

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )

WEDNESDAY, THE 22<sup>ND</sup> 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 Textbook (555 Princess Street) Inc. (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 9840478 Canada Inc. (the "**Purchaser**"), as purchaser, dated October 23, 2017 (the "**Sale Agreement**"), a copy of which is attached as Confidential Appendix "B" to the Ninth Report of the Receiver dated November 15, 2017 (the "**Ninth Report**"), and vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, all the Receiver's and the Debtor's right, title and interest in and to the property described as the "Purchased Assets" in the

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

**ON READING** the Ninth 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 16, 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 Purchaser, or as it may direct.

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

have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice 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 Purchaser.

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

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

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

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

6. **THIS COURT ORDERS** that 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;
- (b) second, to JL Richards & Associates Limited ("**JL Richards**") in the amount of \$3,337, provided that counsel for JL Richards confirms its agreement that such amount represents JL Richards' entitlement to a special priority lien under section 78 of the *Construction Lien Act*, and failing which the distribution will be subject to further Order of the Court; and
- (c) third, to Grant Thornton Limited, in its capacity as Court-appointed trustee of Textbook Student Suites (555 Princess Street) Trustee Corporation in the proceedings bearing Court File No. CV-16-11567-00CL (in such capacity, the "**Trustee**"), to repay up to the amounts owing to Textbook Student Suites (555 Princess Street) Trustee Corporation.

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 Textbook Student Suites (555 Princess Street) Trustee Corporation

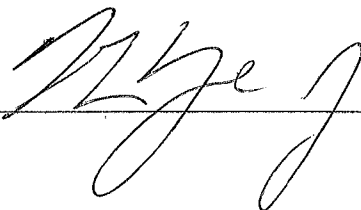
8. **THIS COURT ORDERS** that, notwithstanding:

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

9. **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.



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

NOV 22 2017

PER / PAR:



**SCHEDULE "A"**

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 Textbook (555 Princess Street) Inc. (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 22, 2017, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and 9840478 Canada Inc. (the "**Purchaser**"), as purchaser, dated October 23, 2017 (the "**Sale Agreement**"), and provided for the vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, of all the

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

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

THE RECEIVER CERTIFIES the following:

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



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

**KSV KOFMAN INC.**, in its capacity as court-appointed receiver of all the real property registered on title as being owned by Textbook (555 Princess Street) Inc. and of all the assets, undertakings and properties of Textbook (555 Princess Street) Inc. 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**

**555 Princess Street, Kingston, Ontario**

**PIN 36072-0135 (LT)**

PT LT 626-627 PL A12 KINGSTON CITY AS IN CK40869 EXCEPT FR568186; KINGSTON  
THE COUNTY OF FRONTENAC

**SCHEDULE "C"**  
**INSTRUMENTS TO BE DELETED FROM PIN NO. 36072-0135 (LT)**

<u>Reg No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From</u>	<u>Parties To</u>
FC208911	2015/10/20	Charge	\$8,000,000.00	Textbook (555 Princess Street) Inc.	Textbook Student Suites (555 Princess Street) Trustee Corporation
FC208912	2015/10/20	Transfer of Charge	N/A	Textbook Student Suites (555 Princess Street) Trustee Corporation	Textbook Student Suites (555 Princess Street) Trustee Corporation  Olympia Trust Company
FC211442	2015/12/01	Transfer of Charge	N/A	Textbook Student Suites (555 Princess Street) Trustee Corporation  Olympia Trust Company	Textbook Student Suites (555 Princess Street) Trustee Corporation  Olympia Trust Company AS
FC225967	2016/08/24	Construction Lien	\$66,747.00	J.L. Richards & Associates Limited	N/A
FC228793	2016/10/07	Certificate	N/A	J.L. Richards & Associates Limited	N/A
FC230376	2016/11/03	APL Court Order	N/A	Ontario Superior Court of Justice	Grant Thornton Limited
FC243444	2017/07/07	Charge	\$400,000.00	Textbook (555 Princess Street) Inc.	Marshallzehr Group Inc.

**SCHEDULE "D"**  
**PERMITTED ENCUMBRANCES**

<u>Reg No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From</u>	<u>Parties To</u>
FR359630	1982/06/08	Agreement			City of Kingston
FC208910	2015/10/20	Application to Annex Restrictive Covenant		Textbook (555 Princess Street) Inc.	

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

Proceeding commenced at Toronto

**ORDER**

**BENNETT JONES LLP**  
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KSV Kofman Inc.