from title to the Units, and the Lender is hereby irrevocably authorized and directed by the Subordinate Lender to partially discharge the Subordinate Security from each Unit as the sale by the Borrower or any other person of each such Unit is completed.

8. **Insurance Proceeds.** All insurance and expropriation proceeds received by the Subordinate Lender with respect to the Property shall be delivered to, held and applied by the Lender in accordance with the provisions of the Prior Security, notwithstanding any provision to the contrary in the Subordinate Security or under applicable laws. All rights and entitlement of the Subordinate Lender to such proceeds are hereby postponed and subordinated to the rights of the Lender.

9. **Standstill.** The Subordinate Lender shall not take any Enforcement Action under or in respect of the Subordinate Security or the Subordinate Indebtedness with respect to all or any part of the Property or against the Borrower without reasonable prior notice to and the written consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion. The Subordinate Lender shall not challenge, contest or bring into question the validity, priority or perfection of the Prior Security or any Enforcement Action taken by the Lender under or in respect of the Prior Security or Prior Indebtedness against the Borrower or against all or any part of the Property. In this Section, "**Enforcement Action**" means the commencement of power of sale, foreclosure or other judicial or private sale proceedings, appointing or obtaining the appointment of a receiver, a manager or a receiver and manager or other person having similar powers in respect of any person or property, attornment of rents, taking possession or control of any property or undertaking, commencing, giving or making any demand for payment, any notice of intention to enforce security or any action or proceeding seeking payment or recovery of all or any part of any indebtedness or damages in lieu thereof, accelerating the principal payable under the Subordinate Security, or accepting a transfer of any property in lieu of foreclosure, or the exercise of any other rights or remedies available to a creditor under its security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings.

10. **Assignment by Subordinate Lender.** The Subordinate Lender agrees that it shall not sell, transfer, assign or otherwise dispose of any interest in the Subordinate Loan or the Subordinate Security to any person or persons (the "**Assignee**") except upon terms and conditions which are expressly subject to the terms of this agreement. Concurrently with any such sale, transfer, assignment or other disposition, Subordinate Lender shall cause each Assignee to enter into a subordination and standstill agreement with the Lender on the same terms and conditions as this agreement.

11. **Subordination Effective notwithstanding Registration Dates, etc.** The Prior Security shall have and be entitled to priority over the Subordinate Security in all respects and any mortgage, pledge, charge, assignment and any other security interest created by or pursuant to or granted for the obligations secured by the Subordinate Security to the full extent of the Prior Indebtedness from time to time, and the Subordinate Security shall in all respects rank subordinate and junior to the Prior Security. This priority shall be effective in all events and in all circumstances. Without limiting the generality of the foregoing, this priority shall be effective notwithstanding:

- (a) the respective dates of execution, delivery, attachment, registration, filing, perfection or enforcement of the Prior Security and the Subordinate Security;
- (b) the respective dates of any advances secured by the Prior Security or the Subordinate Security;

- (c) the respective dates of default under the Prior Security or the Subordinate Security;
- (d) any priority to which the Subordinate Security may otherwise be entitled by reason of the giving or failure to give any notice of the acquisition of any charge, lien or security interest, by reason of the failure to register or to register any renewal or by reason of any defect in any item constituting the Prior Security;
- (e) the provisions of the instruments creating the Prior Security and the Subordinate Security; and
- (f) any modification, extension, renewal, replacement, supplement or restatement of the Prior Security or the Prior Indebtedness.

12. **Registration of this Agreement.** The Subsequent Lender hereby irrevocably authorizes and directs the Lender and its solicitors, Blaney McMurtry LLP, to (a) electronically register in the applicable Land Registry Office a postponement of the Subsequent Security, with a copy of this Agreement attached as a schedule thereto, and (b) electronically register a financing change statement under the *Personal Property Security Act* (Ontario), postponing any registrations made under such Act by the Subsequent Lender with respect to the Subsequent Security to all registrations made under such Act by the Lender with respect to the Security.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province in which the Lands are located and the laws of Canada applicable therein.

14. **Successors.** The acknowledgements and agreements contained in this agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

15. **Counterpart.** 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 instrument.

16. **Acknowledgment of Borrower.** The Borrower hereby acknowledges the subordination of the priority of the Subordinate Security to the Prior Security to the same effect as if all monies secured or intended to be secured by the Prior Security were events prior to the creation and registration of the Subordinate Security and the advance of any monies secured by the Subordinate Security as have been or will be advanced, and the Borrower expressly agrees to execute any instruments giving effect to such subordination and postponement as may be required by the Lender from time to time for such purpose.

*signature page to follow*

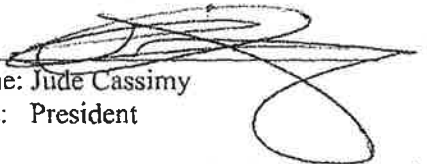
IN WITNESS WHEREOF each of the parties have duly executed this agreement.

**KINGSETT MORTGAGE CORPORATION**

Per: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the Corporation

**TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION**

Per:   
Name: Jude Cassimy  
Title: President

I have the authority to bind the Corporation

**OLYMPIA TRUST COMPANY**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

We have the authority to bind the Corporation

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

Per: \_\_\_\_\_  
Name: John Evan Davies  
Title: Co-President and Secretary

I have the authority to bind the Corporation

IN WITNESS WHEREOF each of the parties have duly executed this agreement.

**KINGSETT MORTGAGE CORPORATION**

Per: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the Corporation

**TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION**

Per: \_\_\_\_\_  
Name: Jude Cassimy  
Title: President

I have the authority to bind the Corporation


**OLYMPIA TRUST COMPANY**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

We have the authority to bind the Corporation

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

Per:   
Name: John/Evan Davies  
Title: Co-President and Secretary

I have the authority to bind the Corporation

IN WITNESS WHEREOF each of the parties have duly executed this agreement.

**KINGSETT MORTGAGE CORPORATION**

Per: Scott Coates  
Name: **Scott Coates**  
Title: **Vice President**

I have the authority to bind the Corporation

**TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION**

Per: \_\_\_\_\_  
Name: **Jude Cassimy**  
Title: **President**

I have the authority to bind the Corporation

**OLYMPIA TRUST COMPANY**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

We have the authority to bind the Corporation

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

Per: \_\_\_\_\_  
Name: **John Evan Davies**  
Title: **Co-President and Secretary**

I have the authority to bind the Corporation



IN WITNESS WHEREOF each of the parties have duly executed this agreement.

**KINGSETT MORTGAGE CORPORATION**

Per: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the Corporation

**TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION**

Per: \_\_\_\_\_  
Name: Jude Cassimy  
Title: President

I have the authority to bind the Corporation

**OLYMPIA TRUST COMPANY**

Per: \_\_\_\_\_  
Name: Anna Le  
Title: Supervisor

Per: \_\_\_\_\_  
Name: Vibha Bhagat  
Title: Supervisor

We have the authority to bind the Corporation

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

Per: \_\_\_\_\_  
Name: John Evan Davies  
Title: Co-President and Secretary

I have the authority to bind the Corporation

**SCHEDULE "A"****Lands**

Firstly: Part of Lot 6 and Lot 7-8, Plan 135 Kingston City  
Part of Lot 24 Block Z Concession 1 Kingston  
designated as Part 1 13R9645;  
together with and subject to Instrument No. FR396611  
City of Kingston; County of Frontenac  
Land Titles Division of Frontenac County (No. 13)  
being the whole of PIN 36071-0209(LT).

Secondly: Part of Lot 9, Plan 135 Kingston City  
designated as Part 1 13R6874;  
together with Instrument No. FR600210  
City of Kingston; County of Frontenac  
Land Titles Division of Frontenac County (No. 13)  
being the whole of PIN 36071-0211(LT).

Municipally known as 429 and 445 Princess Street, Kingston, Ontario.

Tab H

This is Exhibit "H" referred to in the Affidavit of Daniel Pollack  
sworn January 3, 2018



---

*Commissioner for Taking Affidavits (or as may be)*

**ANDREW WINTON**



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

May 16, 2017

## Contents

	Page
1.0 Introduction.....	1
1.1 Restrictions.....	2
2.0 Rideau Property .....	3
2.1 Purchase of the Property.....	3
2.2 Other Payments to Rideau .....	4
3.0 Conclusion.....	6

## Appendices

Appendix	Tab
Corporate Profile Reports.....	A
Title Search Ottawa Property .....	B
555 Princess, Kitchener and Ross Park Bank Statements and Cancelled Cheques ....	C
Companies' Bank Statements and Cancelled Cheques .....	D
445 Princess, Bronson and Ross Park Bank Statements and Cancelled Cheques .....	E
Loan Agreements.....	F



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

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

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

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

**THIRD REPORT OF  
KSV KOFMAN INC.  
AS RECEIVER AND MANAGER**

**MAY 16, 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 ("Scollard"), Memory Care Investments (Kitchener) Ltd. ("Kitchener"), Memory Care Investments (Oakville) Ltd. ("Oakville"), 1703858 Ontario Inc. ("Burlington"), Legacy Lane Investments Ltd. ("Legacy Lane"), Textbook (525 Princess Street) Inc. ("525 Princess") and Textbook (555 Princess Street) Inc. ("555 Princess") (each of the foregoing a "Company", and collectively the "Companies"), and of all of the assets, undertakings and properties of the Companies acquired for or used in relation to the Real Property (together with the Real Property, the "Property").

2. Pursuant to an order of the Ontario Superior Court of Justice (“Court”) dated October 27, 2016, Grant Thornton Ltd. was appointed Trustee (“Trustee”) of eleven entities<sup>1</sup> (collectively, the “Trustee Corporations”) which raised monies from investors through syndicated mortgage investments. The Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements between the Trustee Corporation and the applicable Davies Developer (as defined below).
3. On January 21, 2017, the Trustee brought a motion for an order (“Receivership Order”) appointing KSV as receiver and manager (“Receiver”) of the property owned by Scollard. On February 2, 2017, the Court made the Receivership Order.
4. On April 18, 2017, the Trustee brought a motion, *inter alia*, seeking orders:
  - a) amending and restating the Receivership Order to include the real property registered on title as being owned by Kitchener, Oakville, Burlington, Legacy Lane, 525 Princess and 555 Princess, as well as all of the assets, undertakings and properties of these entities acquired for or used in relation to their real property (the “Amended and Restated Receivership Order”); and
  - b) compelling John Davies and the eleven mortgagors to the Trustee Corporations for which John Davies is a principal (collectively, the “Davies Developers” and each a “Davies Developer”) to immediately deliver to the Trustee all bank statements for the Davies Developers (the “Production Order”). The Trustee has provided the Receiver with copies of the documents produced to the Trustee pursuant to the Production Order.
5. On April 28, 2017, the Court made the Amended and Restated Receivership Order and the Production Order. The Amended and Restated Receivership Order was further amended and restated by a Court order made on May 2, 2017 to rectify certain clerical errors.

## 1.1 Restrictions

1. In preparing this Report, the Receiver has reviewed the following information:
  - a) unaudited financial information of the Companies, including financial statements;
  - b) accounting records and bank statements for Scollard, Kitchener, Oakville, Burlington, Legacy Lane, 525 Princess, 555 Princess, which were provided to the Receiver by management of the Companies; and

---

<sup>1</sup> Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation



- c) bank statements for Textbook Ross Park Inc. ("Ross Park"), Textbook (445 Princess Street) Inc. ("445 Princess") and Textbook (774 Bronson Avenue) Inc. ("Bronson")<sup>2</sup>, which were provided by management of the Davies Developers to the Trustee pursuant to the Production Order, and which were provided subsequently by the Trustee to the Receiver.
2. The Receiver has not performed an audit of the foregoing information. The financial information discussed herein is preliminary and remains subject to further review. The Receiver is only partially through its review of the information noted above. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report.
3. The Receiver does not have access to the books and records of Rideau.
4. The Receiver has not discussed or corresponded with John Davies or Walter Thompson regarding this Report, including in respect of its findings.

## 2.0 Rideau Property

1. Textbook (256 Rideau Street) Inc. ("Rideau") is neither subject to these receivership proceedings nor is it a Davies Developer.
2. Rideau is the registered owner of real properties municipally described as 256 Rideau Street, Ottawa and 211 Besserer Street, Ottawa (jointly, the "Ottawa Property").
3. The officers and directors of Rideau are John Davies and Walter Thompson, who are also the sole officers and directors of 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park. John Davies is the sole officer and director of Kitchener, Burlington, Oakville, Scollard and Legacy Lane. Corporate profile reports for each of these entities are provided in Appendix "A".
4. As the Receiver has not been able to review the books and records of Rideau, the Receiver does not have knowledge of the ownership structure of Rideau.

### 2.1 Purchase of the Property

1. According to title searches, the Ottawa Property was purchased by Rideau for \$11 million on or around November 6, 2015. Kingsett Mortgage Corporation has two mortgages totalling \$8.25 million registered on title to the Ottawa Property. The mortgages were registered on title on November 6, 2015. Copies of the title searches for the Ottawa Property are collectively attached as Appendix "B".

---

<sup>2</sup> None of these entities is subject to the receivership proceedings.

2. The Receiver is performing a review of the receipts and disbursements for each of the Companies. In performing this exercise, the Receiver identified that on October 27, 2015, shortly prior to Rideau's acquisition of the Ottawa Property, 555 Princess transferred \$1.39 million to Rideau, and Kitchener transferred \$111,000 to Rideau, both by way of cheque.<sup>3</sup>
3. In addition, the Trustee has advised the Receiver that on October 27, 2015, Ross Park<sup>4</sup> transferred \$1.25 million to Rideau by way of cheque. The Receiver has reviewed the Ross Park bank statements and cancelled cheque and has confirmed this payment.
4. In all cases, the cheques were signed by John Davies. A copy of the relevant bank statements and cancelled cheques for 555 Princess, Kitchener and Ross Park are provided in Appendix "C".
5. As the Receiver has not been able to review the books and records of Rideau, the Receiver cannot know with certainty the use of the funds which were transferred to Rideau on October 27, 2015. As is described below, however, the timing and amount of the transfer causes the Receiver to suspect that the funds transferred to Rideau were used to help finance the acquisition of the Ottawa Property.

## 2.2 Other Payments to Rideau

1. The Receiver has also identified that \$61,200 was transferred to Rideau by 555 Princess, 525 Princess and Burlington subsequent to Rideau's acquisition of the Ottawa Property, as follows:

(unaudited; \$)	
Date of Payment	Amount
<i>555 Princess</i>	
December 17, 2015	36,000
May 31, 2016	7,000
	43,000
<i>525 Princess</i>	
June 20, 2016	16,000
<i>Burlington</i>	
November 5, 2015 <sup>5</sup>	2,200
Total	61,200

<sup>3</sup> These transfers (and the subsequent transfers by certain of the Companies referred to below) were recorded in the applicable Companies' general ledger as "loans" to Textbook Student Suites Inc. or Textbook Suites Inc. (or just "Textbook" in the case of Kitchener), notwithstanding that the funds appear to have been transferred from the applicable entity directly to Rideau.

<sup>4</sup> Ross Park is not subject to these receivership proceedings, as noted above.

<sup>5</sup> Payment made on the date the Ottawa Property was purchased. This payment is reflected in Burlington's bank statement as an "online banking payment". No details are provided in the bank statement regarding the recipient. Burlington's general ledger reflects that this payment was made to Rideau.

2. Copies of the relevant bank statements and cancelled cheques for each of the payments in the table above are provided in Appendix "D".
3. The Trustee has advised the Receiver that \$839,700 was transferred to Rideau by 445 Princess, Bronson and Ross Park subsequent to the acquisition of the Ottawa Property, as follows:

(unaudited; \$)	
Date of Payment	Amount
<i>445 Princess</i>	
July 27, 2016	35,000
August 3, 2016	37,000
August 4, 2016	5,000
August 16, 2016	33,000
August 25, 2016	370,000
August 26, 2016	60,000
September 1, 2016	3,000
September 7, 2016	21,000
September 15, 2016	2,600
September 22, 2016	2,000
September 29, 2016	61,000
September 30, 2016	8,000
October 12, 2016	2,300
October 12, 2016	30,000
October 28, 2016	61,000
November 3, 2016	33,000
December 13, 2016	2,600
	766,500
<i>Bronson</i>	
April 1, 2016	30,000
April 29, 2016	25,000
May 2, 2016	1,200
	56,200
<i>Ross Park</i>	
February 29, 2016	17,000
<b>Total</b>	<b>839,700</b>

4. The Receiver has reviewed the bank statements and cancelled cheques in respect of the foregoing. Copies of the relevant bank statements and cancelled cheques for the payments in the table above are provided in Appendix "E".

5. Pursuant to Section 7.02 (g) of the loan agreements referred to above entered into by the Companies, 445 Princess, Bronson and Ross Park with the various Trustee Corporations in connection with the syndicated mortgage investments (the "Loan Agreements"), the Companies, 445 Princess, Bronson and Ross Park each covenanted not to use the loan proceeds from the Trustee Corporations for any purpose other than the development and construction of such entity's respective real estate project, with certain limited carve-outs<sup>6</sup> provided in certain of the Loan Agreements. One such carve-out is "for the purposes of earning interest income on funds which are not immediately required to be expended by the Borrower." The Receiver has reviewed the income statements provided to it by the relevant Companies, and notes that there has been no interest received or accrued with respect to the transfers to Rideau. The Receiver has also not seen any other document or information to suggest interest was payable on such transfers. Copies of each of the Loan Agreements are provided in Appendix "F".
6. The Receiver has not corresponded or discussed with John Davies or Walter Thompson the purpose of the above transfers; Mr. Davies could potentially provide an explanation for such transfers. However, the Receiver can think of no commercial or legitimate purpose for the transfers in violation of the covenants.
7. In discussions with a realtor on May 10, 2017 in connection with the Receiver's intention to market the Real Property, the realtor advised the Receiver that it had recently been contacted in respect of a potential engagement to sell the Ottawa Property.
8. Based on the information presented in this Report, and after discussions with counsel, the Receiver believes it and the Trustee have a proprietary interest in the Ottawa Property, and the Receiver is commencing an action against Rideau to assert its proprietary interest in the Ottawa Property and seek certificates of pending litigation and related relief.

### 3.0 Conclusion

1. In order to take steps to protect the interests of the Receiver, 555 Princess, Kitchener and the other entities noted herein that advanced funds to Rideau in contravention of the express provisions of the Loan Agreements, the Receiver believes that it is appropriate that the Court issue an order authorizing the Receiver to file certificates of pending litigation on title to the Ottawa Property. Such relief is particularly important and time sensitive given the Receiver's understanding that the Ottawa Property is being (or is about to be) marketed for sale.

---

<sup>6</sup> In addition to the carve-out set out above, Section 7.02 (g) of certain of the Loan Agreements provide an additional carve-out for any other use specified in the Loan Agreements. The Receiver and its counsel have reviewed each of the Loan Agreements and does not believe the transfers are permitted by any other sections of the Loan Agreements.

\* \* \*

All of which is respectfully submitted,

*KSV Kofman Inc*

**KSV KOFMAN INC.**

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

**TAB 3**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	TUESDAY, THE 9TH
	)	
JUSTICE	)	DAY OF JANUARY, 2018

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

and

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

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

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

**ORDER  
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing KSV Kofman Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) without security, of the real property known as 429 and 445 Princess Street, Kingston, Ontario, (collectively, the “**Real Property**”) the legal description of which is further set out in **Schedule “A”** to this Order, and all other property, assets and undertakings of Textbook (445 Princess Street) Inc. (“**Textbook**”

445 Princess” or the “Debtor”) acquired for, or used in relation to the Real Property (the “Property”), was heard this day at 330 University Avenue, 8th Floor, Toronto, Ontario.

ON READING the Affidavit of Daniel Pollack, sworn January 3, 2018, and the Exhibits thereto, the Pre-Filing Report of KSV dated December 2x, 2018 (the “Pre-Filing Report”), and on hearing the submissions of counsel for the Applicant, Counsel for KSV, and Counsel for the Trustee of the Tier 1 Trustee Corporations, no one else appearing although duly served as appears from the Affidavit of Service of \_\_\_\_\_ sworn January \_\_, 2018, and on reading the Consent of KSV to act as the Receiver,

**SERVICE**

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

**APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the Property, including all proceeds thereof.

**RECEIVER’S POWERS**

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



- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons (each a “**Consultant**”) from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets as the Receiver deems reasonably necessary in order to carry out the powers conferred on the Receiver in this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor with respect to the Property, including, without limitation, rent owing to the Debtor from the Property and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor, including, as may be necessary, to collect funds currently or hereafter in the hands of the Debtor or any Person (as defined below) related thereto;

- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (g) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (h) in accordance with paragraphs 28 to 0 herein, to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (i) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, with the approval of this Court, and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.
- (j) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (k) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate, on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (l) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (n) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any Property owned or leased by the Debtor; and
- (o) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

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

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors (including Walter Thompson and John Davies), officers, employees, agents, accountants, legal

counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto

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

**NO PROCEEDINGS AGAINST THE RECEIVER**

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

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

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

9. THIS COURT ORDERS that no party, other than the Receiver or its Consultants shall advertise, market for sale or sell all or any part of the Property, without the written consent of the Receiver and the Applicant, or further order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

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

**CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers,

facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

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

### **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor’s behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

**LIMITATION ON THE RECEIVER’S LIABILITY**

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



## RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver's Charge**”) on the Property, limited to the amount of \$300,000, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. With respect to any amounts in excess of \$300,000, the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a further charge (the “**Subordinated Receiver's Charge**”) on the Property as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and the Subordinated Receiver's Charge shall form a charge on the Property immediately subordinate to the security in favour of the Applicant, but in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person ranking subordinate to the security in favour of the Applicant.

18. THIS COURT ORDERS that, if requested by the Court, the Applicant or any other interested party, the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a Judge of the Commercial List of the Ontario Superior Court of Justice.

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

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

**FUNDING OF THE RECEIVERSHIP**

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000 (or such greater amount as this Court may by further Order authorize) (the “**Authorized Sum**”) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that the Receiver be at liberty and is hereby empowered to borrow the Authorized Sum from the Applicant by way of the Commitment Letter (as described in the Pre-Filing Report) (the “**Identified Borrowings**”) which Identified Borrowings shall benefit from the Receiver’s Borrowings Charge on the same terms and conditions as provided in paragraph 21 of this Order, and which Commitment Letter and the terms and conditions thereof be and are hereby approved by this Court.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court; however, the Applicant shall be entitled but not obligated to register the Receiver's Borrowings Charge on title to the Real Property.

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

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof, up to the principal amount of \$200,000, shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates, and any additional monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis but immediately subordinate to the borrowings in favour of the Applicant under those Receiver's Certificates, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates..

#### **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an

order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: “<http://ksvadvisory.com/insolvency-cases/textbook-445-princess-street-inc/>”.

26. THIS COURT ORDERS that the Applicant, the Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver shall post a copy of all such materials on its website at the URL listed in paragraph 25 above.

#### **ENGAGEMENT OF ENVIRONMENTAL CONSULTANT AND LISTING AGENT**

27. THIS COURT ORDERS that the Receiver is hereby authorized to engage Pinchin Inc. (“**Pinchin**”) to carry out and perform an environmental phase two assessment of the Real Property.

28. THIS COURT ORDERS that Listing Agreement dated January x, 2018, between the Receiver and Jones Lang LaSalle (“JLL”), attached as **Appendix “B”** to the Pre-Filing Report (the “**Listing Agreement**”) is hereby approved, and the Receiver and JLL are hereby authorized to carry out and perform their respective obligations under the Listing Agreement (including payment of the amounts due to be paid to JLL pursuant to the terms of the Listing Agreement).

#### **APPROVAL OF SALE PROCESS**

29. THIS COURT ORDERS AND DECLARES that the sale process (the “**Sale Process**”), as described in Section 3.0 of the Pre-Filing Report, be and is hereby approved.

30. THIS COURT ORDERS that the Receiver and JLL be and are hereby authorized and directed to perform their obligations under and in accordance with the Sale Process, including under the terms of the Listing Agreement, and to take such further steps as they consider necessary or desirable in carrying out the Sale Process.

31. THIS COURT ORDERS that the Receiver and its affiliates, partners, directors, employees, agents, counsel and controlling person shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of such party in performing its obligations under the Sale Process (as determined by this Court).

**PIPEDA**

32. THIS COURT ORDERS that, in connection with the Sale Process and pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver and JLL are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall (i) return all such information to the Receiver or JLL, as applicable; (ii) destroy all such information; or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a

manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver or JLL, as applicable, or ensure that all other personal information is destroyed.

#### **GENERAL**

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

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

35. 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.

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

37. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

---

**SCHEDULE "A"****LEGAL DESCRIPTION OF THE REAL PROPERTY**

PIN: 36071-0211 (LT)

Address: 429 Princess Street, Kingston, Ontario

PIN: 36071-0209 (LT)

Address: 445 Princess Street, Kingston, Ontario



**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that KSV Kofman Inc., the receiver and manager (the "Receiver") of certain real property registered on title as being owned by Textbook (445 Princess Street) Inc. (the "Debtor") and that is listed on Schedule "A" hereto (collectively, the "Real Property") and of all the assets, undertakings and properties of the Debtor acquired for or used in relation to the Real Property (together with the Real Property, the "Property"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 9th day of January, 2018 (the "Order") made in an action having Court file number CV-17-589078-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$200,000 which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the 1<sup>st</sup> day of each month after the date hereof at a notional rate per annum equal to the rate of 11.5 per cent per annum.

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

principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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

5. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

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

DATED the \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_.

KSV KOFMAN INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "A" TO THE RECEIVER'S CERTIFICATE**  
**LEGAL DESCRIPTION OF THE REAL PROPERTY**

PIN: 36071-0211 (LT)

Address: 429 Princess Street, Kingston, Ontario

PIN: 36071-0209 (LT)

Address: 445 Princess Street, Kingston, Ontario

KINGSETT MORTGAGE CORPORATION  
Applicant

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER  
(APPOINTING RECEIVER)**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
Counsel  
Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

**Matthew P. Gottlieb** LSUC#: 32268B  
mgottlieb@counsel-toronto.com  
Tel: 416 644 5353

**Andrew Winton** LSUC#: 54473I  
awinton@counsel-toronto.com  
Tel: 416 644 5342

Fax: 416 598 3730

Lawyers for the Applicant

# TAB 4

Revised: January 21, 2014  
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. \_\_\_\_\_

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE \_\_\_\_\_ )

WEEKDAY, THE #

JUSTICE \_\_\_\_\_ )

DAY OF MONTH, 20YR \_\_\_\_ TUESDAY,  
THE 9TH

JUSTICE )

\_\_\_\_ DAY OF JANUARY, 2018

**PLAINTIFF<sup>†</sup>**

Plaintiff

-BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

and-

**DEFENDANT**

Defendant

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

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

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

<sup>†</sup>The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

**ORDER**  
**(~~APPOINTING~~Appointing Receiver)**

THIS ~~MOTION~~APPLICATION made by the Plaintiff<sup>2</sup> Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~KSV Kofman Inc. ("KSV") as receiver ~~{and manager}~~ (in such ~~capacities~~capacity, the "Receiver") without security, of ~~all of the~~ real property known as 429 and 445 Princess Street, Kingston, Ontario, (collectively, the "Real Property") the legal description of which is further set out in **Schedule "A"** to this Order, and all other property, assets, and undertakings and properties of ~~[DEBTOR'S NAME]~~ (the "Textbook (445 Princess Street) Inc. ("Textbook 445 Princess" or the "Debtor")") acquired for, or used in relation to ~~a business carried on by the Debtor,~~the Real Property (the "Property"), was heard this day at 330 University Avenue, 8th Floor, Toronto, Ontario.

ON READING the ~~affidavit~~Affidavit of ~~[NAME]~~Daniel Pollack, sworn ~~[DATE]~~January 3, 2018, and the Exhibits thereto, the Pre-Filing Report of KSV dated December 2x, 2018 (the "Pre-Filing Report"), and on hearing the submissions of counsel for ~~[NAMES]~~the Applicant, Counsel for KSV, and Counsel for the Trustee of the Tier 1 Trustee Corporations, no one else appearing ~~for [NAME]~~ although duly served as appears from the ~~affidavit~~Affidavit of ~~service~~Service of ~~[NAME]~~ \_\_\_\_\_ sworn ~~[DATE]~~January, 2018, and on reading the ~~consent~~Consent of ~~[RECEIVER'S NAME]~~KSV to act as the Receiver,

<sup>2</sup> Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated<sup>3</sup> so that this motion is properly returnable today and hereby dispenses with further service thereof.

**APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]KSV~~ is hereby appointed Receiver, without security, of ~~all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor~~Property, including all proceeds thereof ~~(the "Property")~~.

**RECEIVER'S POWERS**

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- ~~(b)~~(a) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking

<sup>3</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~



of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

~~(e) — to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;~~

(e)(a) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons (each a “Consultant”) from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e)(a) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets ~~to continue the business of the Debtor or any part or parts thereof as the Receiver deems reasonably necessary in order to carry out the powers conferred on the Receiver in this Order;~~

(f)(a) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor with respect to the Property, including, without limitation, rent owing to the Debtor from the Property and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor, including, as may be necessary, to collect funds currently or hereafter in the hands of the Debtor or any Person (as defined below) related thereto;

~~(g) — to settle, extend or compromise any indebtedness owing to the Debtor;~~

~~(h)(a)~~ to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the ~~Receiver's~~Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

~~(i)(a)~~ to initiate, prosecute and continue the prosecution of any and all -proceedings and to defend all proceedings now pending or hereafter instituted with respect to the ~~Debtor, the~~ Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

~~(j)(a)~~ in accordance with paragraphs 28 to 0 herein, to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

~~(k)(b)~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, with the approval of this Court, and in each such case notice under subsection 63(4) of the Ontario Personal Property Security Act, or section 31 of the Ontario Mortgages Act, as the case may be, shall not be required.

---

~~<sup>4</sup>This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

~~(i) — without the approval of this Court in respect of any transaction not exceeding \$ \_\_\_\_\_, provided that the aggregate consideration for all such transactions does not exceed \$ \_\_\_\_\_; and~~

~~(ii) — with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;~~

~~and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,]<sup>5</sup> shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.~~

~~(h)(c)~~ to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

~~(m)(d)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate, on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

~~(n)(e)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of -the Property;

~~<sup>5</sup> If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

~~(e)~~(f) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

~~(p)~~(g) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any ~~property~~Property owned or leased by the Debtor; and

~~(q) — to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and~~

~~(r)~~(h) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

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

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, ~~(including Walter Thompson and John Davies)~~, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being ~~"Persons"~~ "Persons" and each being a ~~"Person"~~ "Person") shall forthwith advise the Receiver of the existence of any Property in such ~~Person's~~Person's possession or control, shall grant immediate and continued access to the Property

to the Receiver, and shall deliver all such Property to the Receiver upon the ~~Receiver's~~Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that ~~Person's~~Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

~~8.7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.~~

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

~~9.8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.~~

9. THIS COURT ORDERS that no party, other than the Receiver or its Consultants shall advertise, market for sale or sell all or any part of the Property, without the written consent of the Receiver and the Applicant, or further order of this Court.

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

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

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

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

#### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking

services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the ~~Debtor's~~Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

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

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

#### **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the ~~Debtor's~~Debtor's behalf, may terminate the employment of such employees.- The Receiver shall not be liable for any employee-related



liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, ~~other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.~~

**PIPEDA**

~~15. — THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.~~

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

~~16.15.~~ THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, ~~"Possession")~~) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario*

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

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

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

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

18.17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, limited to the amount of \$300,000, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver'sReceiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections

14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup> With respect to any amounts in excess of \$300,000, the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a further charge (the "Subordinated Receiver's Charge") on the Property as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and the Subordinated Receiver's Charge shall form a charge on the Property immediately subordinate to the security in favour of the Applicant, but in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person ranking subordinate to the security in favour of the Applicant.

19.18. THIS COURT ORDERS that, if requested by the Court, the Applicant or any other interested party, the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

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

## **FUNDING OF THE RECEIVERSHIP**

21.20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider

---

<sup>6</sup> Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".

necessary or desirable, provided that the outstanding principal amount does not exceed \$ \_\_\_\_\_ \$200,000 (or such greater amount as this Court may by further Order authorize) (the "Authorized Sum") at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. -The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Receiver's Borrowings Charge")) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that the Receiver be at liberty and is hereby empowered to borrow the Authorized Sum from the Applicant by way of the Commitment Letter (as described in the Pre-Filing Report) (the "Identified Borrowings") which Identified Borrowings shall benefit from the Receiver's Borrowings Charge on the same terms and conditions as provided in paragraph 21 of this Order, and which Commitment Letter and the terms and conditions thereof be and are hereby approved by this Court.

22. THIS COURT ORDERS that neither the Reeeiver'sReceiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court; however, the Applicant shall be entitled but not obligated to register the Receiver's Borrowings Charge on title to the Real Property.

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

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof, up to the principal amount of \$200,000, shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued ~~Receiver's Certificates.~~ Receiver's Certificates, and any additional monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis but immediately subordinate to the borrowings in favour of the Applicant under those Receiver's Certificates, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates..

#### SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the **"Protocol"**) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>)~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~ shall be valid and effective service.- Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. -This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL ~~<@>~~: “http://ksvadvisory.com/insolvency-cases/textbook-445-princess-street-inc/”.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable Applicant, the Receiver is at liberty to , and any party who has filed a Notice of Appearance may serve or distribute this Order, any other court materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as last shown recorded on the records of the Debtor Service List from time to time, and that any such service or distribution by courier, personal delivery or facsimile transmission the Receiver shall be deemed post a copy of all such materials on its website at the URL listed in paragraph 25 above.

#### **ENGAGEMENT OF ENVIRONMENTAL CONSULTANT AND LISTING AGENT**

27. THIS COURT ORDERS that the Receiver is hereby authorized to be received on engage Pinchin Inc. (“Pinchin”) to carry out and perform an environmental phase two assessment of the next business day following Real Property.

28. THIS COURT ORDERS that Listing Agreement dated January x, 2018, between the date of forwarding thereof, or if sent by ordinary mail, on Receiver and Jones Lang LaSalle (“JLL”), attached as Appendix “B” to the third business day after mailing Pre-Filing Report (the “Listing Agreement”) is hereby approved, and the Receiver and JLL are hereby authorized to carry out

and perform their respective obligations under the Listing Agreement (including payment of the amounts due to be paid to JLL pursuant to the terms of the Listing Agreement).

**APPROVAL OF SALE PROCESS**

29. THIS COURT ORDERS AND DECLARES that the sale process (the “Sale Process”), as described in Section 3.0 of the Pre-Filing Report, be and is hereby approved.

30. THIS COURT ORDERS that the Receiver and JLL be and are hereby authorized and directed to perform their obligations under and in accordance with the Sale Process, including under the terms of the Listing Agreement, and to take such further steps as they consider necessary or desirable in carrying out the Sale Process.

31. THIS COURT ORDERS that the Receiver and its affiliates, partners, directors, employees, agents, counsel and controlling person shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of such party in performing its obligations under the Sale Process (as determined by this Court).

**PIPEDA**

26.32. THIS COURT ORDERS that, in connection with the Sale Process and pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver and JLL are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal

information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall (i) return all such information to the Receiver or JLL, as applicable; (ii) destroy all such information; or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver or JLL, as applicable, or ensure that all other personal information is destroyed.

#### **GENERAL**

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

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

29.35. 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.



~~30.36.~~ THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

~~31.37.~~ THIS COURT ORDERS that the PlaintiffApplicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff-sApplicant's security or, if not so provided by the Plaintiff-sApplicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor-sDebtor's estate with such priority and at such time as this Court may determine.

~~32.38.~~ THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days-days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Schedule "

---

---

---

**SCHEDULE "A"****LEGAL DESCRIPTION OF THE REAL PROPERTY**

PIN: 36071-0211 (LT)

Address: 429 Princess Street, Kingston, Ontario

PIN: 36071-0209 (LT)

Address: 445 Princess Street, Kingston, Ontario

SCHEDULE "B"

RECEIVER CERTIFICATE

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

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

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~, KSV Kofman Inc., the receiver and manager (the "Receiver") ~~of~~ of certain real property registered on title as being owned by Textbook (445 Princess Street) Inc. (the "Debtor") and that is listed on Schedule "A" hereto (collectively, the "Real Property") and of all the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ of the Debtor acquired for, or used in relation to ~~a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property")~~ the Real Property (together with the Real Property, the "Property"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 9th day of \_\_\_\_\_, 20 January, 2018 (the "Order") made in an action having Court file number CL \_\_\_\_\_, CV-17-589078-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ \$200,000 which the Receiver is authorized to borrow under and pursuant to the Order.

2.1. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded ~~[daily]~~ monthly not in advance on the \_\_\_\_\_ 1st day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ 11.5 per cent ~~above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time~~ per annum.

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

~~4.1.~~ All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

~~5.1.~~ Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

~~6.1.~~ The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

~~7.1.~~ The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

~~[RECEIVER'S NAME]~~, KSV KOFMAN  
INC., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per:

\_\_\_\_\_  
Name:

Title:

**SCHEDULE "A" TO THE RECEIVER'S CERTIFICATE**

**LEGAL DESCRIPTION OF THE REAL PROPERTY**

PIN: 36071-0211 (LT)

Address: 429 Princess Street, Kingston, Ontario

PIN: 36071-0209 (LT)

Address: 445 Princess Street, Kingston, Ontario

KINGSETT MORTGAGE CORPORATION  
Applicant

-and-

TEXTBOOK (445 PRINCESS STREET) INC.  
Respondent

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED AT  
TORONTO

ORDER  
(APPOINTING RECEIVER)

LAX O'SULLIVAN LISUS GOTTLIEB LLP

Counsel

Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

Matthew P. Gottlieb LSUC#: 32268B

mgottlieb@counsel-toronto.com

Tel: 416 644 5353

Andrew Winton LSUC#: 544731

awinton@counsel-toronto.com

Tel: 416 644 5342

Fax: 416 598 3730

Lawyers for the Applicant

KINGSETT MORTGAGE CORPORATION  
Applicant

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**APPLICATION RECORD  
(APPLICATION RET. JANUARY 9, 2018)**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
Counsel  
Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

**Matthew P. Gottlieb** LSUC#: 32268B  
mgottlieb@counsel-toronto.com  
Tel: 416 644 5353

**Andrew Winton** LSUC#: 54473I  
awinton@counsel-toronto.com  
Tel: 416 644 5342

Fax: 416 598 3730

Lawyers for the Applicant