

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

TUESDAY, THE 14th DAY

JUSTICE MYERS)

OF NOVEMBER, 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

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Kofman Inc., in its capacity as Court-appointed receiver (in such capacity, the "**Receiver**"), without security, of certain of the assets, undertaking and property of Memory Care Investments (Oakville) Ltd. (the "**Debtor**") for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Revera Inc., as purchaser (the "**Purchaser**"), dated October 10, 2017 (the "**Sale Agreement**"), a copy of which is attached as Confidential Appendix "B" to the Eighth Report of the Receiver dated November 6, 2017 (the "**Eighth Report**"), and vesting at the direction of the Purchaser in 2603849 Ontario Limited (the "**Title Nominee**"), all the Receiver's and the Debtor's right, title and interest in and to the property described as the "Purchased Assets" in the

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

ON READING the Eighth Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Danish Afroz sworn November 6, 2017, filed,

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

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

attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Myers dated May 2, 2017; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Title Nominee.

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

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

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

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

6. **THIS COURT ORDERS** that following the delivery of the Receiver's Certificate, the Receiver is authorized and directed to make the following distributions:

- (a) first, all amounts owing to MarshallZehr Group Inc. to repay all amounts owing to it; and
- (b) second, to Grant Thornton Limited, in its capacity as Court-appointed Trustee of 2223947 Ontario Limited in the proceedings bearing Court File No. CV-16-11567-00CL (in such capacity, the "**Trustee**"), to repay up to the amounts owing to 2223947 Ontario Limited.

7. **THIS COURT ORDERS** that following the making of the distributions contemplated in paragraph 6 above, the Receiver is authorized to make such further distributions to the Trustee from time to time up to the amount owing to 2223947 Ontario Limited.

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

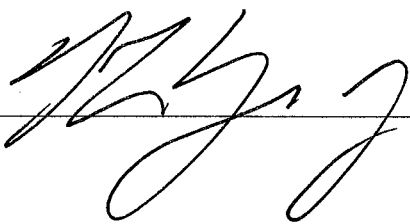
- (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
-

(c) any assignment in bankruptcy made in respect of the Debtor,

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

9. **THIS COURT ORDERS** that the Confidential Appendices to the Eighth Report shall be sealed and kept confidential pending completion of the Transaction.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the 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
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

NOV 14 2017



PER / PAR:

SCHEDULE "A"
FORM OF RECEIVER'S CERTIFICATE

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

RECEIVER'S CERTIFICATE

RECITALS

I. Pursuant to an Order of the Honourable Mr. Justice Myers of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated May 2, 2017, KSV Kofman Inc. was appointed as receiver (in such capacity, the "**Receiver**"), without security, of all the real property registered on title as being owned by Memory Care Investments (Oakville) Ltd. (the "**Debtor**") (collectively, the "**Lands**") and of all the assets, undertakings and properties of the Debtor acquired for or used in relation to the Lands (the "**Property**").

II. Pursuant to an Order of the Court dated November 14, 2017, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and Revera Inc., as purchaser (the "**Purchaser**"), dated October 10, 2017 (the "**Sale Agreement**"), and provided for the vesting

in 2603849 Ontario Limited (the “**Title Nominee**”), of all the Receiver's and the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
 2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
 3. The transaction has been completed to the satisfaction of the Receiver; and
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4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV KOFMAN INC., in its capacity as court-appointed receiver of all the real property registered on title as being owned by Memory Care Investments (Oakville) Ltd. and of all the assets, undertakings and properties of Memory Care Investments (Oakville) Ltd. acquired for or used in relation to such real property, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

SCHEDULE "B"
LEGAL DESCRIPTION OF THE REAL PROPERTY

PIN 24821-0207 (LT)

103 and 109 Garden Drive, Oakville, Ontario

FIRSTLY: PT LT 17 CON 3 TRAFALGAR, SOUTH OF DUNDAS STREET AS IN 333503
EXCEPT THE EASEMENT THEREIN, S/T TW22975 SECONDLY: PT LT 17 CON 3
TRAFALGAR, SOUTH OF DUNDAS STREET DES AS PTS 2, 3, PL 20R-6837, TW23033;
TOWN OF OAKVILLE

SCHEDULE "C"
INSTRUMENTS TO BE DELETED FROM PIN NO. 22507-0109 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
HR1060601	2012/10/29	Charge	\$3,000,000	Memory Care Investments (Oakville) Ltd.	2223947 Ontario Limited
HR1060668	2012/10/29	Transfer of Charge (re: HR1060601)	N/A	2223947 Ontario Limited	Olympia Trust Company
HR1073163	2012/12/24	Transfer of Charge (re: HR1060601)	N/A	2223947 Ontario Limited	Olympia Trust Company
HR1185769	2014/06/02	Notice (re: H558126)	N/A	Memory Care Investments (Oakville) Ltd., 2223947 Ontario Limited and Olympia Trust Company	
HR1185770	2014/06/02	Transfer of Charge (re: HR1060601)	N/A	2223947 Ontario Limited	Olympia Trust Company
HR1266498	2015/05/15	Notice (re: HR1060601)	N/A	Memory Care Investments (Oakville) Ltd.	2223947 Ontario Limited
HR1266500	2015/05/15	Transfer of Charge (re: HR1060601)	N/A	2223947 Ontario Limited	Olympia Trust Company and 2223947 Ontario Limited
HR1389818	2016/09/01	Transfer of Charge	N/A	Olympia Trust Company and 2223947 Ontario Limited	Olympia Trust Company and 2223947 Ontario Limited
HR1407613	2016/11/03	Application Court Order	N/A	Ontario Superior Court of Justice	Grant Thornton Limited

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
HR1451534	2017/05/03	Application Court Order	N/A	Ontario Superior Court of Justice	KSV Kofman Inc.
HR1452511	2017/05/05	Charge	\$1,662,000	Memory Care Investments (Oakville) Ltd.	Marshallzehr Group Inc.

SCHEDULE "D"
PERMITTED ENCUMBRANCES

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
TW22975 (included in the Thumbnail legal description)					
TW23033	1948/12/07	Transfer Easement	N/A	N/A	The Municipal Corporation of the Township of Trafalgar

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

Proceeding commenced at Toronto

ORDER

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