



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

MONDAY, THE 17TH

JUSTICE MYERS)

DAY OF SEPTEMBER, 2018)

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., MEMORY CARE INVESTMENTS (BURLINGTON) LTD. 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 1703858 Ontario Ltd. (the "**Debtor**") and Memory Care Investments (Burlington) Ltd. ("**Memory Care**") 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 2642988 Ontario Inc. (the "**Purchaser**"), as purchaser, dated July 23, 2018 (the "**Sale Agreement**"), a copy of which is attached as Confidential Appendix "3" to the Thirteenth Report of the Receiver dated September

10, 2018 (the "**Thirteenth Report**"), and vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, all the Receiver's, Memory Care'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 Thirteenth 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 September 10, 2018, filed,

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

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all the Receiver's, Memory Care'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**"), the cash deposits described in **Schedule "E"** hereto and the development charges and other payments described in **Schedule "F"** hereto, 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, 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 or Memory Care and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor and/or Memory Care,

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/or Memory Care and shall not be void or voidable by creditors of the Debtor and/or Memory Care, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:
SEP 17 2018

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 LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., MEMORY CARE INVESTMENTS (BURLINGTON) LTD. 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 (the "**Second Amended and Restated 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 1703858 Ontario 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.

- II. Pursuant to an Order of the Court dated September 17, 2018, the Court amended the Second Amended and Restated Order to appoint KSV Kofman Inc. as Receiver without security, of all of the assets, undertakings and properties of Memory Care (Burlington) Ltd. ("**Memory Care**").
- III. Pursuant to an Order of the Court dated September 17, 2018, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and 2642988 Ontario Inc. (the "**Purchaser**"), as purchaser, dated July 23, 2018 (the "**Sale Agreement**"), and provided for the vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, of all the Receiver's, Memory Care'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.
- IV. 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 1703858 Ontario Ltd. and of all the assets, undertakings and properties of 1703858 Ontario Ltd. acquired for or used in relation to such real property, and of all of the assets, undertakings and properties of Memory Care Investments (Burlington) Ltd., and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

SCHEDULE "B"
LEGAL DESCRIPTION OF THE REAL PROPERTY

PIN 07074-0452 (LT)

2168 and 2174 Ghent Avenue, Burlington, Ontario

PT LT 6, PL 125, AS IN 641723 & PT LT 6, PL 125, AS IN 205910; CITY OF BURLINGTON

SCHEDULE "C"
INSTRUMENTS TO BE DELETED FROM PIN NO. 07074-0452 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
HR1100779	2013/05/17	Charge	\$5,500,000	1703858 Ontario Limited	2223947 Ontario Limited
HR1100786	2013/05/17	Transfer of Charge (re: HR1100779)	N/A	2223947 Ontario Limited	Olympia Trust Company and 2223947 Ontario Limited
HR1103691	2013/05/30	Transfer of Charge (re: HR1100779)	N/A	2223947 Ontario Limited	Olympia Trust Company and 2223947 Ontario Limited
HR1223442	2014/10/28	Transfer of Charge (re: HR1100779)	N/A	Olympia Trust Company	Olympia Trust Company
HR1267660	2015/05/22	Notice (re: HR1100779)	N/A	1703858 Ontario Ltd.	2223947 Ontario Limited and Olympia Trust Company
HR1267674	2015/05/22	Transfer of Charge (re: HR1100779, HR1100786, HR1103691, HR1223442 and HR1267660)	N/A	2223947 Ontario Limited	2223947 Ontario Limited and Olympia Trust Company
HR1280794	2015/07/09	Notice (re: HR1100779)	Notice	1703858 Ontario Ltd.	2223947 Ontario Limited and Olympia Trust Company
HR1407613	2016/11/03	Application Court Order	N/A	Ontario Superior Court of Justice	Grant Thornton
HR1418886	2016/12/16	Construction Lien	\$787,000	Varcon Construction Corporation	

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
HR1418917	2016/12/16	Construction Lien	\$91,477	Limen Group Const. Ltd.	
HR1429307	2017/02/01	Certificate (re: HR1418917)	N/A	Limen Group Const. Ltd.	
HR1429371	2017/02/01	Certificate (re: HR1418886)	N/A	Varcon Construction Corporation	
HR1451534	2017/05/03	Application Court Order	N/A	Ontario Superior Court of Justice	KSV Kofman Inc.
HR1452512	2017/05/05	Charge	\$1,775,000	1703858 Ontario Ltd.	Marshallzehr Group Inc.
HR1547769	2018/06/07	Notice (re: HR1452512)	Notice	1703858 Ontario Ltd.	Marshallzehr Group Inc.

SCHEDULE "D"
PERMITTED ENCUMBRANCES

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
HR1190741	2014/06/23	Notice	N/A	The Corporation of the City of Burlington	

SCHEDULE "E"
SECURITY DEPOSITS

Site Plan Securities

2170 Ghent Avenue
File No: 535-014/13

#	Description	Original Security Deposit	Balance Remaining as of the date of the Sale Agreement
	Cash Security – Letter of Intent	\$5,000.00	\$5,000.00
14	Tree Security (Curb Bond and Mud Bond)	\$4,125.00	\$4,125.00
17	Completion of Works on Public Road Allowance Security	\$10,000.00	\$8,382.14
19	Landscaping Security	\$52,000.00	\$49,885.08
20	Site Work Security (including \$20,000 for works with ROW)	\$214,000.00	\$209,202.84
24	Total Securities	\$285,125.00	\$276,959.06

SCHEDULE "F"
DEVELOPMENT CHARGES, ETC.

The following payments made by or on behalf of the Debtor and/or Memory Care to the Corporation of the City of Burlington and/or the Regional Municipality of Halton in connection with the Site Plan Approval and/or Site Plan Agreement: (i) the \$154,118.00 paid to the Corporation of the City of Burlington in respect of development charges; (ii) the \$504,065.96 paid to the Corporation of the City of Burlington for the Regional Municipality of Halton; (iii) the \$76,632.00 paid to the Corporation of the City of Burlington in respect of education charges (School Board); and (iv) the \$319,000.00 paid to the Corporation of the City of Burlington in respect of park dedication.

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

ONTARIO

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

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

(Returnable September 17, 2018)

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