

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.) TUESDAY, THE 2nd
)
JUSTICE MYERS) DAY OF MAY, 2017
)

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

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

ORDER

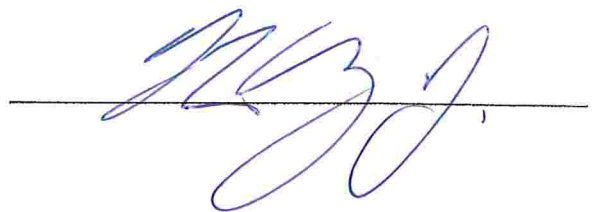
THIS MOTION, made by KSV Kofman Inc., in its capacity as receiver and manager (the "**Receiver**") of the real property (the "**Real Property**") registered on title as being owned by Scollard Development Corporation, Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., 1703858 Ontario Inc., Legacy Lane Investments Ltd., Textbook (525 Princess Street) Inc., and Textbook (555 Princess Street) Inc. (collectively, the "**Debtors**") and of all of the assets, undertakings and properties of the Debtors acquired for or used in relation to the Real Property (together with the Real Property, the "**Property**"), for an order, among other things, amending the Amended and Restated Order granted in this proceeding (the "**Amended and Restated Order**") to correct the amounts of the MC Borrowings (as defined in the Amended and Restated Order), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Supplement to the Second Report of the Receiver dated May 1, 2017, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list,

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

2. **THIS COURT ORDERS** that the Amended and Restated Order be and is hereby amended and restated in the form attached hereto as **Schedule "A"**.

3. **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.



ENTERED AT / INSCRIT À TORONTO
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PER / PAR:



SCHEDULE "A"

Attached.

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

THE HONOURABLE) THURSDAY, THE 2ND
MR. JUSTICE WILTON-SIEGEL) DAY OF FEBRUARY, 2017

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

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

Respondents

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

**SECOND AMENDED AND RESTATED ORDER
(appointing Receiver)**

THIS MOTION, made by Grant Thornton Limited ("GTL"), in its capacity as the Court-appointed trustee (in such capacity, the "Trustee") of Scollard Trustee Corporation ("STC"), MC Trustee (Kitchener) Ltd., 2223974 Ontario Limited, Textbook Student Suites (525 Princess Street) Trustee Corporation, and Textbook Student Suites (555 Princess Street) Trustee Corporation for an Order, pursuant to subsection 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 all the real property registered on title as being owned by Scollard Development Corporation (the "**Original Debtor**") and Memory Care Investments (Kitchener) Ltd. ("**MC Kitchener**"), Memory Care Investments (Oakville) Ltd. ("**MC Oakville**"), 1703858 Ontario Inc. ("**MC Burlington**"), Legacy Lane Investments Ltd. ("**Legacy Lane**"), Textbook (525 Princess Street) Inc. ("**525**"), and Textbook (555 Princess Street) Inc. ("**555**", and together with MC Kitchener, MC Oakville, MC Burlington, Legacy Lane and 525, the "**Additional Debtors**", and together with the Original Debtor, the "**Debtors**") and that is listed on **Schedule "A"** hereto (collectively, the "**Real Property**") and of all the assets, undertakings and properties of the Debtors acquired for or used in relation to the Real Property (together with the Real Property, the "**Property**"), was heard January 31, 2017, February 1, 2017, February 2, 2017 and this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report of the Trustee dated January 20, 2017 and the appendices thereto (the "**Fourth Report**"), including, without limitation, the consent of KSV dated January 19, 2017 to act as the Receiver, the Supplement to the Fourth Report dated January 26, 2017 and the appendices thereto (the "**Fourth Report Supplement**"), the Report of the proposed Receiver dated January 30, 2017, the Sixth Report of the Trustee dated April 18, 2017, including, without limitation, the consent of KSV dated April 18, 2017, the Second Report of the Receiver dated April 21, 2017 and the Supplement to the Second Report of the Receiver dated April 24, 2017, and on hearing the submissions of counsel for the Trustee and such other counsel as were present, no one appearing for any other person on the service list although duly served as appears from the affidavits of service of Eunice Baltkois sworn January 20, 2017 and January 26, 2017 and the affidavit of service of Timothy Jones sworn April 18, 2017,

SERVICE

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

EFFECTIVENESS

2. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, the provisions in this Order that relate to any of the Additional Debtors or any Property owned by any of the Additional Debtors shall only be effective as of April 28, 2017.

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the Property.

RECEIVER'S POWERS

4. **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 manage, operate, and carry on the business of the Debtors in respect of the Property, including the powers to enter into any agreements, incur any obligations in the ordinary course of business in respect of the Property, cease to carry on all or any part of the business in respect of the Property, or cease to perform any contracts of the Debtors in respect of the Property;
- d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a

temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;

- e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors in respect of the Property or any part or parts thereof;
- f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors in respect of the Property and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- g) to settle, extend or compromise any indebtedness owing to the Debtors in respect of the Property;
- h) 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 any Debtor, for any purpose pursuant to this Order;
- i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to any Debtor in respect of the Property, 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;
- j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of investment, development and/or sale as the Receiver in its discretion may deem appropriate;
- k) subject to paragraphs 37 and 38 of this Order with respect to the Original Debtor and the Property owned by the Original Debtor only, 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;

- l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- m) to report to, meet with and discuss with such affected Persons (as defined below) as the 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) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof in respect to the Property for and on behalf of and, if thought desirable by the Receiver, in the name of any Debtor;
- p) to enter into agreements with any trustee in bankruptcy appointed in respect of any Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for the Property;
- q) to exercise any shareholder, partnership, joint venture or other rights which any Debtor may have in respect to any of the Property; and
- r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the 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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the 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.

6. **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 Property, 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 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the 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

8. **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 DEBTORS OR THE PROPERTY

9. **THIS COURT ORDERS** that, subject to paragraph 10 of this Order, no Proceeding against or in respect of the Debtors 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 any Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

10. **THIS COURT ORDERS** that nothing in this Order shall prevent Trisura Guarantee Insurance Company ("**Trisura**") from commencing one or more Proceeding(s) against the Original Debtor and Trisura's other indemnitors (excluding the Original Debtor, the "**Indemnitors**") where the commencement of such Proceeding(s) against the Original Debtor is required in order to name the Indemnitors in such Proceeding(s), provided, however, that neither Trisura nor any of the Indemnitors shall be permitted to continue such Proceeding(s) against the Original Debtor or the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Debtors, 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 any Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or any 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

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

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with any 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 Debtors' 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 Debtors 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

14. **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 (except deposits from purchasers in respect of sales of condominium units relating to the Original Debtor, which shall be delivered to Chaitons LLP to be held and form part of the Deposits (as defined in paragraph 38 of this Order)), 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

15. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the applicable 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

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) 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 applicable Debtor(s), and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **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

18. **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

19. **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 all the Property except the Deposits (as defined herein), 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 all the Property except the Deposits 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.

20. **THIS COURT ORDERS** that 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.

21. **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

22. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$3,500,000 (or such greater amount as this Court may by further Order authorize) by way of the Commitment Letter (as defined in the Fourth Report Supplement) (the "**Scollard Borrowings**") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property of the Original Debtor in favour of Firm Capital Mortgage Fund Inc. ("**Firm Capital**"), which Scollard Borrowings shall benefit from a fixed and specific charge on the Property of the Original Debtor 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, the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and any special priority lien under section 78 of the *Construction Lien Act* in favour of Leeswood Design Build Ltd. (not to exceed \$58,000) that may be determined to exist by the Receiver (the "**Lien**"). If the Lien is determined to exist by the Receiver, the Receiver shall discharge the Lien from the proceeds (not to exceed \$58,000) generated from the Property owned by the Original Debtor. The Commitment Letter, as amended, and the terms and conditions thereof be and are hereby approved by this Court.

23. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby empowered to borrow the sum of up to ~~\$1,357,000~~ \$1,475,000 (or such greater amount as this Court may by further Order authorize) by way of the MC Kitchener Commitment Letter (as defined in the Sixth Report) (the "**MC Kitchener Borrowings**") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property of MC Kitchener in favour of 2174217 Ontario Inc. ("**217**"), which MC Kitchener Borrowings shall benefit from a fixed and specific charge on the Property of MC Kitchener 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, and the MC Kitchener Commitment Letter, as amended, and the terms and conditions thereof be and are hereby approved by this Court.

24. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby empowered to borrow the sum of up to ~~\$1,632,000~~ \$1,662,000 (or such greater amount as this Court may by further Order authorize) by way of the MC Oakville Commitment Letter (as defined in the Sixth Report) (the "**MC Oakville Borrowings**") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property of MC Oakville in favour of 217, which MC Oakville Borrowings shall benefit from a fixed and specific charge on the Property of MC Oakville 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, and the MC Oakville Commitment Letter, as amended, and the terms and conditions thereof be and are hereby approved by this Court.

25. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby empowered to borrow the sum of up to ~~\$1,643,000~~ \$1,775,000 (or such greater amount as this Court may by further Order authorize) by way of the MC Burlington Commitment Letter (as defined in the Sixth Report) (the "**MC Burlington Borrowings**", and together the MC Kitchener Borrowings and the MC Oakville Borrowings, the "**MC Borrowings**") for the purpose of, amongst other things, discharging any and all encumbrances on title to the Property of MC Burlington in favour

of 217, which MC Burlington Borrowings shall benefit from a fixed and specific charge on the Property of MC Burlington 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, and the MC Burlington Commitment Letter, as amended, and the terms and conditions thereof be and are hereby approved by this Court.

26. **THIS COURT ORDERS** that no security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court; however, the Receiver shall be entitled but not obligated to register the Receiver's Borrowings Charge on title to the applicable Real Property.

27. **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, including, without limitation, for the Scollard Borrowings, the MC Kitchener Borrowings, the MC Oakville Borrowings, and the MC Burlington Borrowings.

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

29. **THIS COURT ORDERS** that all amounts owing under and secured by the Firm Capital Boathaus Mortgage (as defined in the Fourth Report) in favour of Firm Capital shall be repaid in full by the Receiver within two (2) business days of the date of this Order from the proceeds of the Scollard Borrowings. Notwithstanding anything else contained herein, nothing in this Order shall affect the rights, remedies or priority of Firm Capital in respect of the Firm Capital Boathaus Mortgage in the interim period from the making of this Order to the time such mortgage has been repaid in full (the "**Interim Period**"), provided, however, that Firm Capital

shall not enforce any of its rights or remedies during the Interim Period in respect of the Firm Capital Boathaus Mortgage without the consent of the Receiver or approval of this Court.

30. **THIS COURT ORDERS** that all amounts owing under and secured by the 217 Memory Care Mortgages (as defined in the Sixth Report) in favour of 217 shall be repaid in full by the Receiver within seven (7) business days following April 28, 2017 from the proceeds of the MC Borrowings. Notwithstanding anything else contained herein, nothing in this Order shall affect the rights, remedies or priority of 217 in respect of the 217 Memory Care Mortgages in the interim period from the making of this Order to the time such mortgages have been repaid in full (the “**217 Interim Period**”), provided, however, that 217 shall not enforce any of its rights or remedies during the 217 Interim Period in respect of the 217 Memory Care Mortgages without the written consent of the Receiver or approval of this Court.

SERVICE AND NOTICE

31. **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/eservice-commercial/>) 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 for each Debtor in accordance with the Protocol with the following URL: <http://www.ksvadvisory.com/insolvency-cases/>.

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

day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

33. **THIS COURT ORDERS AND DIRECTS** that the within proceedings in respect of the Debtors, the Receiver and the Property (collectively, the "**Receivership Proceedings**") shall, immediately upon the issuance of this Order, be assigned the new Court file number referenced in paragraph 34 of this Order and proceed separately from the proceedings in respect of STC, the Trustee and the assets, properties and undertakings of STC.

34. **THIS COURT ORDERS AND DIRECTS** that the title of proceedings in the Receivership Proceedings shall be as follows:

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

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

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

37. **THIS COURT ORDERS** that nothing in this Order or the BIA shall now or in the future grant to the Receiver, or be deemed to grant to the Receiver, or create in favour of any Person

(including, without limitation, any potential future purchaser of the Property or the Original Debtor (the "**Future Purchaser**")), any right, title, entitlement, benefit or interest in or to Tarion Bond Nos. TDS0990169 or TDS0990142 issued, respectively, by Everest Insurance Company of Canada ("**Everest**") and Trisura (collectively, the "**Tarion Bonds**"). For greater certainty, neither the Receiver nor any Future Purchaser shall in any way be entitled to the benefit of or rely on the Tarion Bonds for any purpose whatsoever.

38. **THIS COURT ORDERS** that no Future Purchaser of the Property of the Original Debtor or the Original Debtor shall, without making arrangements to extinguish any liability that Trisura and Everest may have in respect of the Tarion Bonds, be entitled to any right, title, entitlement, benefit or interest, in or to the Property of the Original Debtor, the Original Debtor or any pre-sale deposits held in trust by Chaitons LLP and paid by purchasers of the condominium units in respect of pre-sales at the Real Property related to the Tarion Bonds (the "**Deposits**").

39. **THIS COURT ORDERS AND DIRECTS** that Trisura shall be paid, in full, for any and all losses, damages, liabilities, costs and expenses owed to it by the Original Debtor or to any other Indemnitor pursuant to the Tarion Bonds or Indemnity Agreements defined below from any proceeds of sale resulting from any Transaction (as defined below) in respect of the Property of the Original Debtor.

40. **THIS COURT ORDERS** that the Receiver is precluded from consummating any Transaction (as defined below) that does not:

- (a) fully and finally discharge Trisura and Everest from any and all liability related to the Tarion Bonds; and
- (b) fully indemnify Trisura under the Indemnity Agreements dated October 19, 2015 and May 11, 2015 (the "**Indemnity Agreements**").

The term "**Transaction**" means any arrangement that provides for the sale of, development of or investment in all or part of the Property of the Original Debtor.

41. **THIS COURT ORDERS** that this Amended and Restated Order shall not in any way amend or waive the rights of Trisura as set out in the original Receivership Order dated February 2, 2017. Without limiting the generality of the foregoing, the Amended and Restated Order has no effect on paragraphs 33 to 36 of the Receivership Order (now paragraphs 37 to 40 of this Amended and Restated Order), and this Amended and Restated Order shall not be relied on by the Receiver or any other party to prejudice the rights of Trisura as set out in paragraphs 33 to 36 of the Receivership Order (now paragraphs 37 to 40 of this Amended and Restated Order).

42. **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.

43. **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.

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

45. **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, to the Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"

LEGAL DESCRIPTION OF THE REAL PROPERTY

The real property legally described by the following PINs:

- (a) 26484-0005 (LT);
- (b) 26484-0006 (LT);
- (c) 26484-0007 (LT);
- (d) 22507-0109 (LT);
- (e) 24821-0207 (LT);
- (f) 07074-0452 (LT);
- (g) 48079-0670 (LT);
- (h) 36071-0115 (LT), 36071-0116 (LT), 36071-0117 (LT) and 36071-0118 (LT); and
- (i) 36072-0135 (LT).

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that KSV Kofman Inc., the receiver and manager (in such capacity, the "**Receiver**") of, among other property, certain real property registered on title as being owned by [applicable Debtor] (the "**Debtor**") and that is listed on **Schedule "A"** hereto (collectively, the "**Real Property**") and of all the assets, undertakings and properties of the Debtor acquired for or used in relation to the Real Property (together with the Real Property, the "**Property**"), appointed by Amended and Restated Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 28th day of April 2017 (the "**Order**") made in a motion assigned to Court file number CV-17-11689-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable [on demand by the Lender][by no later than the ____ day of _____] with interest thereon calculated and compounded [daily][monthly not in advance on the ____ day of each month] after the date hereof at a notional rate per annum equal to the rate of ____ per cent above the prime commercial lending rate of Bank of _____ from time to time plus reasonable and documented fees.
3. Such principal sum with interest and fees thereon is, by the terms of the Order, together with the principal sums and interest and fees thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property except for the Deposits (as defined in the Order), if applicable, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal, interest and fees under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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

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

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

DATED the ____ day of _____, 2017.

KSV Kofman Inc., solely in its capacity as the
Receiver of the Property, and not in its personal
capacity

Per: _____

Name:

Title:

SCHEDULE "A" TO THE RECEIVER'S CERTIFICATE

LEGAL DESCRIPTION OF THE REAL PROPERTY

The real property legally described by the following PINs:



THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

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

Respondents

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

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

Proceedings commenced at Toronto

**ORDER
(appointing Receiver)**

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

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

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER
(May 2, 2017)

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