

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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***

**MOTION RECORD
(Returnable May 30, 2018)**

May 17, 2018

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THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

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Respondents

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TAB A

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

NOTICE OF MOTION
(returnable May 30, 2018)

Grant Thornton Limited (“GTL”), in its capacity as the Court-appointed trustee (in such capacity, the “Trustee”) of the named Respondents in this proceeding (the “Tier 1 Trustee Corporations”), will make a motion to a judge presiding over the Commercial List on Wednesday, May 30, 2018 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

1. **THE MOTION IS FOR**, amongst other things, Orders:
 - (a) if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;

- (b) approving a procedure in connection with the establishment of a holdback and holdback release mechanism (the “**Proposed McMurray Holdback Procedure**”) in connection with the real estate development that was to have been constructed by McMurray Street Investments Inc. (the “**Davies McMurray Developer**”) at 28 McMurray Street West in Bracebridge, Ontario and which was to have been known as “Residences on McMurray” (the “**McMurray Project**”);
- (c) appointing KSV Kofman Inc. (“**KSV**”) as receiver for certain identified purposes (in such capacity, the “**Bronson-Ross Park-McMurray Receiver**”), without security, of the assets, undertakings and properties that are not Excluded Property (as defined herein) of Textbook (774 Bronson Avenue) Inc. (the “**Davies Bronson Developer**”), Textbook Ross Park Inc. (the “**Davies Ross Park Developer**”) and the Davies McMurray Developer (together with the Davies Bronson Developer and the Davies Ross Park Developer, the “**Davies Bronson-Ross-Park-McMurray Developers**”) (collectively, and excluding the Excluded Property, the “**Bronson-Ross Park-McMurray Property**”); and
- (d) such further and other relief as counsel may advise and this Court may permit.

2. **THE GROUNDS FOR THE MOTION ARE:**

GTL

- (a) pursuant to the Order of the Honourable Mr. Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made October 27, 2016 (the “**Appointment Order**”), GTL was appointed as the Trustee, without security, of all the assets, undertakings and properties of each of the Tier 1 Trustee Corporations;
- (b) the purpose of the Trustee’s appointment (the “**Appointment**”) is to protect the interests of the investing public, who, through the Tier 1 Trustee Corporations (and now the Trustee), are syndicated mortgage investors (the “**Investors**”, and, individually, an “**Investor**”) with secured lending positions registered (or

previously registered, as applicable) on title to real property owned (or previously owned, as applicable) by 16 borrowers/developers (the “**Developers**”);

- (c) the Tier 1 Trustee Corporations (prior to the Trustee’s Appointment) were special purpose entities required under their relevant constating agreements to hold the mortgages in trust for the Investors and to act in a fiduciary capacity to administer and enforce the mortgages;
- (d) the Tier 1 Trustee Corporations are distinct entities from the Developers;
- (e) the circumstances leading to the Trustee’s Appointment are summarized in the Ninth Report of the Trustee dated February 26, 2018 (the “**Trustee’s Ninth Report**”), with detailed background information contained in the affidavit of Mohammed Ali Marfatia sworn October 20, 2016, which was filed by the Superintendent of Financial Services in support of the Appointment (the “**Marfatia Affidavit**”);

Representative Counsel

- (f) on January 24, 2017, pursuant to the Order of the Honourable Mr. Justice Hainey, Chaitons LLP was appointed by the Court as counsel for all the Investors across (in such capacity, “**Representative Counsel**”), unless and until written notice is provided by a particular Investor to Representative Counsel pursuant to a specified opt-out procedure if such Investor does not wish to be represented by Representative Counsel;

KSV

- (g) John Davies was the/a principal of 11 of the 16 Developers (such 11 Developers being the “**Davies Developers**”);
- (h) since its Appointment, the Trustee has requested, and this Court has ordered, the appointment of KSV as the Court-appointed receiver and manager of certain property of seven of the 11 Davies Developers, specifically:

- (i) pursuant to the Order of the Honourable Mr. Justice Wilton-Siegel made February 2, 2017 (the “**Original Boathaus Receivership Order**”), in respect of certain property of Scollard Development Corporation (the “**Davies Boathaus Developer**”); and
- (ii) pursuant to the Order of the Honourable Mr. Justice Myers made April 28, 2017 (as subsequently amended, the “**Expanded Receivership Order**”), in respect of certain property of:
 - (1) Memory Care Investments (Kitchener) Ltd. (the “**Davies MC Kitchener Developer**”);
 - (2) Memory Care Investments (Oakville) Ltd. (the “**Davies MC Oakville Developer**”);
 - (3) 1703858 Ontario Inc. (the “**Davies MC Burlington Developer**”);
 - (4) Legacy Lane Investments Ltd. (the “**Davies Legacy Lane Developer**”);
 - (5) Textbook (525 Princess Street) Inc. (the “**Davies 525 Princess Developer**”); and
 - (6) Textbook (555 Princess Street) Inc. (the “**Davies 555 Princess Developer**”);
- (i) pursuant to the Order of the Honourable Mr. Justice Hainey made January 9, 2018 (the “**445 Princess Receivership Order**”), this Court also ordered the appointment of KSV, on the application of another creditor, as the Court-appointed receiver and manager of certain property of an eighth Davies Developer, being Textbook (445 Princess Street) Inc. (the “**Davies 445 Princess Developer**”);
- (j) the three remaining Davies Developers in respect of which KSV is not appointed are the Davies Bronson-Ross Park-McMurray Developers;

The Davies Bronson Developer

- (k) the Davies Bronson Developer was the registered owner of the real property municipally known as 774 Bronson Avenue in Ottawa, Ontario and 557 Cambridge Street South in Ottawa, Ontario (the “**Bronson Real Property**”);
- (l) the Davies Bronson Developer defaulted on its obligations under its mortgages in respect of the Bronson Real Property, one of which was a syndicated mortgage (the “**Bronson SMI**”) in favour of a Tier 1 Trustee Corporation named Textbook Student Suites (774 Bronson Avenue) Trustee Corporation (the “**Bronson Trustee Corporation**”);
- (m) the Bronson Real Property was sold under power of sale proceedings commenced by the first mortgagee, Vector Financial Services Limited (“**Vector**”), which transaction closed on or about December 21, 2017 for a sale price of \$7.2 million;
- (n) after accounting for its mortgage (including interest and legal and other fees), property tax arrears and the costs of disposition, Vector remitted the excess proceeds of the sale, being \$740,427.17, to the Trustee. At the time of the Trustee’s Appointment in October 2016, a further \$428,763.35 in interest reserves for the Bronson SMI were also transferred to the Trustee, yielding a gross total of \$1,169,190.52 that the Trustee has received to date in respect of the Bronson SMI;
- (o) notwithstanding these payments, the Davies Bronson Developer continues to owe in excess of \$10.8 million in principal and interest, exclusive of recovery costs and accruing interest, in respect of the Bronson SMI (which, as a result of the sale of the Bronson Real Property, is no longer registered on title to the Bronson Real Property);
- (p) the Davies Bronson Developer is now effectively a shell corporation, with its principal assets being the applicable Bronson-Ross Park-McMurray Property over which the Bronson Trustee Corporation has a general security interest and in respect of which the Trustee made formal written demand on March 21, 2018, which demand was accompanied by a notice of intention to enforce security

pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”);

The Davies Ross Park Developer

- (q) the Davies Ross Park Developer was the registered owner of six parcels of land in London, Ontario (the “**Ross Park Real Property**”);
- (r) the Davies Ross Park Developer defaulted on a syndicated mortgage (the “**Ross Park SMI**”) in favour of a Tier 1 Trustee Corporation named Textbook Student Suites (Ross Park) Trustee Corporation (the “**Ross Park Trustee Corporation**”);
- (s) on February 13, 2018, the Trustee made formal written demand on the Davies Ross Park Developer, which demand was accompanied by a notice of intention to enforce security pursuant to subsection 244(1) of the BIA;
- (t) pursuant to an Order of the Honourable Mr. Justice McEwen made March 1, 2018 (the “**Ross Park MNP Appointment Order**”), and upon a motion by the Trustee, MNP Ltd. (“MNP”) was appointed receiver for certain limited purposes (in such capacity, the “**MNP Receiver**”), without security, of the Ross Park Real Property and certain related assets (together with the Ross Park Real Property, the Deposits (as defined in the Ross Park MNP Appointment Order) and certain other property identified in the draft form of Order, the “**Excluded Property**”);
- (u) pursuant to an Order of the Honourable Mr. Justice McEwen also made on March 1, 2018, the Court approved a sale transaction contemplated by an agreement of purchase and sale between the MNP Receiver, as vendor, and Rise Real Estate Inc., in trust for a corporation to be incorporated, as purchaser (the “**Ross Park Purchaser**”), dated February 21, 2018 (the “**Ross Park Sale Agreement**”), and the vesting in the Ross Park Purchaser of all the Davies Ross Park Developer’s right, title and interest in and to certain of the Excluded Property (the “**Ross Park Transaction**”), which Ross Park Transaction is scheduled to close on May 31, 2018;

- (v) pursuant to a further Order of the Honourable Mr. Justice McEwen also made on March 1, 2018, MNP was discharged as the MNP Receiver effective upon the filing of a certificate by the MNP Receiver certifying that all matters to be attended to in connection with its mandate have been completed to the satisfaction of the MNP Receiver;
- (w) notwithstanding the pending closing of the Ross Park Transaction, the Ross Park SMI remains in default and has not been paid in full, nor will it be paid in full after closing;
- (x) once the Ross Park Transaction closes and the proceeds of sale are disbursed, the Davies Ross Park Developer will effectively be a shell corporation, with its principal assets being the applicable Bronson-Ross Park-McMurray Property over which the Ross Park Trustee Corporation has a general security interest;

The Davies McMurray Developer and the Proposed McMurray Holdback Procedure

- (y) the Davies McMurray Developer was the registered owner of the real property municipally known as 28 McMurray Street West in Bracebridge, Ontario (the “**McMurray Real Property**”);
- (z) the Davies McMurray Developer defaulted on its obligations under its mortgages in respect of the McMurray Real Property, one of which was a syndicated mortgage (the “**McMurray SMI**”) in favour of a Tier 1 Trustee Corporation named 7743718 Canada Inc. (the “**McMurray Trustee Corporation**”);
- (aa) on January 26, 2017, the Trustee made formal written demand on the Davies McMurray Developer, which demand was accompanied by a notice of intention to enforce security pursuant to subsection 244(1) of the BIA;
- (bb) the McMurray Real Property was sold on or about August 21, 2017 under power of sale proceedings commenced by the first mortgagee, Computershare Trust Company of Canada (“**Computershare**”), for \$2,805,756, of which \$2,463,501

was required to discharge the first mortgage, tax arrears and selling costs and related expenditures;

- (cc) from the remaining sale proceeds of \$342,255 held in trust by Computershare's counsel, the Trustee understands that \$74,998 has been paid to Trisura Guarantee Insurance Company ("**Trisura**"), which held a second-ranking charge meant to protect deposits given by purchasers of planned residential/other units (the "**McMurray Deposits**");
- (dd) the Trustee understands from Mr. Davies, Trisura and Tarion Warranty Corporation ("**Tarion**") that all McMurray Deposits known to them have been returned, but that Trisura, Tarion and Everest Insurance Company of Canada ("**Everest**") are concerned about potential liability in the event that there are outstanding McMurray Deposits not known to them;
- (ee) the Trustee, Trisura, Tarion and Everest have agreed upon the Proposed McMurray Holdback Procedure, subject to the approval of this Court;
- (ff) the Davies McMurray Developer continues to owe in excess of \$3.7 million in principal and interest, exclusive of recovery costs and accruing interest, in respect of the McMurray SMI (which, as a result of the sale of the McMurray Real Property, is no longer registered on title to the McMurray Real Property);
- (gg) McMurray is now effectively a shell corporation, with its principal assets being the applicable Bronson-Ross Park-McMurray Property over which the McMurray Trustee Corporation has a general security interest;

Litigation against John Davies et al.

- (hh) in its capacity as the receiver of certain assets of the eight Davies Developers over which it is already appointed as the receiver and manager (the "**Receivership Developers**"), KSV conducted a review of the receipts and disbursements of the Receivership Developers and, at the request of the Trustee, the receipts and

disbursements of the Davies Bronson-Ross Park-McMurray Developers, amongst other companies;

- (ii) in connection with its review, KSV discovered extensive transfers of money from certain of the Receivership Developers and the Davies Bronson-Ross Park-McMurray Developers to various related entities, including entities controlled by Mr. Davies and others;
- (jj) on June 6, 2017, by way of Notice of Action, KSV, in its capacity as receiver and manager of the Receivership Developers (other than the Davies 445 Princess Developer) (in such capacity, the “**Receiver**”), commenced litigation (the “**Action**”) against Mr. Davies (a director and officer of each of the Receivership Developers and each of the Davies Bronson-Ross Park-McMurray Developers) as well as Aeolian Investments Ltd. (“**Aeolian**”). Aeolian is owned by Mr. Davies’ spouse, Judith Davies, and his children. Aeolian’s sole director and officer is Mr. Davies;
- (kk) on August 31, 2017, the Court granted the Receiver leave to amend its Statement of Claim to add other defendants as parties to the Action, including: (i) Mr. Davies in his capacity as the trustee and/or representative of two family trusts; (ii) Mr. Davies’ spouse, Judith Davies, both in her personal capacity and in her capacity as trustee and/or representative of one of the family trusts; and (iii) Gregory Harris solely in his capacity as trustee and/or representative of one of the family trusts;
- (ll) the Receiver also contemplated further amending the Statement of Claim to name additional defendants, including, without limitation, Dachstein Holdings Inc., Alan Harris and Erika Harris (the “**Settling Defendants**”);

The Settlement

- (mm) the Receiver, with the assistance of the Trustee and their respective counsel, engaged in discussions and negotiations with Mr. Alan Harris, as representative for the Settling Defendants, concerning the matters in issue as amongst the parties, which discussions culminated in a settlement (the “**Settlement**”);

- (nn) in substance, the Settlement repatriates certain amounts previously paid to the Settling Defendants by two of the Receivership Developers (being the Davies 525 Princess Developer and the Davies 555 Princess Developer) and two of the Davies Bronson-Ross Park-McMurray Developers (being the Davies Bronson Developer and the Davies Ross Park Developer);
- (oo) the Settlement is therefore accretive to the four corresponding Tier 1 Trustee Corporations, each of which is the fulcrum creditor vis-à-vis its respective Davies Developer;
- (pp) as part of the Settlement, the Settling Defendants have declared that, amongst other things, they did not receive any funds in connection with or in any way relating to any of the Davies Developers other than the known amounts received from the Davies 525 Princess Developer, the Davies 555 Princess Developer, the Davies Bronson Developer and the Davies Ross Park Developer (the “**Declarations**”);
- (qq) the Settlement contemplates a full and final release of the Settling Defendants from each of the Receivership Developers and each of the Davies Bronson-Ross Park-McMurray Developers, provided however that such full and final release does not apply in respect to any omissions in the Declarations;
- (rr) the Settlement represents a fair and commercially reasonable compromise in all the circumstances;

The Relief Sought Is Just and Appropriate

- (ss) the Trustee seeks the appointment of KSV in respect of the Davies Bronson-Ross Park-McMurray Developers to maximize recoveries for all applicable stakeholders, including vis-à-vis the Settlement;
- (tt) KSV is a licensed trustee under the BIA;
- (uu) KSV has consented to act as receiver of the Bronson-Ross Park-McMurray Property;

- (vv) having been appointed as the receiver of the Receivership Developers, KSV is familiar with the operations, affairs and financial circumstances of the Davies Bronson-Ross Park-McMurray Developers. Amongst other things, KSV has already conducted a review of the receipts and disbursements of the Davies Bronson-Ross Park-McMurray Developers as well as certain affiliated and related companies. KSV (in consultation with the Trustee) has also been advancing the Action on behalf of the Receivership Developers (other than the Davies 445 Princess Developer) and has engaged in extensive discussions and negotiations with the Settling Defendants, which culminated in the Settlement;
- (ww) the appointment of KSV is necessary to effect the Settlement, to realize whatever other value remains in the Bronson-Ross Park-McMurray Property and to advance the interests of all stakeholders;
- (xx) the appointment of KSV in respect of the Davies Bronson-Ross Park-McMurray Developers is just and convenient in all the circumstances;
- (yy) the grounds as more particularly set out in the Trustee's Ninth Report;
- (zz) the grounds as more particularly set out in the Eighth Report of the Trustee dated November 3, 2017 (the "**Trustee's Eighth Report**");
- (aaa) the grounds as more particularly set out in the Sixth Report of the Trustee dated April 18, 2017 (the "**Trustee's Sixth Report**");
- (bbb) the grounds as more particularly set out in the Eleventh Report of KSV, in its capacity as receiver and manager of the Receivership Developers, to be filed ("**KSV's Eleventh Report**");
- (ccc) the solemn declaration of John Davies in respect of the McMurray Project declared November 16, 2017 (the "**Davies McMurray Declaration**");
- (ddd) section 243 of the BIA;
- (eee) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(fff) rules 1.04, 2.01, 2.03, 3.02, 16 and 38 of the *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended; and

(ggg) such further and other grounds as counsel may advise and this Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

(a) the Trustee's Ninth Report (with certain appendices);

(b) the Trustee's Eighth Report (without appendices);

(c) the Trustee's Sixth Report (without appendices);

(d) KSV's Eleventh Report;

(e) the Davies McMurray Declaration; and

(f) such further and other material as counsel may submit and this Court may permit.

May 17, 2018

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Lawyers for the Trustee

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

NOTICE OF MOTION
(returnable May 30, 2018)

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TAB B

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

THE HONOURABLE

)

WEDNESDAY, THE 30TH

)

JUSTICE

)

DAY OF MAY, 2018

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***

ORDER

(Holdback Procedure re McMurray)

THIS MOTION, made by Grant Thornton Limited (“GTL”), in its capacity as the Court-appointed trustee (in such capacity, the “Trustee”) of 7743718 Canada Inc. for an Order, amongst other things, approving the Holdback Procedure (as defined herein), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the notice of motion, the Sixth Report of the Trustee dated April 18, 2017 (the “**Sixth Report**”) (without certain exhibits) and the Eighth Report of the Trustee dated November 3, 2017 (without exhibits), and on hearing the submissions of counsel for the Trustee, Tarion Warranty Corporation (“**Tarion**”) and Everest Insurance Company of Canada (“**Everest**”), and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Eunice Baltkois sworn May 17, 2018.

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 Holdback Procedure will be governed by this Order.

3. **THIS COURT ORDERS** that, for the purposes of this Order and the Holdback Procedure, the following terms shall have the following meanings:

- (a) “**Bond**” means the Tarion Warranty Corporation Bond, being bond number TDS0990127 issued by Everest in favour of Tarion;
- (b) “**Business Day**” means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (c) “**Claimant**” means a Person asserting a Tarion Claim;
- (d) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (e) “**Deposit**” means all monies, including, without limitation, deposit monies and monies on account of extras and upgrades, that were paid by any Person in respect of a pre-construction agreement of purchase and sale for a residential unit in the McMurray Project;
- (f) “**Holdback Claim Amounts**” means amounts in respect of accepted Tarion Claims and any administration fees, interest and other amounts to which Tarion may be entitled in connection therewith pursuant to the Bond;

- (g) “**Holdback Procedure**” means the procedures outlined in this Order in connection with the establishment of a holdback and holdback release mechanism in connection with the McMurray Project;
- (h) “**McMurray Project**” means the real estate development that was to have been constructed by McMurray Street Investments Inc. at 28 McMurray Street West, Bracebridge, Ontario, and which was to have been known as “Residences on McMurray”;
- (i) “**Order**” means this Order;
- (j) “**Person**” means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity; and
- (k) “**Tarion Claims**” means any right or claim of any Person against Tarion under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31, as amended (together with the regulations promulgated thereunder, collectively, the “**ONHWPA**”), whether or not asserted, in respect of the McMurray Project.

PAYMENT OF AND ENTITLEMENT TO FUNDS

4. **THIS COURT ORDERS** that none of Computershare Trust Company of Canada (“**Computershare**”), Frontenac Mortgage Investment Corporation (“**Frontenac**”), Pillar Financial Services Inc. (“**Pillar**”) or any of their respective successors, assigns or agents has any right whatsoever to claim any further amount in connection with the McMurray Property (as defined in the Sixth Report).

5. **THIS COURT ORDERS** that none of Computershare, Frontenac, Pillar or any of their respective successors, assigns or agents has any remaining interest whatsoever in any assets, properties or undertakings of McMurray Street Investments Inc.

6. **THIS COURT ORDERS** that Viner Kennedy LLP shall pay, within ten (10) Business Days of the granting of this Order, the following amounts to the following parties from

the remaining proceeds in the amount of \$267,256.92 (the “**Proceeds**”) from the sale of the McMurray Project:

- (a) the amount of \$200,000 (the “**Holdback**”) to Tarion, which amount shall be a holdback required to secure payment by Tarion of Tarion Claims that are filed by Claimants prior to January 25, 2021 (the “**Outside Date**”), and against which Tarion may claim Holdback Claim Amounts;
- (b) the amount of \$60,748.01 (the “**Everest Amounts**”) to Trisura Guarantee Insurance Company (“**Trisura**”) on behalf of Everest, which amount comprises all outstanding premiums, administration fees or interest due to Everest in connection with the Bond; and
- (c) the amount of \$6,508.91 (the “**Proceeds Balance**”) to the Trustee, which amount is the balance of the Proceeds following the payments described in paragraphs 6(a) and 6(b) above.

7. **THIS COURT ORDERS** that upon Tarion’s receipt of the Holdback pursuant to paragraph 6(a):

- (a) Tarion shall deliver to Everest the Bond for immediate cancellation and neither Tarion nor Everest shall have any further obligations or liability whatsoever in respect of the Bond or the McMurray Project (in the case of Tarion, subject only to any Tarion Claims that are to be dealt with pursuant to paragraph 9); and
- (b) subject to the terms of this Order, Tarion and its respective successors, assigns and agents shall: (i) only be entitled to seek recourse in respect of Tarion Claims and Holdback Claim Amounts against the Holdback; (ii) have no further right whatsoever in respect of such claims to any further amount derived from the McMurray Property; and (iii) not have any further interest whatsoever in respect of such claims in any other assets, properties or undertakings of McMurray Street Investments Inc.

8. **THIS COURT ORDERS** that upon Viner Kennedy LLP’s payment of each of the Holdback, the Everest Amounts and the Proceeds Balance pursuant to paragraphs 6(a), 6(b) and 6(c), respectively:

- (a) Viner Kennedy LLP shall have no further obligations or liability whatsoever in respect of the Proceeds; and

- (b) none of Trisura, Everest and any of their respective successors, assigns or agents shall: (i) have any further right whatsoever to claim any further amount derived from the McMurray Property; and (ii) have any remaining interest whatsoever in any assets, properties or undertakings of McMurray Street Investments Inc.

TARION CLAIMS

9. THIS COURT ORDERS that:

- (a) Tarion shall: (i) review any Tarion Claims filed prior to the Outside Date and not already satisfied as of the date hereof, and accept, revise or reject them in accordance with Tarion's ordinary claims review procedures provided, however, that Tarion shall have the right, but not the obligation, to consult with the Trustee during its review of Tarion Claims; (ii) advise the Trustee of the particulars of the payment of any Tarion Claims within ten (10) days after the payment of any such Tarion Claims, and (iii) no less frequently than every six (6) months after the date of this Order, report to the Trustee as to the amount remaining in the Holdback, and the amount of all Tarion Claims paid and Holdback Claim Amounts to the date of such report;
- (b) Tarion shall be entitled to utilize the Holdback and process payments therefrom on account of the Tarion Claims and the Holdback Claim Amounts, 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, rights of distraint, 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;
- (c) the balance of the Holdback (the "**Holdback Balance**"), if any, shall be paid by Tarion to the Trustee, within ten (10) Business Days following all of: (i) January 25, 2021; (ii) the completion of the review by Tarion of the Tarion Claims filed prior to the Outside Date; (iii) in the event that Tarion revises or rejects any Tarion Claims, the resolution of such Tarion Claims in accordance with the procedures provided for in the ONHWPA; and (iv) the processing and payment by Tarion of any Tarion Claims and Holdback Claim Amounts from the Holdback; and
- (d) Tarion shall have no further obligations or liability whatsoever in respect of the Holdback Balance following Tarion's payment of the Holdback Balance to the Trustee.

VINER KENNEDY LLP, EVEREST, TARION AND THE TRUSTEE

10. **THIS COURT ORDERS** that none of Viner Kennedy LLP, Everest, Tarion or the Trustee shall incur any liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of any gross negligence or wilful misconduct on their respective parts, and that no proceeding or process in any court or tribunal shall be commenced or continued against any of Viner Kennedy LLP, Everest, Tarion or the Trustee in connection with the carrying out of the provisions of this Order except with the written consent of Viner Kennedy LLP, Everest, Tarion or the Trustee, as applicable, or with leave of this Court on seven (7) days' notice to Viner Kennedy LLP, Everest, Tarion or the Trustee, as applicable.

11. **THIS COURT ORDERS** that, in connection with the payment or receipt of any funds described herein, the Person receiving such funds shall do so 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, rights of distraint, 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.

MISCELLANEOUS

12. **THIS COURT ORDERS** that each of Viner Kennedy LLP, Tarion, and the Trustee may from time to time apply to this Court for advice and directions in respect of the terms of this Order and in carrying out the terms of this Order.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States to give effect to this Order and to assist Viner Kennedy LLP, Tarion, and the Trustee, and their respective 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 Viner Kennedy LLP, Tarion, and the Trustee, an officer of this Court, and their respective agents, as may be necessary or desirable to give effect to this Order or to assist Viner Kennedy LLP, Tarion, and the Trustee and their respective agents, in carrying out the terms of this Order.

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

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

Applicant

Respondents

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

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

Proceedings commenced at Toronto

ORDER

(Holdback Procedure re McMurray)

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*Lawyers for Grant Thornton Limited, in its capacity as the court-
appointed trustee of each of the Respondents*

TAB C

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

THE HONOURABLE) WEDNESDAY, THE 30TH
JUSTICE)
) DAY OF MAY, 2018
)

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**

**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 each of the Respondents in the proceedings bearing Court File No. CV-16-11567-00CL (the "Trustee Corporations"), 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 (in such capacity, the "**Receiver**"), without security, of all the assets, undertakings and properties that are not listed on **Schedule "A"** hereto of Textbook (774 Bronson Avenue) Inc. (the "**Bronson Debtor**"), Textbook Ross Park Inc. (the "**Ross Park Debtor**") and McMurray Street Investments Inc. (the "**McMurray Debtor**", and together with the Bronson Debtor and the Ross Park Debtor, the "**Debtors**", and each being a "**Debtor**") (collectively, excluding the assets, undertakings and properties listed on Schedule "A" hereto, the "**Property**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Ninth Report of the Trustee dated February 26, 2018 (without appendices), the Eight Report of the Trustee dated November 3, 2017 (without appendices), the Sixth Report of the Trustee dated April 18, 2017 (the "**Trustee's Sixth Report**") and certain appendices thereto, the Eleventh Report of KSV dated May 17, 2018 and the appendices thereto, and on hearing the submissions of counsel for the Trustee, counsel for KSV and such other counsel as were present, no one appearing for any other party, although duly served as appears from the affidavits of service of Eunice Baltkois sworn May 17, 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 record 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.

3. **THIS COURT ORDERS** that nothing in this Order and no action by the Receiver shall alter or interfere with any part of the Order (appointing Receiver) of the Honourable Mr. Justice McEwen made in Court File No. CV-16-11567-00CL on March 1, 2018 (the "**MNP Ross Park**

Appointment Order"), the Approval and Vesting Order of the Honourable Mr. Justice McEwen made in Court File Nos. CV-16-11567-00CL and CV-18-593063-00CL on March 1, 2018 (the "**MNP Ross Park Approval and Vesting Order**"), the Ancillary and Discharge Order of the Honourable Mr. Justice McEwen made in Court File Nos. CV-16-11567-00CL and CV-18-593063-00CL on March 1, 2018 (the "**MNP Ross Park Ancillary and Discharge Order**", and together with the MNP Ross Park Appointment Order and the MNP Ross Park Ancillary and Discharge Order, the "**MNP Ross Park Orders**") or the Order (Holdback Procedure re McMurray) of this Court made today in Court File No. CV-16-11567-00CL (the "**McMurray Holdback Order**", and together with the MNP Ross Park Orders, the "**Specified Prior Orders**"). For greater certainty, any and all rights, powers, remedies and obligations conferred by any of the Specified Prior Orders to or on any Person (as defined herein), including, without limitation, the Ross Park Debtor, the McMurray Debtor, John Davies, Trisura Insurance Guarantee Company, Everest Insurance Company of Canada, Tarion Warranty Corporation, Chaitons LLP, Viner Kennedy LLP, MNP Ltd., the Trustee, Ross Park Trustee Corporation, McMurray Trustee Corporation, 2377358 Ontario Limited, Creek Crest Holdings Inc., Rise Real Estate Inc., 2411208 Ontario Inc., Computershare Trust Company of Canada, Frontenac Mortgage Investment Corporation, Pillar Financial Services Inc. and any of their respective successors, assigns or agents, shall be and are unaffected by this Order.

RECEIVER'S POWERS

4. **THIS COURT ORDERS** that, subject to paragraph 3 of this Order, 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;
- (b) to engage 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;

- (c) 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;
- (d) 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;
- (e) 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;
- (f) to enter into agreements with the Trustee; and
- (g) 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 applicable Debtor, 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 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 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 DEBTORS OR THE PROPERTY

8. **THIS COURT ORDERS** that, subject to paragraph 3 of this Order, no Proceeding against or in respect of 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 Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that, subject to paragraph 3 of this Order, all rights and remedies against 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.

RECEIVER TO HOLD FUNDS

10. **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, 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

11. 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*.

LIMITATION ON THE RECEIVER'S LIABILITY

12. **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

13. **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, 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.

14. **THIS COURT ORDERS** that, if requested by the Trustee, this Court or any other interested party, the Receiver and its legal counsel shall pass their 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.

15. **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.

SERVICE AND NOTICE

16. **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 of the Rules of Civil Procedure (the “**Rules**”) this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules 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://www.ksvadvisory.com>.

17. **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 Debtors 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

18. **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 19 of this Order and proceed separately from the proceedings in respect of the Trustee Corporations, the Trustee and the assets, properties and undertakings of the Trustee Corporations.

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

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

B E T W E E N:

**GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED
TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE
CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE
CORPORATION AND 7743718 CANADA INC.**

Applicant

- and -

**TEXTBOOK (774 BRONSON AVENUE) INC., TEXTBOOK ROSS PARK INC.
and MCMURRAY STREET INVESTMENTS INC.**

Respondents

**IN THE MATTER OF A MOTION PURSUANT TO SECTION 243 OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, RSO 1990, c C 43, AS AMENDED**

20. **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.

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

22. **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.

23. **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.

24. **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 the security of the Respondent's security or, if not so provided by such security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.

25. **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"

EXCLUSIONS FROM THE DEFINITION OF "PROPERTY" IN THIS ORDER

- (a) All the assets, undertakings and properties over which MNP Ltd. was appointed as receiver pursuant to the MNP Ross Park Appointment Order;
- (b) the Deposits (as defined in the MNP Ross Park Appointment Order);
- (c) the Deposits (as defined in the McMurray Holdback Order);
- (d) the Proceeds (as defined in the McMurray Holdback Order);
- (e) the McMurray Transaction Deposit (as defined in the Trustee's Sixth Report);
- (f) any and all real property, if any, including, without limitation, any and all fixtures, if any;
- (g) any and all goods (as defined in the *Personal Property Security Act* (Ontario) (the "PPSA"), if any; and
- (h) any and all documents of title (as defined in the PPSA), if any.

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

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

Applicant

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 the Respondents*

TAB D

Court File No. ——— CV-16-11567-00CL

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

THE HONOURABLE ———) ~~WEEKDAY~~WEDNESDAY, THE # 30TH
JUSTICE ———)
DAY OF MONTHMAY, 20YR2018

PLAINTIFF[†]

Plaintiff

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

DEFENDANT

Defendant

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

[†]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.

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

ORDER
(appointing Receiver)

THIS MOTION, made by the Plaintiff² for an Order pursuant to section Grant Thornton Limited ("GTL"), in its capacity as the Court-appointed trustee (in such capacity, the "**Trustee**") of each of the Respondents in the proceedings bearing Court File No. CV-16-11567-00CL (the "**Trustee Corporations**"), 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 ~~[RECEIVER'S NAME]~~ KSV Kofman Inc. ("KSV") as receiver ~~[and manager]~~ (in such capacities capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor ~~that~~ are not listed on Schedule "A" hereto of Textbook (774 Bronson Avenue) Inc. (the "Bronson Debtor"), Textbook Ross Park Inc. (the "Ross Park Debtor") and McMurray Street Investments Inc. (the "McMurray Debtor", and together with the Bronson Debtor and the Ross Park Debtor, the "**Debtors**", and each being a "**Debtor**") (collectively, excluding the assets, undertakings and properties listed on Schedule "A" hereto, the "**Property**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~ sworn ~~[DATE]~~ and the Exhibits thereto Ninth Report of the Trustee dated February 26, 2018 (without appendices), the Eight Report of the Trustee dated November 3, 2017 (without appendices), the Sixth Report of the Trustee dated April 18, 2017 (the "Trustee's Sixth Report") and certain appendices thereto, the Eleventh Report of KSV dated May 17, 2018 and the appendices thereto, and on hearing the submissions of counsel for ~~[NAMES]~~ the Trustee, counsel for KSV and such other counsel as were present, no one appearing for ~~[NAME]~~ any other party, although duly served as appears from the affidavits of service of [NAME] Eunice Baltkois sworn [DATE] May 17, 2018, and on reading the consent of ~~[RECEIVER'S NAME]~~ KSV to act as the Receiver,

²Section 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~~notice of ~~Motion~~motion and the ~~Motion~~motion record is hereby abridged and validated³ 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, including all proceeds thereof ~~(the "Property")~~the Property.

3. **THIS COURT ORDERS** that nothing in this Order and no action by the Receiver shall alter or interfere with any part of the Order (appointing Receiver) of the Honourable Mr. Justice McEwen made in Court File No. CV-16-11567-00CL on March 1, 2018 (the "MNP Ross Park Appointment Order"), the Approval and Vesting Order of the Honourable Mr. Justice McEwen made in Court File Nos. CV-16-11567-00CL and CV-18-593063-00CL on March 1, 2018 (the "MNP Ross Park Approval and Vesting Order"), the Ancillary and Discharge Order of the Honourable Mr. Justice McEwen made in Court File Nos. CV-16-11567-00CL and CV-18-593063-00CL on March 1, 2018 (the "MNP Ross Park Ancillary and Discharge Order", and together with the MNP Ross Park Appointment Order and the MNP Ross Park Ancillary and Discharge Order, the "MNP Ross Park Orders") or the Order (Holdback Procedure re McMurray) of this Court made today in Court File No. CV-16-11567-00CL (the "McMurray Holdback Order", and together with the MNP Ross Park Orders, the "Specified Prior Orders"). For greater certainty, any and all rights, powers, remedies and obligations conferred by any of the Specified Prior Orders to or on any Person (as defined herein), including, without limitation, the Ross Park Debtor, the McMurray Debtor, John Davies, Trisura Insurance Guarantee Company, Everest Insurance Company of Canada, Tarion Warranty Corporation, Chaitons LLP, Viner Kennedy LLP, MNP Ltd., the Trustee, Ross Park Trustee Corporation, McMurray Trustee Corporation, 2377358 Ontario Limited, Creek Crest Holdings Inc., Rise Real

³ 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.

Estate Inc., 2411208 Ontario Inc., Computershare Trust Company of Canada, Frontenac Mortgage Investment Corporation, Pillar Financial Services Inc. and any of their respective successors, assigns or agents, shall be and are unaffected by this Order.

RECEIVER'S POWERS

4. ~~3.~~ **THIS COURT ORDERS** that, subject to paragraph 3 of this Order, 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 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;
- (b) (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 Debtor or any part or parts thereof;~~
- ~~(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;~~
- ~~(g) to settle, extend or compromise any indebtedness owing to the Debtor;~~
- (c) ~~(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 the any Debtor, for any purpose pursuant to this Order;
- (d) ~~(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 the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ 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 sale as the Receiver in its discretion may deem appropriate;~~
- ~~(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business;~~

⁴This 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,]⁵ shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.~~

~~(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;~~

~~(e) (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 for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;~~

~~(f) (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the~~

⁵ 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.

~~foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor; the Trustee; and~~

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

~~(g) (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 applicable Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

~~5. 4. THIS COURT ORDERS~~ that (i) the ~~Debtor~~Debtors, (ii) all of ~~its~~their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on ~~its~~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.~~ ~~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~~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 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

~~7.~~ **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 DEBTOR~~DEBTORS OR THE PROPERTY

8. ~~9.~~ **THIS COURT ORDERS** that, subject to paragraph 3 of this Order, 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.

NO EXERCISE OF RIGHTS OR REMEDIES

9. ~~10.~~ **THIS COURT ORDERS** that, subject to paragraph 3 of this Order, 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 any Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the 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~~

~~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

10. ~~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

11. ~~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, 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)(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 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. 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

~~12. 17.~~ **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

13. ~~18.~~ **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, 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.⁶

14. ~~19.~~ **THIS COURT ORDERS** that, if requested by the Trustee, this Court or any other interested party, the Receiver and its legal counsel shall pass ~~its~~their 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.

15. ~~20.~~ **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. 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~~

⁶ 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".

~~§ _____ (or such greater amount as this Court may by further Order authorize) 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.~~

~~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.~~

~~23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" 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 shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.~~

SERVICE AND NOTICE

~~16. 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/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the Rules of Civil Procedure (the "**Rules**") 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://www.ksvadvisory.com>.

~~17.~~ ~~26.~~ **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 ~~Debtor's~~ Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the ~~Debtor~~ Debtors 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

18. 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 19 of this Order and proceed separately from the proceedings in respect of the Trustee Corporations, the Trustee and the assets, properties and undertakings of the Trustee Corporations.

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

Court File No. CV-18-_____ -00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION AND 7743718 CANADA INC.

Applicant

- and -

TEXTBOOK (774 BRONSON AVENUE) INC., TEXTBOOK ROSS PARK INC. and MCMURRAY STREET INVESTMENTS INC.

Respondents

IN THE MATTER OF A MOTION PURSUANT TO SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c C 43, AS AMENDED

20. ~~27.~~ **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.

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

22. ~~29.~~ **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.

23. ~~30.~~ **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.

24. ~~31.~~ **THIS COURT ORDERS** that the ~~Plaintiff~~Trustee 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~~security of the Respondent's security or, if not so provided by the ~~Plaintiff's~~such security, then on a substantial indemnity basis to be paid by the Receiver from the ~~Debtor's estate~~Debtors' estates with such priority and at such time as this Court may determine.

25. ~~32.~~ **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"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. ~~THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number ___CL_____, 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 \$ _____ 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 [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.~~

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. ~~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. ~~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 _____, 20__.

~~[RECEIVER'S NAME], solely in its capacity as Receiver of the Property, and not in its personal capacity~~

Per: _____

Name: _____

Title: _____

25559533.1

EXCLUSIONS FROM THE DEFINITION OF "PROPERTY" IN THIS ORDER

- (a) All the assets, undertakings and properties over which MNP Ltd. was appointed as receiver pursuant to the MNP Ross Park Appointment Order;
- (b) the Deposits (as defined in the MNP Ross Park Appointment Order);
- (c) the Deposits (as defined in the McMurray Holdback Order);
- (d) the Proceeds (as defined in the McMurray Holdback Order);
- (e) the McMurray Transaction Deposit (as defined in the Trustee's Sixth Report);
- (f) any and all real property, if any, including, without limitation, any and all fixtures, if any;
- (g) any and all goods (as defined in the *Personal Property Security Act* (Ontario) (the "PPSA"), if any; and
- (h) any and all documents of title (as defined in the PPSA), if any.

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

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

Applicant

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 the Respondents

Document comparison by Workshare Compare on May-17-18 9:45:13 AM

Input:	
Document 1 ID	interwovenSite://AB-WS1/CM/32154472/1
Description	#32154472v1 <CM> - Model Receivership Order - Revised January 21, 2014
Document 2 ID	interwovenSite://AB-WS1/CM/32113978/4
Description	#32113978v4 <CM> - Receivership Order (Bronson, Ross Park and McMurray)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	142
Deletions	169
Moved from	1
Moved to	4

T A B E

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

BETWEEN:

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

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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION

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

SIXTH REPORT OF THE TRUSTEE - APRIL 18, 2017



Grant Thornton

Grant Thornton Limited
200 King Street, 11th Floor
Toronto, ON M5H 3T4

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- Appendix 7 Boathaus Receivership Order made by the Honourable Justice Wilton-Siegel, corresponding Ancillary Order, Endorsement and unofficial typed Endorsement, all dated February 2, 2017
- Appendix 8 Affidavit of John Davies (without exhibits) sworn December 6, 2016
- Appendix 9 Corporate Profile Report of the Davies McMurray Developer
- Appendix 10 Parcel registers re McMurray Property
- Appendix 11 Computershare McMurray Mortgage (together with a notice of assignment of rents and postponement by McMurray SMI)
- Appendix 12 Trisura McMurray Charge (together with a postponement by McMurray SMI)
- Appendix 13 Certified PPSA search results re Davies McMurray Developer, with currency to March 27, 2017
- Appendix 14 McMurray SMI Loan Agreement dated April 20, 2012, McMurray SMI Participation Agreement dated April 20, 2012 and the McMurray SMI Charge
- Appendix 15 Communications between Trustee's counsel and H+H dated January 4 and 5, 2017
- Appendix 16 Email chain between Trustee's counsel and H+H dated January 13, 2017
- Appendix 17 Computershare McMurray Notice of Sale dated January 9, 2017
- Appendix 18 Trustee's McMurray Investor Letter dated January 17, 2017
- Appendix 19 H+H email and attachments therein dated February 28, 2017
- Appendix 20 Corporate profile reports for the Davies Memory Care Developers

- Appendix 21 Parcel register re MC Kitchener Property
- Appendix 22 Parcel register re MC Oakville Property
- Appendix 23 Parcel register re MC Burlington Property
- Appendix 24 MC Burlington Construction Liens
- Appendix 25 217 Memory Care Mortgages (and postponements given by Memory Care SMIs)
- Appendix 26 Certified PPSA search results re Davies Memory Care Developers, with currency to March 27, 2017
- Appendix 27 Memory Care SMI Loan Agreements, Memory Care SMI Participation Agreements and Memory Care SMI Charges
- Appendix 28 Notices of sale issued by 217 re Memory Care Properties
- Appendix 29 Corporate profile reports of the Other Davies Defaulting Developers
- Appendix 30 Certified PPSA search results re the Other Davies Defaulting Developers, with currency to March 27-30, 2017
- Appendix 31 Parcel register re Legacy Lane Property
- Appendix 32 Parcel registers re 525 Princess Property
- Appendix 33 Parcel register re 555 Princess Property
- Appendix 34 SMI Loan agreement, SMI participation agreements and SMI charges re Legacy Lane SMI, 525 Princess SMI and 555 Princess SMI
- Appendix 35 Notice of intention to enforce security re Davies Bronson Developer
- Appendix 36 Boathaus Receiver's First Report (without appendices) dated April 5, 2017
- Appendix 37 Commitment Letters re 217 Memory Care Mortgages dated March 14, 2017
- Appendix 38 Affidavit of Peter Pontsa sworn January 18, 2017 (without exhibits)
- Appendix 39 Representative Counsel Order of Justice Hainey dated January 24, 2017
- Appendix 40 Email received from a member of the Investor Committee forwarding emails and attachment from Michael Fox dated April 14 and 15, 2017
- Appendix 41 Demand letters and notices of intention to enforce security in respect of the applicable Davies Developers

Appendix 42 Consent of KSV Kofman Inc. regarding the expansion of the Boathaus Proceedings

Appendix 43 Fee affidavit of Jonathan Krieger, sworn April 17, 2017

Appendix 44 Fee affidavit of Steven L. Graff, sworn April 13, 2017

Appendix 45 Interim R&D dated April 12, 2017

Confidential Appendix

Confidential Appendix 1 Correspondence between Trustee and Representative Counsel dated February 6, 2017, March 28, 2017 and April 3, 2017

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

BETWEEN:

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**

SIXTH REPORT OF THE TRUSTEE

APRIL 18, 2017

INTRODUCTION AND BACKGROUND

1. This report (this "**Sixth Report**") is filed by Grant Thornton Limited ("**GTL**") in its capacity as the court-appointed trustee (in such capacity, the "**Trustee**") of each of the 11 above-named Respondents (collectively, the "**Tier 1 Trustee Corporations**", and individually, a "**Tier 1 Trustee Corporation**"). GTL was appointed as the Trustee pursuant to the Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "**Commercial List Court**") made on October 27, 2016 (the "**Appointment Order**"), a copy of which is attached hereto as **Appendix "1"** (together with His Honour's endorsement).

2. The purpose of the Trustee's appointment (the "**Appointment**") is to protect the interests of the investing public, who, through the Trustee, are mortgagees with secured lending positions registered on title to real property owned by 16 borrowers/developers (the "**Developers**"). The Developers are distinct entities from the Tier 1 Trustee Corporations.
3. Detailed background information pertaining to the circumstances leading to the Trustee's Appointment is contained in the affidavit of Mohammed Ali Marfatia sworn October 20, 2016 (the "**Marfatia Affidavit**"), which was filed by the Superintendent of Financial Services (the "**Superintendent**") in support of the Appointment.
4. In summary, the Marfatia Affidavit describes a series of 16 syndicated mortgage investments ("**SMIs**") sold to the investing public (the "**Investors**"), in respect of which, amongst other things:
 - (i) the 16 Developers are the owners of the real property, borrowers in the mortgage transactions and developers of the underlying real estate projects;
 - (ii) the 11 Tier 1 Trustee Corporations (prior to the Appointment of the Trustee) were special purpose entities required under their relevant constating agreements to hold the mortgages in trust for the Investors and to act in a fiduciary capacity to administer and enforce the mortgages (some of the Tier 1 Trustee Corporations held more than one mortgage); and
 - (iii) other entities, being First Commonwealth Mortgage Corporation ("**First Commonwealth**") and Tier 1 Mortgage Corporation ("**Tier 1 Mortgage Corp**"), were amongst those licensed mortgage brokers that promoted and sold the SMIs, and a third entity, being Tier 1 Transaction Advisory Services Inc. ("**Tier 1 Transaction**"), was also heavily involved in the SMIs and had applied for a mortgage brokerage license.

5. The Marfatia Affidavit further describes how Mr. Raj Singh, who is simultaneously the President, the CEO and a shareholder of Tier 1 Transaction, a mortgage agent of First Commonwealth, a director, officer, shareholder (either directly or indirectly) and/or profit participation interest holder in at least 11 of the Developers and the sole director, officer and shareholder of all but two of the Tier 1 Trustee Corporations, was in a clear conflict of interest position not properly disclosed to the Investors, in that, amongst other things, he was required to administer and enforce the SMIs on behalf of the Investors as against borrowers in which he had a financial interest in the majority of cases.
6. As discussed in the Marfatia Affidavit, the Superintendent also discovered systematic and recurrent failures by First Commonwealth and Tier 1 Mortgage Corp to abide by the basic consumer protection measures put in place by the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), which resulted in the Superintendent issuing: (i) a Notice of Proposal to revoke the licenses of First Commonwealth, Tier 1 Mortgage Corp and Mr. Singh (amongst others) and to refuse the license surrender application of First Commonwealth; (ii) an Interim Suspension Order against these same entities/persons, preventing them from dealing or trading in mortgages in Ontario; and (iii) an Interim Compliance Order against Tier 1 Transaction, requiring that it cease and desist unlicensed activity.
7. Finally (and without being exhaustive), the Marfatia Affidavit also discussed the Superintendent's concern that the appraisal values provided to the Investors did not reflect the value of the real property at the time of the mortgage, such that the true values may be inadequate to cover the respective SMIs but rather, reflected the value of the developed project.
8. Apart from the Marfatia Affidavit, responding affidavits to the Application were sworn by each of John Davies (a principal for 11 of the 16 Developers, which affidavit was filed in opposition to the Appointment) and Gregory Harris (a lawyer at Harris + Harris LLP ("**H+H**"), counsel involved in the SMI transactions). The Appointment Order was granted notwithstanding the submissions of these stakeholders and their counsel to the Court.

9. On November 10, 2016, the Trustee filed its first report (the "**First Report**") in the context of a motion (the "**Stay Motion**") before the Ontario Superior Court of Justice (Divisional Court) (the "**Divisional Court**"), which had been brought by 11 of the Developers for whom Mr. John Davies is the principal (the "**Davies Developers**").¹ In substance, the Stay Motion sought a stay of certain paragraphs of the Appointment Order pending the hearing of the Davies Developers' further motion to the Divisional Court for leave to appeal the Appointment Order (the "**Leave to Appeal Motion**"). The First Report also outlined the various degrees to which each of Mr. Davies, Mr. Singh and H+H were cooperating with the Trustee. A copy of the First Report, without appendices, is attached as **Appendix "2"**.
10. The Stay Motion was heard by the Divisional Court on November 14, 2016, which heard submissions from counsel for each of the Superintendent, the Trustee and the Davies Developers. Also making submissions was Matthew Gottlieb from the law firm of Lax O'Sullivan Lisus Gottlieb LLP, which had been retained by Mr. Garry Levy – an Investor in certain of the SMIs and spokesperson for a group of Investors – for the purpose of, amongst other things, potentially bringing a motion to amend the Appointment Order. No such motion has been brought as of the date of this Sixth Report (instead, as set out below, pursuant to an Order granted January 24, 2017, Chaitons LLP has been appointed representative counsel on behalf of Investors who choose not to opt-out from such representation).
11. The Divisional Court dismissed the Stay Motion and ordered the Davies Developers to pay to the Trustee \$5,000 for its costs within 30 days (the "**Cost Award**"). To date, the Davies Developers have not satisfied the Cost Award.
12. The Divisional Court also held that it had no jurisdiction to hear the Leave to Appeal Motion or the underlying appeal of the Appointment Order (the "**Appeal**"), and, on consent of both the Superintendent and the Trustee, transferred the

¹The Davies Developers are Textbook (525 Princess Street) Inc., Textbook (555 Princess Street) Inc., Textbook (Ross Park) Inc., 1703858 Ontario Inc., Memory Care Investments (Oakville) Ltd., Memory Care Investments (Kitchener) Ltd., Textbook (774 Bronson Ave) Inc., Legacy Lane Investments Ltd., Scollard Development Corporation, McMurray Street Investments Inc. and Textbook (445 Princess Street) Inc.

Appeal to the Court of Appeal for Ontario. The Davies Developers then advised that they would also pursue the Stay Motion at the Court of Appeal for Ontario.

13. On November 28, 2016, the Trustee filed its second report (the "**Second Report**"), which provided stakeholders with, amongst other things, an update on the challenges encountered by the Trustee in performing its mandate as a result of the actions of certain parties, including the lack of information provided by the Davies Developers. A copy of the Second Report, without appendices, is attached as **Appendix "3"**. The Second Report was not filed in connection with a specific motion or court attendance.
14. On December 7, 2016, nine of the Davies Developers (and one of Mr. Davies' related companies) (the "**CCAA Applicants**")² sought protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA Application**") and the appointment of KSV Kofman Inc. ("**KSV**") as proposed "super" monitor, which CCAA Application, *inter alia*, proposed to afford broad powers to KSV, including certain investigative powers. On or about the same day, the Davies Developers formally withdrew both the Stay Motion and the Appeal.
15. The CCAA Application was heard by the Honourable Justice Penny on December 9, 2016 and December 14, 2016, during which period the Trustee filed its third report dated December 13, 2016 (the "**Third Report**"). A copy of the Third Report, without appendices, is attached as **Appendix "4"**.
16. The purpose of the Third Report was to express the Trustee's preliminary views on the CCAA Application, which were summarized therein as follows:
 16. In order [to] properly evaluate the alternatives available to the Davies Developers, the Trustee requires reporting on each [of their Projects (the "**Davies Projects**") and for such reporting to be independently verified by a third party. Absent such information, it is difficult for the Trustee to adequately report and make sound recommendations to the Investors in the Davies Projects. In addition, absent the requested accounting from the Davies Developers, the Trustee cannot evaluate the propriety of the Davies Developers' use of Investors funds.

²The two Davies Developers that were not CCAA Applicants were McMurray Street Investments Inc. and Textbook (445 Princess Street) Inc.

17. Based on the lack of responses from the Davies Developers for the past six weeks since the Appointment Order, the Trustee is only supportive of CCAA [p]roceedings which provide additional powers to [a proposed] Court officer who can facilitate information flow to the Trustee for the benefit of Investors, and, in the interim, stop any enforcement proceedings by prior ranking mortgagees.
18. At this point, the Trustee does not view the proposed CCAA [p]roceedings as a means to a restructuring of the CCAA Applicants. However, the proposed CCAA [p]roceedings appear to create a mechanism for the flow of information under the supervision of a Court officer with enhanced powers under the proposed order (at least in respect of the CCAA Applicants, which includes 9 of the 11 Davies Developers). While the Trustee has concerns with the various Court ordered charges proposed in the CCAA [p]roceedings and its impact on the Investors' positions, the existence of a Court officer creates independent oversight in the short term and will facilitate the transfer of information from the proposed monitor to the Trustee in respect of the CCAA Applicants.
17. A central feature of the CCAA Application was a proposed DIP loan to the CCAA Applicants in an amount of up to \$6.75 million and a corresponding charge over their property (i.e., nine of the Davies Projects) (the "**DIP Charge**"). The proposed DIP lender, Morrison Financial Mortgage Corporation ("**Morrison**"), was not prepared to advance funds unless the DIP Charge ranked ahead of the interests of the first-ranking mortgagees, which caused several mortgagees registered on title ahead of the Investors' interests to oppose the CCAA Application.
18. On December 15, 2016, His Honour dismissed the CCAA Application, providing the written reasons attached as **Appendix "5"** (which appendix also contains an unofficial typed version of the written reasons).
19. Had the CCAA Application been granted as proposed by the Davies Developers, the Trustee understands that part of the funding provided by Morrison was to have been used to take-out a mortgage in the amount of \$2.5 million registered in favour of Firm Capital Mortgage Fund Inc. ("**Firm Capital**") against the real property underlying one of the Davies Projects (the "**Boathaus Property**"). Immediately after the CCAA Application was dismissed, Firm Capital issued a notice of sale in respect of its mortgage on the Boathaus Property (the "**Firm Capital Boathaus Mortgage**"), which notice provided, amongst other things, that Firm Capital would sell the Boathaus Property unless it was repaid by January 21, 2017.

20. On January 21, 2017, in order to prevent the immediate forced sale of the Boathaus Property by Firm Capital, the Trustee brought a motion to have KSV appointed by the Court as receiver and manager of the Boathaus Property³ (in such capacity, the "**Boathaus Receiver**") to, amongst other things, market and solicit offers for the investment in, development of and/or sale of the Boathaus Property (the "**Boathaus Proceedings**"). In connection with this motion, the Trustee filed its fourth report dated January 20, 2017 (the "**Fourth Report**") and a supplement thereto dated January 26, 2017 (the "**Fourth Report Supplement**"), both of which are attached collectively, without appendices, as **Appendix "6"**.
21. As set out in the Fourth Report and the Fourth Report Supplement, a binding commitment for financing (the "**Boathaus Financing**") was received to replace the Firm Capital Boathaus Mortgage (which was registered ahead of the Investors' SMI) and to provide funding towards the administration of the Boathaus Proceedings, both of which were seen as necessary preconditions to proceed with the Boathaus Proceedings. It was also the Trustee's recommendation that the Boathaus Proceedings proceed separately from the present proceedings (and be assigned a separate Court file number) in order to maintain independence between Court officers and maximize procedural efficiency.
22. On February 2, 2017, the Honourable Justice Wilton-Siegel made an Order appointing KSV as the Boathaus Receiver (the "**Boathaus Receivership Order**"). As requested, the Boathaus Receivership Order approved the Boathaus Financing and provided that the Boathaus Proceedings were to proceed as a separate matter in Court file number CV-17-11689-00CL. Certain additional safeguards were also built into the Boathaus Receivership Order on the requests of Trisura Guarantee Insurance Company ("**Trisura**") (the chargee registered on title behind the then-Firm Capital Boathaus Mortgage but ahead of the Investors' SMI) and Leeswood Design Build Ltd. (a construction lien claimant) to protect their respective interests. A copy of the Boathaus Receivership Order, together with the corresponding ancillary Order, official hand-written

³ Together with all the assets, undertakings and properties of the Davies Boathaus Developer acquired for or used in relation to the Boathaus Property.

endorsement and unofficial typed endorsement are attached collectively as **Appendix "7"**.

23. The Davies Boathaus Developer sent a representative to attend at part of the hearing for the limited purpose of seeking an adjournment request to assess a pending offer, which request His Honour denied. Apart from the adjournment request, neither the Davies Boathaus Developer nor its counsel addressed the Court to oppose the relief sought, and no one attended at the hearing on behalf of any of the Davies Developers to challenge the contents of the Trustee's reporting in the First Report, the Second Report, the Third Report, the Fourth Report or the Fourth Report Supplement, all of which were approved at the Court attendance on February 2, 2017 (as reflected in Appendix "7" hereto).
24. The Fourth Report noted, amongst other things, that the Trustee may seek to expand the Boathaus Proceedings at a later date to include other properties of the Developers generally, including the Davies Developers specifically. The Trustee has also filed a fifth report dated January 23, 2017 and a supplement thereto dated April 4, 2017 (together with the First Report, the Second Report, the Third Report and the Fourth Report, the "**Previous Reports**") in response to a receivership application brought by a mortgagee against a Developer that is not a Davies Developer. All the Previous Reports and the Trustee's activities therein have been approved by this Court.

PURPOSE OF THE SIXTH REPORT

25. The purpose of this Sixth Report is to provide the Court with information to support the Trustee's request for Orders:
 - (i) expanding the Boathaus Proceedings to include additional properties of the Davies Developers, being (as defined herein), each of the three Memory Care Properties, the Legacy Lane Property, the 525 Princess Property and the 555 Princess Property;

- (ii) compelling Mr. Davies and the Davies Developers to immediately deliver to the Trustee all internal trust ledgers and bank statements for each of the Davies Developers;
- (iii) approving this Sixth Report and the conduct and activities of the Trustee as described herein;
- (iv) sealing the confidential appendix to this Sixth Report; and
- (v) approving the fees and disbursements of the Trustee and its counsel to and including March 31, 2017 and an allocation of such fees and disbursements.

26. Copies of materials filed in these proceedings generally are available on the Trustee's website at www.grantthornton.ca/tier1.

DISCLAIMER

27. This Sixth Report has been prepared for the use of the Court and the Tier 1 Trustee Corporations' stakeholders as general information relating to the Tier 1 Trustee Corporations. Accordingly, the reader is cautioned that this Sixth Report may not be appropriate for any other purpose. The Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Sixth Report for any other purpose.

28. In preparing this Sixth Report, the Trustee has relied upon certain unaudited financial information provided by parties who had knowledge of the affairs of the Tier 1 Trustee Corporations, including Gregory Harris of H+H, Raj Singh, and John Davies. The Trustee has also relied on information provided to it by KSV in its capacity as the Boathaus Receiver, including its first report dated April 5, 2017 (the "**Boathaus Receiver's First Report**"). The Trustee has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Trustee expresses no opinion or other form of assurance with respect to such information.

29. All references to dollars in this Sixth Report are in Canadian currency unless otherwise noted.

THE OTHER DAVIES DEVELOPERS AND THEIR PROJECTS

30. Apart from the Davies Boathaus Developer and the Boathaus Property that are already subject to the Boathaus Proceedings, there are ten other Davies Developers – each with its own underlying real property. Of these ten other Davies Developers, nine are currently in default to the corresponding Tier 1 Trustee Corporation,⁴ as summarized in the table over the next two pages and set out in more detail in the balance of this Sixth Report:

⁴ The one Davies Developer believed not to be presently in default to its corresponding Tier 1 Trustee Corporation is Textbook (445 Princess Street) Inc. (for which the Tier 1 Trustee Corporation is Textbook Student Suites (445 Princess Street) Trustee Corporation).

DAVIES DEVELOPER	TIER 1 TRUSTEE CORPORATION AND SMI REGISTERED ON TITLE ⁵	DAVIES DEVELOPER DEFAULT(S) PER SMI	CHARGE(S) REGISTERED ON TITLE AHEAD OF SMI?
<i>McMurray Property</i>			
McMurray Street Investments Inc. (" Davies McMurray Developer ")	7743718 Canada Inc. (" McMurray Trustee Corporation ") holds an SMI in the principal amount of \$3.5 million (" McMurray SMI ") over 28 McMurray Street West, Bracebridge, ON (" McMurray Property ")	<ul style="list-style-type: none"> statement of claim seeking possession issued by another mortgagee SMI matured prior to Trustee's Appointment without payment of principal (or subsequent interest) to McMurray Trustee Corporation (or to Trustee) two notices of sale under mortgage issued by another mortgagee 	Yes
<i>Memory Care Properties</i>			
Memory Care Investments (Kitchener) Ltd. (" Davies MC Kitchener Developer ")	MC Trustee (Kitchener) Ltd. (" MC Kitchener Trustee Corporation ") holds an SMI (" MC Kitchener SMI ") in the principal amount of \$10.6 million over 169 Borden Avenue North, Kitchener, ON (" MC Kitchener Property ")	<ul style="list-style-type: none"> SMI matured prior to Trustee's Appointment without payment of principal (or subsequent interest) to MC Kitchener Trustee Corporation (or to Trustee) filed for CCAA protection notice of sale under mortgage issued by another mortgagee 	Yes
Memory Care Investments (Oakville) Ltd. (" Davies MC Oakville Developer ")	2223974 Ontario Limited (" Oakville-Burlington-Legacy Trustee Corporation ") holds an SMI (" MC Oakville SMI ") in the principal amount of \$9 million over 103 and 109 Garden Drive, Oakville, ON (" MC Oakville Property ")	<ul style="list-style-type: none"> ceased making interest payments to MC Oakville Trustee Corporation prior to Trustee's Appointment SMI has since matured without payment filed for CCAA protection notice of sale under mortgage issued by another mortgagee 	Yes
1703858 Ontario Inc. (" Davies MC Burlington Developer ")	Oakville-Burlington-Legacy Trustee Corporation holds an SMI (" MC Burlington SMI ") in the principal amount of \$8.3 million over 2168 and 2174 Ghent Avenue, Burlington, ON (" MC Burlington Property ")	<ul style="list-style-type: none"> ceased making interest payments to Legacy Lane Trustee Corporation prior to Trustee's Appointment filed for CCAA protection notice of sale under mortgage issued by another mortgagee 	Yes

⁵ All SMIs held by the Tier 1 Trustee Corporations are jointly held with Olympia Trust Company for the benefit of those Investors holding their underlying positions in RRSPs.

DAVIES DEVELOPER	TIER 1 TRUSTEE CORPORATION AND SMI REGISTERED ON TITLE ⁶	DAVIES DEVELOPER DEFAULT(S) PER SMI	CHARGE(S) REGISTERED ON TITLE AHEAD OF SMI?
<i>Other Davies Defaulting Properties</i>			
Legacy Lane Investments Ltd. ("Davies Legacy Lane Developer")	Oakville-Burlington-Legacy Trustee Corporation holds an SMI ("Legacy Lane SMI") in the principal amount of \$3.5 million over 16 Legacy Lane, Huntsville, ON ("Legacy Lane Property")	<ul style="list-style-type: none"> ceased making interest payments to Legacy Lane Trustee Corporation prior to Trustee's Appointment filed for CCAA protection 	No (excluding construction liens)
Textbook (525 Princess Street) Inc. ("Davies 525 Princess Developer")	Textbook Student Suites (525 Princess Street) Trustee Corporation ("525 Princess Trustee Corporation") holds an SMI ("525 Princess SMI") in the principal amount of \$6.4 million over 525 Princess Street, Kingston, ON ("525 Princess Property")	<ul style="list-style-type: none"> filed for CCAA protection 	No (excluding construction liens)
Textbook (555 Princess Street) Inc. ("Davies 555 Princess Developer")	Textbook Student Suites (555 Princess Street) Trustee Corporation ("555 Princess Trustee Corporation") holds an SMI ("555 Princess SMI") in the principal amount of \$8 million over 555 Princess Street, Kingston, ON ("555 Princess Property")	<ul style="list-style-type: none"> insufficient funds provided to Trustee to satisfy interest obligations filed for CCAA protection 	No (excluding construction liens)
Textbook Ross Park Inc. ("Davies Ross Park Developer")	Textbook Student Suites (Ross Park) Trustee Corporation ("Ross Park Trustee Corporation") holds an SMI ("Ross Park SMI") in the principal amount of \$11.6 million over 1234, 1236, 1238, 1240, 1244 and 1246 Richmond Street, London, ON ("Ross Park Property")	<ul style="list-style-type: none"> ceased making interest payments subsequent to Trustee's Appointment filed for CCAA protection 	Yes
Textbook (774 Bronson Avenue) Inc. ("Davies Bronson Developer")	Textbook Student Suites (774 Bronson Avenue) Trustee Corporation ("Bronson Trustee Corporation") holds an SMI ("Bronson SMI") in the principal amount of \$10.875 million over 774 Bronson Avenue and 557 Cambridge Street South, Ottawa, ON ("Bronson Property")	<ul style="list-style-type: none"> filed for CCAA protection notice of intention to enforce security issued by another mortgagee 	Yes

⁶ All SMIs held by the Tier 1 Trustee Corporations are jointly held with Olympia Trust Company for the benefit of those Investors holding their underlying positions in RRSPs.

31. Each of these nine defaulting Davies Developers and corresponding properties is discussed below.

THE MCMURRAY PROPERTY

32. The McMurray Property is owned by the Davies McMurray Developer, which is one of two Davies Developers that did not seek CCAA protection.⁷ The CCAA Application nonetheless disclosed certain information in respect of the Davies McMurray Developer and the McMurray Property because, according to the evidence filed by John Davies in the CCAA Application, “[c]ircumstances may require [the Davies McMurray Developer] to seek CCAA protection in the future.” A copy of the affidavit sworn by Mr. Davies on December 6, 2016 in support of the CCAA Application is attached, without exhibits, as **Appendix “8”** (the “**Davies Affidavit**”).
33. As indicated in the corporate profile report attached as **Appendix “9”**, the Davies McMurray Developer’s registered office is located in Mississauga, Ontario, with John Davies as the sole director and each of John Davies, Gregory Harris (the lawyer at H+H) and David Arsenault as officers. According to the Davies Affidavit, the shares of the Davies McMurray Developer are held as follows: 30% by the Davies Family Trust; 16% by R. Alan Harris (who, according to the Davies Affidavit, is Gregory Harris’ father); 8% by D. Arsenault Holdings Inc.; and 46% by Tori Manchulenko.
34. According to the Davies Affidavit, the intended use for the McMurray Property is a condominium project.
35. The McMurray Property consists of two parcels of land in Bracebridge, Ontario, as attached as **Appendix “10”**, which parcel registers reflect the following:
- (i) the Davies McMurray Developer purchased the McMurray Property on or about January 15, 2010 for \$650,000;
 - (ii) the McMurray SMI was registered on title on or about May 3, 2012 for \$3.5 million;

⁷ The other being Textbook (445 Princess Street) Inc., which is the one Davies Developer that is not presently believed to be in default to its corresponding Tier 1 Trustee Corporation.

- (iii) several adjustments were subsequently made on title to the McMurray SMI to reflect that Olympia Trust Company (“**OTC**”) would ultimately hold the McMurray SMI jointly with the McMurray Trustee Corporation to accommodate RRSP and other Investors, respectively;
 - (iv) a mortgage in favour of Computershare Trust Company of Canada (“**Computershare**”) was registered on title for \$2 million on January 16, 2014 (the “**Computershare McMurray Mortgage**”), and a postponement of the McMurray SMI to the Computershare McMurray Mortgage was then immediately registered on title;
 - (v) a \$5 million charge in favour of Trisura was registered on title on November 21, 2014 (the “**Trisura McMurray Charge**”), and a postponement of the McMurray SMI to the Trisura McMurray Charge was registered on title on January 8, 2015; and
 - (vi) the Appointment Order was registered on title on November 3, 2016.
36. Copies of the Computershare McMurray Mortgage (together with a notice of assignment of rents and the postponement by the McMurray SMI) and the Trisura McMurray Charge (together with the postponement by the McMurray SMI) are respectively attached as **Appendix “11”** and **Appendix “12”**.
37. Each of Computershare and Trisura has also made one or more registration(s) against the Davies McMurray Developer under the *Personal Property Security Act* (Ontario) (the “**PPSA**”). The Trustee is not aware of the McMurray Trustee Corporation holding any personal property security against the Davies McMurray Developer. For completeness sake, a copy of the certified PPSA search results against the Davies McMurray Developer, with currency to March 27, 2017, is attached as **Appendix “13”**.
38. Copies of the material components of the McMurray SMI are attached collectively as **Appendix “14”**, being: (i) a loan agreement dated April 20, 2012 between the

Davies McMurray Developer, as developer/borrower, and the McMurray Trustee Corporation, as lender on behalf of the Investors (the "**McMurray SMI Loan Agreement**"); (ii) a syndicated mortgage participation agreement dated April 20, 2012 between McMurray Trustee Corporation and the Investors (the "**McMurray SMI Participation Agreement**"); and (iii) the charge registered on title (the "**McMurray SMI Charge**").

39. The Davies Affidavit acknowledges that both the Computershare McMurray Mortgage and the McMurray SMI matured in the spring of 2016 without repayment of principal, and that interest has also not been paid on the McMurray SMI since July 2016. These constitute Events of Default (as defined in the McMurray SMI Loan Agreement).
40. According to the Davies Affidavit, the Davies McMurray Developer entered into a sale agreement for the McMurray Property to close on January 6, 2016 for \$8 million, consisting of a \$6 million cash component and a \$2 million vendor take-back mortgage (collectively, the "**McMurray Transaction**"). According to the Davies Affidavit, the \$6.0 million cash component was to have been sufficient to repay both the Computershare McMurray Mortgage and the McMurray SMI with all interest arrears.
41. Notwithstanding what was sworn in the Davies Affidavit, the Trustee learned from H+H (the Davies McMurray Developer's counsel) that the anticipated cash proceeds from the McMurray Transaction would be insufficient to repay the entirety of the McMurray SMI, and that the Trustee and OTC would instead be assigned an interest in the \$2.0 million vendor take-back mortgage until the entirety of the McMurray SMI were repaid.
42. On January 4, 2017, shortly before the anticipated closing of the McMurray Transaction, counsel for the Trustee and counsel for the Davies McMurray Developer agreed that the outstanding balance of the McMurray SMI was \$4,390,738, of which \$3,619,000 was to be paid in cash on closing, with the balance to be satisfied through the assignment of interest in the vendor take-back mortgage.

43. On January 4 and 5, 2017, H+H advised the Trustee that it was unsure whether the McMurray Transaction would close, disclosing to the Trustee for the first time that the Davies McMurray Developer had not had any communications with (or received any contact information for) the purchaser or its counsel. The Trustee made immediate enquiries with H+H to understand the nature of its previous interactions with the purchaser, including how it was possible that the Davies McMurray Developer negotiated and entered into a sale agreement with the purchaser, yet did not have contact information for the purchaser. No meaningful response has been provided as of the date of this Sixth Report. Copies of communications between the Trustee's counsel and H+H in this regard are attached collectively as **Appendix "15"**.
44. On January 6, 2017, H+H advised the Trustee that the McMurray Transaction did not close because of the purchaser's purported conduct and behaviour (which H+H described as being a lack of communication and cooperation).
45. On January 13, 2017, the Davies McMurray Developer confirmed to the Trustee, through counsel, that Wynn Realty Corporation, Brokerage, held, and was continuing to hold, the deposit made by the purchaser in respect of the McMurray Transaction (the "**McMurray Transaction Deposit**"). The Trustee insisted to H+H that the McMurray Transaction Deposit remain in the real estate agent's trust account until: (i) all parties, including the Trustee, agree to the release of the McMurray Transaction Deposit; or (ii) Order of the Court. The Trustee also asked to be kept apprised of the status of the McMurray Transaction, should the Davies McMurray Developer or its counsel re-establish contact with the purchaser. Copies of an email chain between the Trustee's counsel and H+H on these issues is attached as **Appendix "16"**.
46. The Trustee has not received any further updates from H+H or the Davies McMurray Developer in respect to the McMurray Transaction or the McMurray Transaction Deposit.
47. When the McMurray Transaction failed to close, Computershare issued a notice of sale in respect of the McMurray Property dated January 9, 2017 (the "**Computershare McMurray Notice of Sale**"). The Computershare McMurray

Notice of Sale required the Davies McMurray Developer (or any other registrant on title) to pay \$1,998,923.75 in satisfaction of the Computershare McMurray Mortgage by February 15, 2017, failing which Computershare advised sale proceedings would be commenced in respect of the McMurray Property. A copy of the Computershare McMurray Notice of Sale is attached as **Appendix "17"**.

48. On January 17, 2017, the Trustee issued a letter to the Investors in the McMurray SMI, advising, amongst other things, as to the Trustee's above understanding of what happened with the McMurray Transaction, the status of the McMurray Transaction Deposit and the issuance of the Computershare McMurray Notice of Sale (the "**Trustee's McMurray Investor Letter**"). Amongst other things, the Trustee's McMurray Investor Letter cautioned that the Trustee did not have access to a pool of funds to take-out the Computershare McMurray Mortgage, and it was unclear what amount, if any, would remain to satisfy the McMurray SMI in the event that the McMurray Property were sold privately in accordance with the Computershare McMurray Notice of Sale. A copy of the Trustee's McMurray Investor Letter is attached as **Appendix "18"**.
49. To the best of the Trustee's knowledge, the February 15, 2017 deadline established by the Computershare McMurray Notice of Sale expired without repayment of the Computershare McMurray Mortgage.
50. On February 28, 2017, the Trustee received an email from H+H, which, amongst other things:
 - (i) advised the Trustee that Computershare had served a statement of claim against the Davies McMurray Developer in August 2016, seeking, amongst other things, possession of the McMurray Property (collectively, the "**Computershare McMurray Action**") and attached same;
 - (ii) attached a letter from Computershare's counsel dated February 23, 2017, advising that the default judgment would be obtained if a statement of defence were not delivered by the Davies McMurray Developer by March 10, 2017; and

- (iii) attached a notice of sale issued by Computershare in respect of the McMurray Property dated October 7, 2016 (predating the Computershare McMurray Notice of Sale dated January 9, 2017) (the “**Original Computershare McMurray Notice of Sale**”).
51. None of the Computershare McMurray Action, the relief against the McMurray Property sought therein or the Original Computershare McMurray Notice of Sale had been previously disclosed to the Trustee or in the CCAA Application. Copies of H+H's email and the attachments therein are attached collectively as **Appendix “19”**. The First Report, the Second Report and the Third Report (attached, respectively, without appendices, as Appendices 2 through 4) set out the Trustee's repeated attempts to glean information from the Davies Developers, including, without limitation, information related to mortgages ranking ahead or behind the mortgages held by the Tier 1 Trustee Corporations on the Davies Developers' projects.
52. As of the date of this Sixth Report, the Trustee has no comfort regarding the Davies McMurray Developer's ability or willingness to repay the Computershare McMurray Mortgage (let alone the McMurray SMI), or any of the purported arrangements that any of the Davies Developers may purport to advance with respect to their projects generally.
53. Since the failed McMurray Transaction, the Trustee has pursued three different financiers as potential take-out lenders for the Computershare McMurray Mortgage in order to protect the interest of the McMurray SMI but, at this point, the Trustee has been unable to secure any such financing.
54. On April 10, 2017, the Trustee had a conference call with representatives of the Computershare McMurray Mortgage (Pillar Financial) (the “**Computershare Representatives**”) and its counsel, to understand the status of Computershare's enforcement actions and plans. During the call, the Trustee learned that Computershare has advanced its enforcement efforts and plans to take possession of the McMurray Property and continue with sale efforts once it is legally entitled to do so. The Trustee suggested that the appointment of a Court-appointed receiver would be appropriate given the issues surrounding the

McMurray Property and, more particularly, the conduct of the McMurray Developer and the McMurray Transaction Deposit. The Computershare Representatives have taken same under advisement and agreed to advise the Trustee of any developments in advancing its enforcement action.

THE MEMORY CARE PROPERTIES

55. The MC Kitchener Property, the MC Oakville Property and the MC Burlington Property (collectively, the “**Memory Care Properties**”) are owned, respectively, by the Davies MC Kitchener Developer, the Davies MC Oakville Developer and the Davies MC Burlington Developer (collectively, the “**Davies Memory Care Developers**”). Each of the Davies Memory Care Developers sought CCAA protection in the CCAA Application.
56. As indicated in the corporate profile reports collectively attached as **Appendix “20”**, the Davies Memory Care Developers’ registered offices are each located in Mississauga, Ontario, with John Davies as the sole director and officer in each case. According to the Davies Affidavit, the shares of the Davies Memory Care Developers are held as follows:
- (i) the shares of each of the Davies MC Kitchener Developer and the Davies MC Burlington Developer, and one of the two classes of shares of the Davies MC Oakville Developer, are ultimately held, through one or more intermediate vehicles, by Mr. Davies’ wife and children (50%) and the mother of Gregory Harris (the lawyer at H+H) (50%); and
 - (ii) the other class of shares of the Davies MC Oakville Developer is held solely by five SMI Investors.
57. According to the Davies Affidavit, the Memory Care Properties are intended to be used for Alzheimer’s residential facilities. Apart from certain suspended footings and foundational work in respect of the MC Burlington Property, the Davies Affidavit advises that no construction had commenced on any of the Memory Care Properties.

58. The MC Kitchener Property consists of one parcel of land in Kitchener, Ontario, as attached as **Appendix “21”**, which parcel register reflects, in substance, the following:

- (i) 237519 Ontario Ltd. (“**237**”), a corporation related to John Davies,⁸ purchased the MC Kitchener Property on or about June 4, 2013 for \$1,585,000, and then transferred the MC Kitchener Property to the *Davies MC Kitchener Developer* on or about February 25, 2014 for \$3,950,000;
- (ii) the MC Kitchener SMI was registered on title on or about the same date as this transfer for \$6,500,000;
- (iii) several adjustments were subsequently made on title to the MC Kitchener SMI to reflect that OTC would hold the MC Kitchener SMI jointly with the MC Kitchener Trustee Corporation to accommodate RRSP and other Investors, respectively;
- (iv) a mortgage in favour of 2174217 Ontario Inc. (“**217**”) was registered on title for \$950,000 on February 17, 2015 (the “**217 MC Kitchener Mortgage**”), and a postponement of the MC Kitchener SMI to the 217 MC Kitchener Mortgage was then immediately registered on title;
- (v) notices were subsequently filed on title in respect of the 217 MC Kitchener Mortgage and the MC Kitchener SMI, which, amongst other things, increased the principal amount of the MC Kitchener SMI to \$10.6 million; and
- (vi) the Appointment Order was registered on title on November 3, 2016.

⁸ According to the evidence filed by Mr. Davies in the CCAA Application, the related-parent corporation to the *Davies MC Kitchener Developer* purchased the MC Kitchener Property from a court-appointed receiver and assigned its interest to 237.

59. The MC Oakville Property consists of one parcel of land in Oakville, Ontario, as attached as **Appendix "22"**, which parcel register reflects, in substance, the following:

- (i) the Davies MC Oakville Developer purchased the MC Oakville Property on or about October 29, 2012 for \$1,945,000, and the MC Oakville SMI was then immediately registered on title for \$3,000,000;
- (ii) several adjustments were subsequently made on title to the MC Oakville SMI to reflect that OTC would hold the MC Oakville SMI jointly with the Oakville-Burlington-Legacy Trustee Corporation to accommodate RRSP and other Investors, respectively;
- (iii) notices were subsequently filed on title to increase the principal amount secured under the MC Oakville SMI to \$9 million;
- (iv) a mortgage in favour of 217 was registered on title for \$1,250,000 on July 8, 2016 (the "**217 MC Oakville Mortgage**"), and a postponement of the MC Oakville SMI to the 217 MC Oakville Mortgage was then immediately registered on title; and
- (v) the Appointment Order was registered on title on November 3, 2016.

60. The MC Burlington Property consists of one parcel of land in Burlington, Ontario, as attached as **Appendix "23"**, which parcel register reflects, in substance, the following:

- (i) the Davies MC Burlington Developer purchased the MC Burlington Property between October 17, 2006 and August 8, 2007 for the aggregate amount of \$965,000;
- (ii) the MC Burlington SMI (together with the MC Kitchener SMI and the MC Oakville SMI, the "**Memory Care SMIs**") was registered on title on May 17, 2013 for \$5,500,000;

- (iii) several adjustments were subsequently made on title to the MC Burlington SMI to reflect that OTC would hold the MC Burlington SMI jointly with the Oakville-Burlington-Legacy Trustee Corporation to accommodate RRSP and other Investors, respectively;
 - (iv) notices were subsequently filed on title to increase the principal amount secured under the MC Burlington SMI to \$8,262,600;
 - (v) a mortgage in favour of 217 was registered on title for \$1,250,000 on July 8, 2016 (the "**217 MC Burlington Mortgage**", and together with the 217 MC Kitchener Mortgage and the 217 MC Oakville Mortgage, the "**217 Memory Care Mortgages**"), and a postponement of the MC Burlington SMI to the 217 MC Burlington Mortgage was then immediately registered on title;
 - (vi) the Appointment Order was registered on title on November 3, 2016; and
 - (vii) two construction liens and corresponding certificates in favour of Varcon Construction Corporation and Limen Group Const. Ltd. in the amounts of, respectively, \$786,999.80 and \$91,476.89 (the "**MC Burlington Construction Liens**") were subsequently registered on title.
61. Copies of the MC Burlington Construction Liens are attached collectively as **Appendix "24"**.
62. Copies of all three 217 Memory Care Mortgages, as amended, are attached collectively as **Appendix "25"** (together with the postponements given by the Memory Care SMIs).
63. 217 has also made one or more registration(s) against the Davies Memory Care Developers under the PPSA. The Trustee is not aware of any of the Tier 1 Trustee Corporations holding any personal property security against the Davies Memory Care Developers. For completeness sake, copies of the certified PPSA

search results against the Davies Memory Care Developers, with currency to March 27, 2017, are attached collectively as **Appendix “26”**.

64. Copies of the material components of the Memory Care SMIs are attached collectively as **Appendix “27”**, being: (i) loan agreements between each of the Davies Memory Care Developers, as developer/borrower, and the corresponding Tier 1 Trustee Corporation, as lender on behalf of the Investors (the **“Memory Care SMI Loan Agreements”**); (ii) syndicated mortgage participation agreements between the applicable Tier 1 Trustee Corporation and the Investors (the **“Memory Care SMI Participation Agreements”**); and (iii) the charges, as amended, registered on title (the **“Memory Care SMI Charges”**).
65. Each of the Davies Memory Care Developers ceased making interest payments on the Memory Care SMIs prior to the Trustee’s Appointment. Moreover, the MC Kitchener SMI matured prior to the Trustee’s Appointment and the MC Oakville SMI matured after the Trustee’s Appointment, and in neither case were any amounts repaid. 217 has also issued notices of sale in respect of each of the Memory Care Properties, as a result of defaults in respect of the 217 Memory Care Mortgages, copies of which notices of sale are attached collectively as **Appendix “28”**.

THE OTHER DAVIES DEFAULTING PROPERTIES

66. The Legacy Lane Property, the 525 Princess Property, the 555 Princess Property, the Ross Park Property and the Bronson Property (collectively, the **“Other Davies Defaulting Properties”**) are owned, respectively, by the Davies Legacy Lane Developer, the Davies 525 Princess Developer, the Davies 555 Princess Developer, the Davies Ross Park Developer and the Davies Bronson Developer (collectively, the **“Other Davies Defaulting Developers”**). Each of the Other Davies Defaulting Developers sought CCAA protection in the CCAA Application.
67. As indicated in the corporate profile reports collectively attached as **Appendix “29”**, the Other Davies Defaulting Developers’ registered offices are each located in Mississauga, Ontario, with John Davies and his business partner, Walter Thompson, as the sole directors and officers in each case, except for the

Legacy Lane Developer, the sole director and officer of which is John Davies. According to the Davies Affidavit, the shares of the Other Davies Defaulting Developers are ultimately held, through one or more intermediate vehicles, by one or more of:

- (i) Mr. Davies' wife and children;
- (ii) Mr. Singh (see paragraphs 5, 6 and 9 of this Sixth Report);
- (iii) Mr. R. Alan Harris (who, according to the Davies Affidavit, is Gregory Harris' father); and
- (iv) a trust, of which, according to the Davies Affidavit, Mr. Thompson, amongst other unidentified persons, is a beneficiary.

68. According to the Davies Affidavit, all the Other Davies Defaulting Properties apart from the Legacy Lane Property are intended to be used for student residences and ancillary retail space, with the Legacy Lane Property intended to be used for townhomes. The Davies Affidavit advises that no material construction had commenced on any of the Other Davies Defaulting Properties.

69. The Trustee is not aware of any of the Tier 1 Trustee Corporations holding any personal property security against the Other Davies Defaulting Developers. For completeness sake, copies of the certified PPSA search results against the Other Davies Defaulting Developers, with currency to March 27-30, 2017, are attached collectively as **Appendix "30"**.

70. Apart from plan references/agreements and construction liens of limited amounts,⁹ there are no encumbrances on the Legacy Lane Property, the 525 Princess Property or the 555 Princess Property other than, respectively, the Legacy Lane SMI, the 525 Princess SMI and the 555 Princess SMI.

71. The Legacy Lane Property consists of one parcel of land in Huntsville, Ontario, the parcel register of which is as attached as **Appendix "31"**. The 525 Princess

⁹ There is one construction lien registered on title to the Legacy Land Property for \$93,959 in favour of HLD Corporation Ltd., and there is one construction lien registered on title to the 525 Princess Property and 555 Princess Property for \$66,746.58 in favour of J.L. Richards & Associates Limited.

Property consists of four parcels of land in Kingston, Ontario, the parcel registers of which are attached as **Appendix “32”**. The 555 Princess Property consists of one parcel of land in Kingston, Ontario, the parcel register of which is attached as **Appendix “33”**. In each case, the corresponding SMI in favour of the applicable Tier 1 Trustee Corporation is held jointly with OTC to accommodate RRSP Investors.

72. Copies of the material components of the Legacy Lane SMI, the 525 Princess SMI and the 555 Princess SMI are attached collectively as **Appendix “34”**, being: (i) loan agreements between each of the applicable Davies Developer, as developer/borrower, and the corresponding Tier 1 Trustee Corporation, as lender on behalf of the Investors; (ii) syndicated mortgage participation agreements between the applicable Tier 1 Trustee Corporation and the Investors; and (iii) the charges, as amended, registered on title.
73. There are other encumbrances registered on title to the Ross Park Property and the Bronson Property apart from the Ross Park SMI and the Bronson SMI. As no relief is being sought in respect of the Ross Park Property or the Bronson Property at this time, an examination of their parcel pages or registrations has not been provided in this Sixth Report.
74. Each of the Other Davies Defaulting Developers has committed one or more defaults in connection with its corresponding SMI, including, in all cases, the filing for CCAA protection. In addition, the Davies Legacy Lane Developer ceased making interest payments prior to the Trustee’s Appointment, the Davies 555 Princess Developer and the Davies Ross Park Developer ceased making interest payments subsequent to the Trustee’s Appointment and the Davies Bronson Developer received a notice of intention to enforce security by another mortgagee, a copy of which notice is attached as **Appendix “35”**.

APPOINTMENT OF A RECEIVER

75. At this stage, the Trustee considers that it has exhausted any and all reasonable efforts to allow the defaulting Davies Developers to implement their own resolutions to deal with their liquidity problems. Quite apart from the lack of confidence in Mr. Davies as a result of, amongst other things, the failed

McMurray Transaction and the circumstances surrounding same, and quite apart from the mounting enforcement steps that have been taken by other mortgagees without any solution being advanced or implemented by Mr. Davies, the Boathaus Receiver has recently filed the Boathaus Receiver's First Report, which, amongst other things, identified extensive transfers of money from the Davies Boathaus Developer to various related entities, including other Davies Developers, and *vice versa*. As set out in the Boathaus Receiver's First Report, the Davies Boathaus Developer was not permitted to use the loan proceeds from the Boathaus SMI for any purpose other than the development and construction of the Boathaus Property without the authorization of the Boathaus SMI investors. In addition, and of significant concern, is that the Boathaus Receiver's First Report identified substantial transfers of money from the Davies Boathaus Developer to entities controlled by Mr. Davies and entities controlled by Raj Singh. A copy of the Boathaus Receiver's First Report is attached, without appendices, as **Appendix "36"**.

76. In light of all the foregoing, the Trustee believes that its only reasonable and prudent option under the circumstances is, where possible, to have a receiver and manager appointed in respect of the applicable defaulting Davies Developers. At the same time, given the presence of charges registered on title in priority to the SMIs on many of the properties, the Trustee cannot proceed with the request to appoint a receiver and manager over these properties in the absence of take-out financing or other acceptable arrangements being made with any applicable prior-ranking chargees on title.
77. At this time, the Trustee has secured take-out financing for the three 217 Memory Care Mortgages, copies of which commitment letters are attached collectively as **Appendix "37"**, namely, the "**MC Kitchener Commitment Letter**", the "**MC Oakville Commitment Letter**" and the "**MC Burlington Commitment Letter**". As set out in the email to the Trustee attached along with the commitment letters, all of the conditions in the commitment letters have been waived. The Trustee is therefore in a position to request from this Court that the Boathaus Proceedings be expanded to include the three Memory Care Properties, as well as the Legacy Lane Property, the 525 Princess Property and the 555 Princess Property (being the three properties without any other mortgages on title apart from the SMIs).

78. On January 24, 2017, pursuant to the Order of the Honourable Justice Hainey, Chaitons LLP was appointed by the Court as counsel for all the Investors across all 16 SMIs (in such capacity, "**Representative Counsel**"), unless and until written notice is provided by a particular Investor to Representative Counsel pursuant to a specified opt-out procedure if such Investor does not wish to be represented by Representative Counsel (collectively, the "**Representative Counsel Order**"). A copy of the affidavit of Peter Pontsa sworn January 18, 2017 in support of the Representative Counsel Order (the "**Pontsa Affidavit**") is attached, without exhibits, as **Appendix "38"**, and a copy of the Representative Counsel Order is attached as **Appendix "39"**.
79. The Representative Counsel Order also provides, amongst other things, that Representative Counsel is empowered and authorized to accept instructions from the Investors Committee (as defined in the Pontsa Affidavit), which instructions shall be binding on the Investors who have not opted out of representation by Representative Counsel. The Trustee is not aware of any opt-out notice having been given as of the date of this Sixth Report.
80. On January 27, 2017 and January 30, 2017, the Trustee held meetings with the Investors in, amongst others, each of the Memory Care SMIs, the Legacy Lane SMI, the 525 Princess SMI and the 555 Princess SMI. The meetings had been organized prior to the Representative Counsel's appointment, but Representative Counsel was invited to participate in these meetings (and did so) with the Trustee and its counsel. Amongst the items discussed at these meetings was the possibility of proceeding with one or more receiverships for the applicable SMIs and the reasons therefor.
81. On February 6, 2017, the Trustee sent a letter to Representative Counsel, setting out the Trustee's recommendations with respect to all the SMIs, including, without limitation, its recommendations with respect to each of the Memory Care SMIs, the Legacy Lane SMI, the 525 Princess SMI and the 555 Princess SMI, and sought directions from the Investors Committee regarding same. In addition to various subsequent discussions and telephone conversations, follow-up letters were also sent by the Trustee to Representative Counsel on each of March 28, 2017 and April 3, 2017. Copies of all three letters are attached as **Confidential**

Appendix “1”, the contents of which contain commercially-sensitive material, the release of which, if released publicly, could easily prejudice the stakeholders of the Tier 1 Trustee Corporations and the Developers.

82. Notwithstanding a passage of time in excess of two months, the Investors Committee has failed to communicate a unified position to the Trustee with respect to the Trustee’s recommendations. This delay has been costly, in respect of accruing interest on the non-SMI first mortgages, professional costs of administration and carrying costs associated with the land. The Trustee understands that certain members of the Investors Committee are considering a conditional offer put forward in respect of the Memory Care SMIs by Raj Singh. In light of, amongst other things, the evidence in the Marfatia Affidavit regarding Mr. Singh’s historical involvement in the various entities connected with the SMIs (see paragraphs 5 and 6 of this Sixth Report for a summary), the Trustee’s position is that any offer put forward by Mr. Singh should be tested in the open market.
83. One member of the Investor Committee representing the MC Oakville Property, Mr. Dennis Gingell, has opposed the advice of the Trustee (and we understand the advice of Representative Counsel). Notwithstanding the Trustee’s communicated intended path forward to Representative Counsel and the Investor Committee, the Trustee understands Mr. Gingell has continued to negotiate independently with Raj Singh and an outside consultant, Mr. Dennis Jewitt (who was involved in the Vaughan Crossings transaction) to pursue other options for the MC Oakville Property, absent consultation with the MC Oakville SMI Investors. The Trustee does not support the direction proposed by Mr. Gingell for, amongst other things, the reasons set out in its April 3, 2017 letter to Representative Counsel, referred to above.
84. The Trustee continues to deal with challenges and inquiries concerning the dissemination of conflicting information to certain Investors from a former investment advisor/mortgage broker that promoted and sold the SMIs. A similar issue had arisen in respect of a different investment advisor to Tier 1, which was detailed in the Trustee’s Second Report. A former investment advisor, Michael Fox, has recently sent correspondence to his alleged investor constituents and

the Investor Committee, recommending opposition to the Trustee's efforts. Such correspondence recommends that Investors support the appointment of an alternate receiver (other than KSV) as recommended by Raj Singh, as well as the retention of Dennis Jewitt. The Trustee is of the view that Mr. Fox's email and position are self-serving and focused on directing the Investors' concerns away from the investment advisors and the parties behind the SMIs and towards the professionals. In addition, the Trustee, for reasons voiced on several occasions, does not consider Mr. Fox's considered alternatives reasonable, informed or viable. The Trustee does not support the appointment of an alternate receiver for the reasons set out herein. A copy of Mr. Fox's correspondence, which was forwarded to the Trustee by a member of the Investor Committee, is attached as **Appendix "40"**.

85. A significant number of Investors have inquired whether the Trustee will pursue civil litigation or criminal charges against the parties behind the SMIs, the Davies Developers, or their investment advisors/mortgage brokers who earned significant commissions on the sale of the SMI products. At this stage of the administration, the Trustee's efforts have largely been focused on seeking alternatives for the monetization of the underlying real estate projects in the best interests of the Investors, in most cases under very challenging scenarios. However, the Trustee has not lost sight of the concerns of the Investors and believes that with full access to the banking records of the Davies Developers, and in collaboration with the work of KSV, the Trustee should be able to fully understand the scope of what has transpired with Investors' money and report same to the Court and the Investors in due course. In parallel with this, the Trustee is aware that certain Investors have been in contact and met with at least two class action lawyers to pursue potential litigation against the parties involved with the SMIs. Furthermore, the Trustee has been in contact with the Royal Canadian Mounted Police, who are aware of the Investors' concerns with respect to the conduct of Mr. Singh, Mr. Davies and the mortgage brokers and investment advisors that promoted and sold the SMIs.
86. It is therefore the Trustee's view that the time has come to proceed in respect of the Boathaus Proceedings' expansion to include the six additional properties referenced in this Sixth Report.

87. Accordingly, the Trustee has made formal written demand on the applicable Davies Developers, which demands were accompanied by notices of intention to enforce security pursuant to subsection 244(1) of the BIA, copies of which are collectively attached as **Appendix “41”**. As reflected in the demands, the aggregate balance owing under the six SMIs in question exceeds \$50 million in principal and interest, exclusive of recovery costs and accruing interest.
88. As of the date of this Sixth Report, the applicable Davies Developers have each failed to make payment in accordance with the demands or make alternative arrangements acceptable to the Trustee.
89. In the circumstances set out above, the Trustee believes that it is just and equitable that the Boathaus Proceedings be expanded to include the Memory Care Properties, the Legacy Lane Property, the 525 Princess Property and the 555 Princess Property. It is the Trustee’s view that the proposed expansion of the Boathaus Proceedings is necessary for the protection of the Investors of the applicable SMIs and possibly other stakeholders. The Trustee believes that the proposed expansion of the Boathaus Proceedings would enhance the prospect of recovery by the Trustee for the Investors and protect all stakeholders.
90. The Trustee recommends that KSV continue its mandate as the receiver and manager in the Boathaus Proceedings and that such mandate be expanded to include the Memory Care Properties, the Legacy Lane Property, the 525 Princess Property and the 555 Princess Property. KSV is licensed to act in this capacity and has gleaned additional familiarity with the Davies Developers as a result of the existing Boathaus Proceedings, as reflected by, amongst other things, the findings in the Boathaus Receiver’s First Report. It is the Trustee’s view that KSV’s continued and expanded involvement will result in efficiencies for the benefit of the Investors.
91. KSV has consented to the expansion of the Boathaus Proceedings as proposed by this Sixth Report, should the Court grant such relief. A copy of KSV’s consent is attached as **Appendix “42”**.

DEMAND OF BOOKS AND RECORDS FROM JOHN DAVIES AND THE DAVIES DEVELOPERS

92. To date, despite several demands, the Trustee has not received the requested books and records from Mr. Davies, particularly the trust ledgers and the source and use of funds related to the Davies Developers. While H+H has provided the Trustee with its trust ledgers for the Davies Developers relating to each project, the Trustee made several requests (but has yet to receive) the Davies Developers' internal trust ledgers/bank statements relating to each project. As the Trustee has explained to Mr. Davies, the Trustee is looking to understand specifically how the funds received by the Davies Developers from H+H (on both Investor raises as well as third party raises) were used based on the Davies Developers' internal banking records.
93. Similarly, while the Trustee has received copies of the Davies' Developers internal financial statements, which provide a general summary of assets/expenses, the Trustee has made several requests (but has yet to receive) a detailed accounting of the use of the specific funds advanced from each SMI mortgage and each third-party mortgage.
94. In light of the serious concerns raised in the Boathaus Receiver's First Report, the Trustee is seeking an order compelling Mr. Davies and the Davies Developers to immediately deliver to the Trustee all internal trust ledgers and bank statements for each of the Davies Developers.

APPROVAL OF THE TRUSTEE'S ACTIVITIES AND PROFESSIONAL FEES

95. The Trustee's activities since the Appointment Order include, without limitation:
- administering the SMI portfolio;
 - corresponding, via counsel, with H+H to secure any funds held in interest reserve accounts;
 - investigating the history of the 16 SMIs and reviewing, with legal counsel, the various encumbrances on the underlying properties and the terms and conditions of the various agreements comprising the SMIs;

- reviewing and interpreting the limited information received from the Developers in respect of the SMIs and respective properties;
- holding meetings with Investors, including formal meetings for all Investors in the Memory Care SMIs, the Legacy Lane SMI, the 525 Princess SMI, the 555 Princess SMI and the 747 Bronson SMI;
- meetings with Representative Counsel and, in some cases, certain representatives of the Investors Committee;
- holding meetings with brokers and other stakeholders;
- corresponding with the Developers, Raj Singh and their counsel;
- corresponding with and fielding extensive written and telephone enquiries from Investors, the Investors Committee and Representative Counsel;
- holding discussions and exchanging correspondence with the first mortgagees on various properties;
- issuing formal update letters to the Investors for each of the 16 different SMIs;
- maintaining and updating the Trustee's website; and
- corresponding, meeting and negotiating with various parties to advance a transaction in respect of the Vaughan Crossings SMI (as defined in the Previous Reports).

96. Since the outset of these proceedings, the Trustee and its counsel have also deployed significant time and energy in dealing with Mr. Davies, the Davies Developers, their counsel and their network of contacts. The Previous Reports address, amongst other things, the varying levels of cooperation and transparency that the Trustee has encountered in these proceedings, which have required the Trustee to engage in many activities that need not have been as time consuming – if necessary at all – including, without limitation:

- assisting the Superintendent to obtain the Appointment Order, which included, amongst other things, replying to responding materials and submissions made in opposition to the Appointment Order by Mr. Davies and counsel for the Davies Developers;
- engaging in significant amounts of correspondence and communications with the Davies Developers and their counsel in an effort to obtain information about the various projects, both financial and otherwise, a great deal of which has still not been provided;
- responding to and preparing for the Stay Motion brought to the Divisional Court by the Davies Developers, which Stay Motion was dismissed;
- preparing for the Stay Motion and the Appeal brought to the Court of Appeal for Ontario by the Davies Developers, which Stay Motion and Appeal were eventually withdrawn by the Davies Developers;
- preparing for and examining the merits of the CCAA Application brought by most of the Davies Developers, which CCAA Application was dismissed;
- preparing for, examining the merits of and drafting materials for the McMurray Transaction, which the Davies McMurray Developer failed to advise would not be proceeding until the eleventh hour;
- engaging in significant amounts of correspondence and communications with the Davies Boathaus Developer in respect of its intentions to avoid enforcement by a prior-ranking mortgagee on the Boathaus Property, and finding replacement financing for the Boathaus Property and bringing a motion to commence the Boathaus Proceedings after repeated attempts to solicit a realistic solution from Mr. Davies went unanswered; and
- engaging in significant amounts of correspondence and communications with Representative Counsel and the Investors Committee in order to

address possible solutions for the other properties owned by the Davies Developers, most of which are also in default and in respect of which Mr. Davies has not advanced or implemented any workable cures, and ultimately finding replacement financing for certain of these properties and bringing this motion to expand the Boathaus Proceedings.

97. The Trustee and its independent legal counsel, A&B, have maintained detailed records of their professional time and costs since the Appointment Order was granted.
98. Pursuant to the terms of the Appointment Order, the Trustee and its counsel shall be paid their reasonable fees and disbursements and shall pass their accounts before the Court.
99. The total fees of the Trustee to and including March 31, 2017 amount to \$466,962.00, plus expenses and disbursements in the amount of \$9,817.82 and HST in the amount of \$61,981.38, totalling \$538,761.20. The details of the time spent and services provided by the Trustee (including an allocation of such fees and disbursements across the 16 SMIs) are more particularly described in the Affidavit of Jonathan Krieger, Senior Vice-President of GTL who is involved in this matter, sworn April 17, 2017 in support hereof, a copy of which is attached as **Appendix "43"**.
100. The total legal fees incurred by the Trustee for services provided to it by its independent legal counsel, Aird & Berlis LLP, to and including March 31, 2017 amount to \$561,428.00, plus expenses and disbursements in the amount of \$20,047.18 and HST in the amount of \$75,304.41, totaling \$656,779.59. The details of the time spent and services provided by Aird & Berlis LLP (including an allocation of such fees and disbursements across the 16 SMIs) are more particularly described in the Affidavit of Steven L. Graff, sworn April 13, 2017 in support hereof, a copy of which is attached as **Appendix "44"**.
101. The Trustee is of the view that these accounts are reasonable in the very challenging circumstances of these proceedings. Further to the points set out above, the Trustee is dealing with over \$100 million of Investors' investment across 16 real estate developments where all but three projects are in default.

To date, the Trustee has dealt with over a thousand stakeholders, including Investors and their advisors, developers, other mortgagees, lien claimants, creditors, contractors, financiers, and investor committee representatives, many of which have competing interests. The Trustee respectfully requests that the Court approve its fees and disbursements and those of its legal counsel.

PROPOSED ALLOCATION OF PROFESSIONAL FEES

102. At the time of the Appointment Order, the Trustee and its counsel set up various groupings of dockets specific to certain Developers/properties in order to account for their work in respect of the administration of these proceedings. Where applicable, the Trustee and its counsel have recorded time to specific dockets in respect of a Developer. However, a significant amount of the Trustee and its counsel's work to date has been of a general nature, related to the Davies Developers or all of the Tier 1 Projects generally and not specifically allocable to a specific property. This general time includes, amongst other things, reviewing the allegations raised in the Marfatia Affidavit filed in support of these proceedings, consultation with the Superintendent, pursuing information in respect of the Davies Developers generally, dealing with the proposed CCAA proceedings, attending in Court, drafting related Court materials, preparing and administering general investor correspondence, maintaining the designated website for investor communications, maintaining the toll free telephone line, maintaining the designated email account, and answering and responding to thousands of investor emails and/or telephone calls. In respect of these services, the Trustee and its counsel have recorded their professional time to grouped dockets entitled Davies Allocation or General Account (the "**General Costs**").
103. The Trustee has carefully reviewed the dockets supporting the Davies Allocation and General Costs, including the nature of the work expended and the proportionate amount of time expended on each of the Properties. The Trustee has prepared the summary below (the "**Allocation Summary**") in respect of the Trustee's and its counsel's dockets, and proposes to allocate the fees, including the Davies Allocation and General Costs, as follows:

Tier 1
Trustee's Allocation of Time
for the period ending March 31, 2017

	October 2016 - March 31 2017							
	Project Specific Time	Grouped WIP		General WIP				
		Textbook Allocation	Raj Singh Projects	All Projects	Subtotal	Disbursements	HST	Total
	\$ 135,697	\$ 112,711	\$ 28,491	\$ 190,062		\$ 9,818	\$ 61,981	\$ 538,761
Properties								
McMurray	\$ 7,220	\$ 6,082	\$ -	\$ 11,879	\$ 25,181	\$ 556	\$ 3,346	\$ 29,083
Vaughan Crossings	\$ 55,377	\$ -	\$ -	\$ 11,879	\$ 67,256	\$ 1,068	\$ 8,882	\$ 77,205
Boathaus	\$ 47,566	\$ 11,366	\$ -	\$ 11,879	\$ 70,811	\$ 1,295	\$ 9,374	\$ 81,480
445 Princess	\$ 280	\$ 7,002	\$ -	\$ 11,879	\$ 19,161	\$ 387	\$ 2,541	\$ 22,089
525 Princess	\$ -	\$ 10,685	\$ -	\$ 11,879	\$ 22,564	\$ 559	\$ 3,006	\$ 26,128
555 Princess	\$ -	\$ 10,685	\$ -	\$ 11,879	\$ 22,564	\$ 559	\$ 3,006	\$ 26,128
Legacy Lane	\$ -	\$ 10,685	\$ -	\$ 11,879	\$ 22,564	\$ 559	\$ 3,006	\$ 26,128
Ross Park	\$ -	\$ 9,764	\$ -	\$ 11,879	\$ 21,643	\$ 559	\$ 2,886	\$ 25,088
Bronson	\$ -	\$ 10,685	\$ -	\$ 11,879	\$ 22,564	\$ 559	\$ 3,006	\$ 26,128
Memory Care- Burlington	\$ -	\$ 11,919	\$ -	\$ 11,879	\$ 23,798	\$ 559	\$ 3,166	\$ 27,523
Memory Care- Oakville	\$ -	\$ 11,919	\$ -	\$ 11,879	\$ 23,798	\$ 559	\$ 3,166	\$ 27,523
Memory Care- Kitchener	\$ -	\$ 11,919	\$ -	\$ 11,879	\$ 23,798	\$ 559	\$ 3,166	\$ 27,523
Silver Seven	\$ 25,254	\$ -	\$ -	\$ 11,879	\$ 37,133	\$ 587	\$ 4,904	\$ 42,624
Guildwood	\$ -	\$ -	\$ 9,497	\$ 11,879	\$ 21,376	\$ 485	\$ 2,842	\$ 24,703
Hazelton	\$ -	\$ -	\$ 9,497	\$ 11,879	\$ 21,376	\$ 485	\$ 2,842	\$ 24,703
Keele Medical	\$ -	\$ -	\$ 9,497	\$ 11,879	\$ 21,376	\$ 485	\$ 2,842	\$ 24,703
	\$ 135,697	\$ 112,711	\$ 28,491	\$ 190,062	\$ 466,962	\$ 9,818	\$ 61,981	\$ 538,761

Tier 1
A&B's Allocation of Time
for the period September 20, 2016 to March 31, 2017

	WIP Allocation			
	Subtotal	Disbursements	HST	Total
	\$ 561,428	\$ 20,047	\$ 75,304	\$ 656,780
Properties				
McMurray	\$ 16,536	\$ 598	\$ 2,219	\$ 19,354
Vaughan Crossings	\$ 121,662	\$ 3,175	\$ 16,168	\$ 141,004
Boathaus	\$ 86,361	\$ 3,331	\$ 11,615	\$ 101,308
425 Princess	\$ 24,235	\$ 971	\$ 3,264	\$ 28,469
525 Princess	\$ 28,747	\$ 1,162	\$ 3,873	\$ 33,781
555 Princess	\$ 28,747	\$ 1,162	\$ 3,873	\$ 33,781
Legacy Lane	\$ 30,604	\$ 1,175	\$ 4,116	\$ 35,895
Ross Park	\$ 15,741	\$ 592	\$ 2,115	\$ 18,448
Bronson	\$ 28,747	\$ 1,162	\$ 3,873	\$ 33,781
Memory Care- Burlington	\$ 29,543	\$ 1,167	\$ 3,977	\$ 34,687
Memory Care- Oakville	\$ 29,543	\$ 1,167	\$ 3,977	\$ 34,687
Memory Care- Kitchener	\$ 29,543	\$ 1,167	\$ 3,977	\$ 34,687
Silver Seven	\$ 45,789	\$ 1,454	\$ 6,121	\$ 53,363
Guildwood	\$ 15,210	\$ 588	\$ 2,046	\$ 17,844
Hazelton	\$ 15,210	\$ 588	\$ 2,046	\$ 17,844
Keele Medical	\$ 15,210	\$ 588	\$ 2,046	\$ 17,844
	\$ 561,428	\$ 20,047	\$ 75,304	\$ 656,780

104. The Trustee respectfully requests this Court issue an order approving the Allocation Summary outlined above. If approved, in a later report, the Trustee will present to the Court an allocation of professional fees and disbursements for the period of April 1, 2017 onwards, which allocation may differ from this Allocation Summary, based on the nature of work expended and area of focus going forward.
105. While the Trustee has prepared this Allocation Summary and seeks approval of the Trustee and its counsel's fees and disbursements, there are certain Tier 1 Trustee Corporations where there are currently no funds available to satisfy the fees and disbursements as set out in the Allocation Summary.
106. The Trustee is of the view that, at this stage of the proceedings, the proceeds of realization (or funds held in the Trustee's respective trust accounts) for each Tier 1 Trustee Corporation should remain ring fenced in the trust account for the respective property. In the future, the Trustee may make further recommendations to the Court regarding the possible repatriation of proceeds between Tier 1 Trustee Corporations, which recommendation will likely be made in the context of a future distribution motion.
107. In order to respect the proposed ring fence, the Trustee and its counsel will not be able to satisfy the payment of all of their fees and disbursements as set out in the Allocation Summary until such time as there are proceeds of realization or other receipts in respect of all of the properties.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

108. A copy of the Trustee's interim statement of receipts and disbursements as at April 12, 2017 is attached hereto as **Appendix "45"** (the "**Interim R&D**"), which does not yet reflect drawing the fees and disbursements set out in the Allocation Summary. The Interim R&D reflects the cash currently in the respective trust accounts, which amounts will increase as properties are monetized throughout the Trustee's administration.

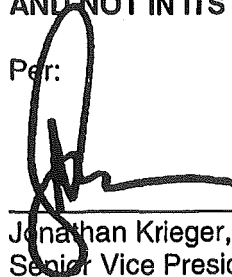
CONCLUSION AND RECOMMENDED RELIEF

109. In light of the foregoing, the Trustee respectfully recommends that the Court issue the Orders in the form attached to the Trustee's motion record.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS COURT-APPOINTED
TRUSTEE OF THE TIER 1 TRUSTEE CORPORATIONS
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Per:



Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice President

28378018.9

TAB 17

NOTICE OF SALE UNDER MORTGAGE

TO: THE PARTIES SHOWN ON SCHEDULE "A" ATTACHED HERETO

TAKE NOTICE that default has been made in payment of the monies due under a certain mortgage dated the 16th day of January, 2014, made between

MCMURRAY STREET INVESTMENTS INC. as Mortgagor,
COMPUTERSHARE TRUST COMPANY OF CANADA as Mortgagee,

upon the following property, namely:

PT THE GROVE, PL 8 BRACEBRIDGE; PT LTS 11, 12, 13 AND 14 N/S ONTARIO ST, PL 3, BRACEBRIDGE; PT LT 1, CON 2 MACAULAY PT 1 35R22861; PT THE GROVE, PL 8 BRACEBRIDGE; PT LOTS 11 & 12 N/S ONTARIO ST, PL 3, BRACEBRIDGE PT 35R22861; PT LOT 1, CON 2 MACAULAY PT 3 OF 35R22861; T/W PT 7 35R2580 AS IN DM30937, DM80981; S/T PT 3 35R22861 AS IN LT92776 AS AMENDED BY ORDER LT240194 PARTIALLY RELEASED BY LT165005; S/T PT 3 35R22861 AS IN LT92727 AMENDED BY ORDER LT240194, TOWN OF BRACEBRIDGE, DISTRICT MUNICIPALITY OF MUSKOKA; and PT LT 26 RCP 531 BRACEBRIDGE PT 5 35R22861; BRACEBRIDGE; THE DISTRICT MUNICIPALITY OF MUSKOKA

which mortgage was registered on the 16th day of January, 2014, in the Land Titles Office for the Land Titles Division of Muskoka as Instrument No. MT135137

AND I hereby give you notice that the amount now due on the mortgage for principal money, interest, taxes, insurance premiums and costs, respectively, are as follows:

for principal outstanding \$1,989,699.42
for interest accrued to January 9, 2017 54,224.33
for NSF fees 200.00
for costs 4,800.00
\$1,998,923.75

(such amount for costs being up to and including the service of this Notice only, and thereafter such further costs and disbursements will be charged as may be proper), together with interest at the rate of 12.0 per cent, per annum, on the principal and interest hereinbefore mentioned, from the 9th day of January, 2017 to the date of payment.

AND UNLESS the said sums are paid on or before the 15th day of February, 2017, I shall sell the property covered by the said mortgage under the provisions contained in it.

THIS NOTICE IS given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED the 9th day of January, 2017.

COMPUTERSHARE TRUST COMPANY OF CANADA
by its solicitors,

VINER, KENNEDY, FREDERICK,
ALLAN & TOBIAS LLP
Barristers and Solicitors
366 King Street East, Suite 300
Kingston, ON K7K 6Y3
Tel: 613-542-3124

Per: [Signature]
Garth B. Allan

SCHEDULE "A"

TO: McMurray Street Investments Inc.
c/o Harris + Harris LLP
Barristers and Solicitors
2355 Skymark Avenue, Suite 300
Mississauga, Ontario
L4W 4Y6

AND TO: Olympia Trust Company
In Trust for RRSP - 91886
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 119422
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118627
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 89181
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 122245
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 119395
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 119164
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118229
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118230
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118285
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 115197
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118977
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 119394
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118979
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118975
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118742
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118820
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118967
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118974
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118981
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118980
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 100287
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 119278
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 86593
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 118827
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 98070
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: Olympia Trust Company
In Trust for RRSP - 98563
2200 - 125 - 9th Ave S.E.
Calgary, Alberta
T2G 0P6

AND TO: 774718 Canada Inc.
Tier 1 Transaction Advisory Services Inc.
3100 Steeles Avenue East, Suite 902
Markham, Ontario
L3R 8T3

AND TO: Trisura Guarantee Insurance Company
333 Bay Street, Suite 1610
Toronto, Ontario
M5H 2R2

AND TO: Grant Thornton Limited
200 King Street West, 11th Floor
Box 11
Toronto, Ontario
M5H 3T4

AND TO: Aird Berlis LLP
Attention: Randy Hooke
181 Bay Street, Suite 1800
Box 754
Toronto, Ontario
M5J 2T9

TAB 35

NOTICE OF INTENTION TO ENFORCE SECURITY
(Bankruptcy and Insolvency Act, Subsection 244(1))

By Registered and Ordinary Post

TO: TEXTBOOK (774 BRONSON AVENUE) INC.
51 Caldari Road, Suite #A1M
Concord, ON L4K 4G3

AND TO: TEXTBOOK (774 BRONSON AVENUE) INC.
c/o HARRIS & HARRIS LLP
Barristers & Solicitors
2355 Skymark Ave #300
Mississauga, ON L4W 4Y6
Attention: Greg Harris

AND TO: TEXTBOOK (774 BRONSON AVENUE) INC.
c/o GRANT THORNTON LIMITED
Solely in its capacity as Court
Appointed Trustee of the Property
200 King Street West
11 Floor
Box 11
Toronto, Ontario M5H 3T4

AND TO: WALTER THOMPSON
226-111 Civic Square Gate
Aurora, ON L4G 0S6

AND TO: JOHN DAVIES
24 Country Club Drive
King City, Ontario
L7B 1M5

AND TO: TEXTBOOK SUITES INC.
51 Caldari Road
Suite #A1M
Concord, ON L4K 4G3

CC: AIRD & BERLIS LLP
Barristers & Solicitors
Brookfield Place
Suite 1800, P.O. Box 754
181 Bay Street
Toronto, ON M5J 2T9
Attention: Steven L. Graff

an insolvent company/person

TAKE NOTICE that:

1. VECTOR FINANCIAL SERVICES LIMITED, a secured creditor, intends to enforce its security on the property of the insolvent company/person described below:
 - (a) leasehold improvements, equipment, furnishings and chattels located at the debtor's premises, being LTS 3 & 4, PL 28; OTTAWA/NEPEAN being municipally known as 774 Bronson Avenue, Ottawa, Ontario and LT 37 & PT LT 38, PL 28, PART 4, 5R14360; OTTAWA/NEPEAN being 557 Cambridge Street South, Ottawa, Ontario and more particularly described in a Mortgage dated April 1, 2016, registered as Instrument No. OC1775861 in the Ottawa-Carleton Land Registry Office (No. 4).
2. The security that is to be enforced is in the form of:
 - (a) a Mortgage dated April 1, 2016, registered as Instrument No. OC1775861 in the Ottawa-Carleton Land Registry Office (No. 4); and
 - (b) a Notice of Assignment of Rents – General dated April 1, 2016, registered as Instrument No. OC1775862 in the Ottawa-Carleton Land Registry Office (No. 4).
 - (c) a General Security Agreement – Dated 2016 03 30
 - (i) PPSA Registration File No. 715176504, Registration No. 20160330 1541 1862 2888.
 - (ii) PPSA Registration File No. 715176504, Registration No. 20160330 1542 1862 2889.

3. Joint and Several Guarantee dated March 31, 2016 from:

Walter Thompson
John Davies
Textbook Suites Inc.

4. The total amount of indebtedness secured by the security is \$5,700,000.00 as of January 13, 2016 together with additional costs of the secured creditor of \$100,000.00 together with interest at the greater of 8.5% per annum or CIBC Prime Rate plus 4.00% per annum until April 10, 2017 and at the greater of 12.00% per annum or CIBC Prime Rate plus 9.00% per annum thereafter. The secured creditor held an interest reserve of \$121,702.17 as at January 16, 2017. The Lender's solicitors Garfinkle Biderman LLP holds an environmental holdback of \$250,000 which has been pledged as collateral security to the Lender.
5. The secured party will not have the right to enforce the security until after the expiry of the ten (10) day period following the sending of this notice, unless the insolvent company/person consents to an earlier enforcement.

DATED at Toronto this 19th day of January, 2017

VECTOR FINANCIAL SERVICES LIMITED

by its solicitors,
Messrs. Garfinkle, Biderman LLP

Per: 

Barry M. Polisuk

One Financial Place
1401-1 Adelaide Street East
Toronto, Ontario M5C 2V9

Tel: (416) 869-1234
Fax: (416) 869-0547

Note: This Notice is given for precautionary purposes only and there is no acknowledgement that any person to whom this Notice is delivered is insolvent, or that the provisions of the *Bankruptcy and Insolvency Act* apply to the enforcement of this security.

TAB 36



**First Report of
KSV Kofman Inc.
as Receiver and Manager of
Certain Property of
Scollard Development Corporation**

April 5, 2017

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Confidential Appendix

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT
CORPORATION

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

FIRST REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER

APRIL 5, 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 (the "Company"), and of all of the assets, undertakings and properties of the Company 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 (Commercial List) (the "Court") made on February 2, 2017 (the "Receivership Order"), KSV was appointed as the receiver and manager ("Receiver") of the Property.
3. The principal purpose of these proceedings is to complete a transaction that maximizes value for the Company's creditors.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company;
 - b) summarize the recommended marketing process to solicit offers for the development and/or sale of the Property (the "Strategic Process"), including the retention of TD Cornerstone Commercial Realty Inc. ("TD") to act as listing agent for the Property;

- c) provide the Receiver's preliminary findings concerning its review of the Company's receipts and disbursements for the period April 1, 2014, the date the Company appeared to have opened its bank account, to February 2, 2017, the date of the Receivership Order; and
- d) recommend that the Court issue an order, among other things:
 - approving the Strategic Process, including the retention of TD as the listing agent;
 - approving the activities of the Receiver as described in this Report; and
 - sealing the confidential appendices until further order of this Court.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information of the Company and discussions with the Company's accountant, SourcePoint Business Group Inc., and the Company's legal counsel, Harris & Harris LLP ("Harris"). The Receiver has not performed an audit or other verification of such information. The financial information discussed herein is preliminary and remains subject to further review, including the information discussed in Section 5 below. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report.

2.0 Background

1. The Company purchased the Real Property in September, 2014. The Real Property is located in Whitby, Ontario and comprises approximately three acres.
2. The Company intended to develop a project known as "Boathaus" on the Real Property. Boathaus is presently intended to be a five-story condominium consisting of 291 residential units. The Company was considering adding a sixth story with an additional 74 residential units. As part of its development efforts, the Company pre-sold 214 units and collected approximately \$8 million in deposits. The deposits are being held by Chaitons LLP and are not being used by the Receiver to fund these proceedings or for any other purpose.
3. The only structure on the Real Property is a single storey 7,500 square foot commercial building that was renovated by the Company so that it could be used as the project sales centre.
4. John Davies is the sole director and officer of the Company. The Receiver understands that the Company's shareholders are Aeolian Investments Ltd. ("Aeolian") (50%) and Erika Harris (50%). The Receiver understands that Aeolian is owned by Mr. Davies' wife and children¹. Ms. Harris is the mother of Greg Harris, a partner at Harris.

¹ This information is sourced from the Affidavit of John Davies sworn December 6, 2016 in support of the Company's and certain related entities' application for protection under the *Companies' Creditors Arrangement Act*.

2.1 Creditors

2.1.1 Downing Street Financial Inc.

1. Pursuant to the Receivership Order, the Receiver was authorized to borrow \$3.5 million from Downing Street Financial Inc. ("Downing Street") under a Receiver's Certificate (the "Downing Street Facility"). Downing Street was granted a charge on the Property (other than the deposits). At the commencement of the receivership, Downing Street advanced the Receiver all funds available under the Downing Street Facility. In accordance with the Receivership Order, the Downing Street Facility was used to repay a mortgage in the amount of approximately \$2.5 million owing to Firm Capital Mortgage Corporation ("Firm Capital") and the remaining funds are being used to fund the costs of these proceedings.

2.1.2 Scollard Trustee Corporation

1. Scollard Trustee Corporation ("STC") raised monies from investors through syndicated mortgage investments. STC then entered into a loan agreement with the Company for the full amount of the funds advanced by investors, secured by a mortgage over the Property. STC is a bare trustee and is responsible for holding and administering the mortgage. The STC debt ranks behind the Downing Street Facility.
2. As of the date of the receivership, the Company's indebtedness to STC totalled approximately \$14.1 million; interest and costs continue to accrue on this debt.
3. Pursuant to an order of the Court dated October 27, 2016, Grant Thornton Limited was appointed the trustee ("Trustee") of STC and several related entities under Section 37 of the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29, as amended. The application to appoint KSV as Receiver was brought by the Trustee.

2.2 Other Creditors

1. Trisura Guarantee Insurance Company and Everest Insurance Company of Canada (jointly, the "Sureties") provided bonds to Tarion Warranty Corporation ("Tarion") in connection with certain liabilities that may accrue to Tarion in connection with the Boathaus project. As of the date of the receivership, the amounts, if any, owing to the Sureties are unknown; however, they are not expected to be significant. The Receivership Order provides that Trisura will be paid, in full, for any and all losses, damages, liabilities, costs and expenses owed to it from any proceeds of sale resulting from a transaction in respect of the Property.
2. According to searches conducted of the Land Titles Office (Toronto), three liens totalling approximately \$800,000 have been registered on title against the Real Property pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended. The Receiver's counsel is in the process of reviewing these lien claims.

3. According to the Company's books and records, as of the date of the Receivership Order, the Company's unsecured obligations totalled approximately \$6.1 million, of which approximately \$4.5 million appears to be owing to affiliated entities for monies advanced by them to the Company. Details concerning the amounts owing to the affiliated entities are provided in Section 5 below.

3.0 Company Sale Process

1. The Receiver understands that the Company engaged Wynn Realty Corporation ("Wynn") in January, 2017 to list the Property for sale.
2. Since the date of its appointment, the Receiver has considered two offers presented by Wynn:
 - In respect of the first offer, immediately following its appointment, the Receiver spoke with the prospective purchaser to understand the status of its diligence - the offer had a one month diligence condition. The prospective purchaser advised the Receiver that Wynn had approached it just a few days prior to the receivership application and that it had neither conducted any diligence on the Property nor had any background on the Company. The Receiver advised that Purchaser that it was not prepared to pursue this transaction; and
 - In respect of the second offer, an agreement of purchase and sale ("APS") was negotiated; however, the purchaser failed to pay the deposit contemplated by the APS when due. On April 4, 2017, the purchaser advised that it would not be pursuing this transaction.

4.0 Strategic Process

4.1 Request for Proposals from Realtors

1. Contemporaneous with its discussions with parties that expressed an interest in acquiring the Property, the Receiver solicited proposals from six realtors to act as listing agent for the Property. The Receiver requested that each realtor provide, among other information, background information regarding each firm's experience with real estate similar to the Property, a marketing plan which considered investment, development and the outright sale of the Property, an estimate of value of the Property and the realtor's proposed commission structure. A copy of the request for proposal sent to realtors is attached as Appendix "A".
2. Each realtor was provided access to an electronic data room after it executed a confidentiality agreement ("CA").
3. The deadline for proposals was February 22, 2017. Five of the six realtors submitted a proposal. The Receiver prepared a summary of the proposals (the "Realtor Summary") and provided it to the Trustee and its legal counsel. The Realtor Summary is attached as Confidential Appendix "1". The rationale for seeking a sealing order for the Realtor Summary is provided in Section 4.2 below.
4. Two realtors, including TD, were short listed to present to the Receiver their proposals to sell the Property. Presentations were conducted on March 2, 2017.

5. The Receiver selected TD to act as the realtor on this assignment. The Receiver considered, among other things, TD's experience selling similar properties and its identification of opportunities to enhance value on the project. The Receiver negotiated TD's commission structure. The commission structure is such that TD's fees increase as the value of any transaction increases. The Receiver discussed its realtor recommendation with the Trustee and after consideration, the Trustee provided its consent.
6. The Receiver negotiated a "carve out" in the listing agreement in respect of one party who has expressed an interest in the Property (the "Excluded Party"). Pursuant to the carve-out, TD agreed to waive its commission under the listing agreement and to receive a maximum fee of \$50,000², plus its out of pocket expenses, in the event the Receiver completes a transaction with the Excluded Party. The fee is intended to compensate TD for its time and costs incurred in connection with its early stage marketing efforts for the Property.
7. A copy of TD's listing agreement is provided in Confidential Appendix "2". The Receiver proposes to file the listing agreement on a sealed basis for the reasons provided below.

4.2 Confidentiality

1. The Receiver respectfully requests that the Realtor Summary and the listing agreement be filed with the Court on a confidential basis and be sealed ("Sealing Order") as the documents contain confidential information. If these documents are not sealed, the information in these documents may negatively impact realizations on the Property as interested parties would have access to value estimates. The Receiver is not aware of any party that will be prejudiced if the information is sealed. The Receiver believes the proposed Sealing Order is appropriate in the circumstances.

4.3 Strategic Process

1. The Receiver recommends that the Court issue an order approving the Strategic Process summarized in the table below.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 - Underwriting</i>		
Finalize marketing materials	<ul style="list-style-type: none"> ➤ TD and the Receiver to: <ul style="list-style-type: none"> ○ prepare a summary of the project and the opportunity; ○ populate an online data room; ○ prepare a CA; and 	

² In the event the Receiver closes a transaction with the Excluded Party within 30 days from the date the Court approves a marketing process (the "Exclusion Period"), TD will be entitled to a fee of \$25,000 plus its out-of-pocket expenses. The fee increases by \$25,000 if the Receiver enters into a transaction with the Excluded Party after the Exclusion Period.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
	<ul style="list-style-type: none"> o prepare a Confidential Information Memorandum ("CIM"). 	Weeks 1-2
Prospect Identification	<ul style="list-style-type: none"> ➤ TD to develop a master prospect list. TD will qualify and prioritize prospects. ➤ TD will also have pre-marketing discussions with targeted developers. 	
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> o Offering summary and marketing materials printed; o publication of the acquisition opportunity in <i>The Globe and Mail</i> (National Edition); o telephone and email canvass of leading prospects; and o meet with and interview prospective bidders. ➤ Assist the Receiver and its legal counsel in the preparation of a vendor's form of Purchase and Sale Agreement (the "PSA"). 	Weeks 3-4
Stage 2	<ul style="list-style-type: none"> ➤ TD to provide detailed information to qualified prospects which sign the CA, including the CIM, access to the data room and a form PSA. ➤ TD to facilitate all diligence by interested parties. 	Weeks 4-5
Stage 3	<ul style="list-style-type: none"> ➤ Prospective purchasers to submit PSAs or other proposals, including development proposals. 	Week 6
<i>Phase 3 – Offer Review and Negotiations</i>		
Short-listing of Offers	<ul style="list-style-type: none"> ➤ Short listing of bidders. ➤ Further bidding - interested bidders may be asked to improve their offers. 	One week following bid deadline
Selection of Successful Bids	<ul style="list-style-type: none"> ➤ Select successful bidder and finalize definitive documents. 	One week
Transaction Approval Motion and Closing	<ul style="list-style-type: none"> ➤ Motion for transaction approval and close transaction 	Two weeks

2. Additional aspects of the Strategic Process include:

- a) the Property will be marketed on an "as is, where is" basis;
- b) the Receiver will be entitled to extend the deadline to submit offers under the Strategic Process if it considers it to be appropriate and necessary;

- c) the Receiver will have the right to reject any and all offers, including the highest offer; and
- d) any transaction will be subject to Court-approval.

4.4 Strategic Process Recommendation

1. The Receiver recommends that the Court issue an order approving the Strategic Process, including the retention of TD as the listing agent, for the following reasons:
 - a) TD's team will be led by individuals who have extensive real estate experience, including properties similar to the Property - TD has relationships with likely bidders for the Property. Its fees are structured to incentivize it to maximize recoveries. Its fee structure is consistent with market;
 - b) the Strategic Process provides flexibility for the Receiver to consider various options for the Property, including sale and development proposals;
 - c) the Strategic Process is a fair, open and transparent process intended to canvass the market broadly in order to obtain the highest and best offer;
 - d) there will be no delay commencing the process – TD has conducted a review of information concerning the Property; and
 - e) the duration of the Strategic Process is sufficient to allow interested parties to perform diligence and to submit an offer. The Receiver will also have the right to extend or amend timelines. Each bidder will be provided with the same deadline to submit an offer.

5.0 Sources and Uses of the Company's Cash

1. At the commencement of the receivership proceedings, the Receiver reviewed the Company's balance sheet and identified significant balances owing to and from other real estate development projects affiliated with the Company's principal, Mr. Davies (collectively, the "Affiliated Property Companies"³).
2. Pursuant to paragraph 7.02 (g) of the loan agreement between STC and the Company dated April 8, 2014 (the "Loan Agreement"), the Company is not permitted to use the loan proceeds received from STC (the "Loan Proceeds") for any purpose other than the development and construction of the Boathaus project, unless the consent of STC is obtained for such alternative use. A copy of the Loan Agreement is attached as Appendix "B".

³ These are: Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., Memory Care Investments (Burlington) Ltd., Textbook (445 Princess Street) Inc., Textbook (555 Princess Street) Inc., Textbook (525 Princess Street) Inc., 1703858 Ontario Inc., Memory Care Investments Ltd., Textbook Student Suites Inc., Textbook Suites Inc., 2375219 Ontario Ltd., McKenzie Marsh Investments Ltd., Lafontaine Terrace Management Corporation, Legacy Lane Investments Ltd., McMurray Street Investments Inc. and Textbook (774 Bronson Avenue) Inc.

3. The Receiver reviewed the Company's bank statements, accounting records and unaudited financial statements for the period April 1, 2014 to February 2, 2017 (the "Review Period").

(unaudited; \$C000s)	Amount
<i>Receipts</i>	
Loan proceeds	
STC	13,596
Firm Capital	2,350
2174217 Ontario Ltd.	750
Affiliated Property Companies	6,186
Raj Singh and entities related to Mr. Singh	350
Aeollan	25
Sundry receipts	602
Total receipts	<u>23,859</u>
<i>Disbursements</i>	
Purchase of Real Property	9,163
Affiliated Property Companies	3,355
Interest and fees ⁴	2,705
STC loan commissions	2,175
Aeollan	1,244
Sales centre construction and operating costs	1,174
Development costs	1,161
Raj Singh and entities related to Mr. Singh	636
Loan repayment (2174217 Ontario Ltd.)	750
Professional fees	446
Entities and Individuals related to John Davies (excluding Aeollan)	92
Other	955
Total disbursements	<u>23,856</u>
Ending balance	<u>3</u>

4. The table above reflects that the Company:
- a) had total receipts of approximately \$23.859 million, including \$6.186 million from Affiliated Property Companies; and
 - b) made disbursements of approximately \$23.856 million, including \$3.355 million to Affiliated Property Companies and approximately \$1.244 million to Aeollan, a company owned by Mr. Davies' wife and children. Details regarding payments to Aeollan are discussed in Section 5.1 below.

⁴ Approximately \$2.0 million in interest was paid in respect of STC. The remainder represents amounts paid to Firm Capital and 2174217 Ontario Ltd.

5. The Receiver understands that each Affiliated Property Company is a single purpose entity. Set out in Appendix "C" is a brief description of the single purpose activity. A summary of the amounts received from Affiliated Property Companies and paid to Affiliated Property Companies is provided in the table below:

(unaudited; \$C000s) Entity	Amounts Received From	Amounts Advanced To	Net Received/ (Advanced)
Memory Care Investments (Oakville) Ltd.	2,191	(687)	1,504
Memory Care Investments (Kitchener) Ltd.	1,516	(95)	1,421
Textbook (445 Princess Street) Inc.	645	-	645
Textbook (774 Bronson Avenue) Inc.	559	-	559
1703858 Ontario Inc.	553	(28)	525
Textbook Student Suites Inc.	122	(6)	116
Textbook (555 Princess Street) Inc.	13	-	13
Textbook Suites Inc.	14	(3)	11
Textbook (525 Princess Street) Inc.	7	-	7
2375219 Ontario Ltd.	23	(25)	(2)
McKenzie Marsh Investments Ltd.	100	(111)	(11)
Lafontaine Terrace Management Corporation	-	(75)	(75)
Memory Care Investments Ltd.	47	(229)	(182)
Legacy Lane Investments Ltd.	12	(229)	(217)
Memory Care Investments (Burlington) Ltd.	384	(884)	(500)
McMurray Street Investments Inc.	-	(983)	(983)
Total	6,186	(3,355)	2,831

6. During September and October, 2014, Loan Proceeds totalling approximately \$13.596 million were advanced from STC to the Company on four different dates. The Receiver was able to isolate the use of the Loan Proceeds, as reflected in the table below.

(unaudited; \$C000s)	Amount
Cash balance, as of September 1, 2014	3
<i>Receipts</i>	
STC	13,596
Other ⁵	32
Subtotal	13,628
<i>Disbursements</i>	
Purchase of Real Property	8,163 ⁶
First Commonwealth Mortgage Corporation	2,175
Affiliated Property Companies	1,259
STC interest reserve	1,088
Development costs	331
Professional fees	287
Tier 1 Transaction Advisory Services Inc.	156
Aeolian	133
Subtotal	13,592
Cash balance, as of October 31, 2014	39

7. The table reflects:

- a) \$2.175 million (16.0% of the total proceeds) was paid to First Commonwealth Mortgage Corporation⁷ as commissions and brokerage fees in connection with raising the STC loan. The amount of the commissions appears to be consistent with the Loan Agreement;
- b) approximately \$1.259 million (9.3% of the total proceeds) was advanced to certain Affiliated Property Companies. These advances occurred almost immediately after the Company received the Loan Proceeds. A schedule of these advances is provided below.

⁵ Mainly represents an HST refund.

⁶ The total amount paid for the Real Property, including closing expenses, was \$9.2 million. Of this amount, \$1 million was paid by Memory Care Investments (Oakville) Ltd.

⁷ The Loan Agreement indicates that First Commonwealth Mortgage Corporation and Tier 1 Mortgage Corporation are jointly the Mortgage Broker in connection with the STC loan.

(unaudited; \$C000s) Entity	Amount Advanced
Memory Care Investments (Burlington) Ltd.	366
McMurray Street Investments Inc.	350
Memory Care Investments (Oakville) Ltd.	322
Legacy Lane Investments Ltd.	120
Memory Care Investments (Kitchener) Ltd.	71
Memory Care Investments Ltd.	30
	1,259

- c) approximately \$287,000 was paid in professional fees and related disbursements, including approximately \$243,000 to Harris. Pursuant to Schedule "C" of the Loan Agreement, it appears that Harris was to receive approximately \$95,000, plus disbursements, in connection with the STC Loan. The amount received by Harris is subject to further review, including whether Harris performed other services to the Company which would have entitled it to further fees.

5.1 Advances to Aeolian

1. Net payments to Aeolian during the Review Period totalled approximately \$1.2 million, as follows:

(unaudited; C\$000's) Description	Amount
Management fees	780
Amounts advanced by the Company on behalf of:	
Legacy Lane Investments Ltd.	116
Memory Care Investments (Burlington) Ltd.	116
Memory Care Investments (Kitchener) Ltd.	116
Memory Care Investments (Oakville) Ltd.	116
	464
Total	1,244

2. The table above reflects:
- a) \$780,000 was charged by Aeolian on account of management fees on the Company's project. Approximately \$624,000 of these fees were recorded subsequent to the commencement of the receivership, the effect of which was to eliminate a receivable owing by Aeolian to the Company which arose because Aeolian had received cash from the Company in excess of the management fees it charged the Company prior to the commencement of the receivership; and
- b) approximately \$464,000 was paid by the Company to Aeolian on behalf of the projects noted in the table above.

3. The transactions between the Company and both the Affiliated Property Companies and Aeolian raise concerns about the use of monies invested by syndicated mortgage Investors in the Company and in the Affiliated Property Companies.
4. The Receiver intends to discuss the implications of its preliminary findings in this section with the Trustee.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in Section 1.1 (1)(d) of this Report.

* * *

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
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

TAB F

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

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

BETWEEN:

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

EIGHTH REPORT OF THE TRUSTEE

NOVEMBER 3, 2017



Grant Thornton

Grant Thornton Limited
200 King Street W., 11th Floor
Toronto, ON M5H 3T4

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- Appendix 5 Fifth Report dated January 23, 2017 (without appendices), Fifth Report Supplement dated April 4, 2017 (without appendices), Vaughan Crossings Receivership Order made February 14, 2017, related endorsement, Vaughan Crossings Transaction Order made April 10, 2017, corresponding Order re ancillary matters and related endorsement
- Appendix 6 Sixth Report dated April 18, 2017 (without appendices), Sixth Report Supplement dated April 21, 2017 (without appendices), Expanded Receivership Order made April 28, 2017 and related endorsement
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

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

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2006, c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c.
C.43**

EIGHTH REPORT OF THE TRUSTEE

NOVEMBER 3, 2017

INTRODUCTION AND BACKGROUND

1. This report (this "**Eighth Report**") is filed by Grant Thornton Limited ("**GTL**") in its capacity as the court-appointed trustee (in such capacity, the "**Trustee**") of each of the 11 above-named Respondents (collectively, the "**Tier 1 Trustee Corporations**", and individually, a "**Tier 1 Trustee Corporation**"). GTL was appointed as the Trustee pursuant to the Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "**Commercial List Court**") made October 27, 2016 (the "**Appointment Order**"), a copy of which is attached hereto as **Appendix "1"** (together with His Honour's endorsement).

2. The purpose of the Trustee's appointment (the "**Appointment**") is to protect the interests of the investing public, who, through the Trustee, are mortgagees with secured lending positions registered on title to real property owned by 16 borrowers/developers (the "**Developers**"). The Developers are distinct entities from the Tier 1 Trustee Corporations.
3. Detailed background information pertaining to the circumstances leading to the Trustee's Appointment is contained in the affidavit of Mohammed Ali Marfatia sworn October 20, 2016 (the "**Marfatia Affidavit**"), which was filed by the Superintendent of Financial Services (the "**Superintendent**") in support of the Appointment. A copy of the Marfatia Affidavit, without exhibits, is attached as **Appendix "2"**.
4. In summary, the Marfatia Affidavit describes a series of 16 syndicated mortgage investments ("**SMIs**") sold to the investing public (the "**Investors**"), in respect of which, amongst other things:
 - (i) the 16 Developers were the owners of the real property, borrowers in the mortgage transactions and developers of the underlying real estate projects;
 - (ii) the 11 Tier 1 Trustee Corporations (prior to the Appointment of the Trustee) were special purpose entities required under their relevant constating agreements to hold the mortgages in trust for the Investors and to act in a fiduciary capacity to administer and enforce the mortgages (some of the Tier 1 Trustee Corporations held more than one mortgage); and
 - (iii) other entities, being First Commonwealth Mortgage Corporation ("**First Commonwealth**") and Tier 1 Mortgage Corporation ("**Tier 1 Mortgage Corp**"), were amongst those licensed mortgage brokers that promoted and sold the SMIs, and a third entity, being Tier 1 Transaction Advisory Services Inc. ("**Tier 1 Transaction**"), was also heavily involved in the SMIs and had applied for a mortgage brokerage licence.

5. The Marfatia Affidavit further describes how Mr. Raj Singh, who was simultaneously the President, the CEO and a shareholder of Tier 1 Transaction, a mortgage agent of First Commonwealth, a director, officer, shareholder (either directly or indirectly) and/or profit participation interest holder in at least 11 of the Developers and the sole director, officer and shareholder of all but two of the Tier 1 Trustee Corporations, was in a clear conflict of interest position not properly disclosed to the Investors, in that, amongst other things, he was required to administer and enforce the SMIs on behalf of the Investors as against borrowers in which he had a financial interest in the majority of cases.
6. As discussed in the Marfatia Affidavit, the Superintendent also discovered systematic and recurrent failures by First Commonwealth and Tier 1 Mortgage Corp to abide by the basic consumer protection measures put in place by the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), which resulted in the Superintendent issuing: (i) a Notice of Proposal to revoke the licenses of First Commonwealth, Tier 1 Mortgage Corp and Mr. Singh (amongst others) and to refuse the licence surrender application of First Commonwealth; (ii) an Interim Suspension Order against these same entities/persons, preventing them from dealing or trading in mortgages in Ontario; and (iii) an Interim Compliance Order against Tier 1 Transaction, requiring that it cease and desist unlicensed activity.
7. Finally (and without being exhaustive), the Marfatia Affidavit also discussed the Superintendent's concern that the appraisal values provided to the Investors did not reflect the value of the real property at the time of the mortgage, such that the true values may be inadequate to cover the respective SMIs but rather, reflected the value of the developed project.
8. Apart from the Marfatia Affidavit, responding affidavits to the Superintendent's application were sworn by each of John Davies (a principal for 11 of the 16 Developers, which affidavit was filed in opposition to the Appointment) and Gregory Harris (a lawyer at Harris + Harris LLP ("**H+H**"), counsel involved in the SMI transactions). The Appointment Order was granted notwithstanding the submissions of these stakeholders and their counsel to the Court.

9. On January 24, 2017, pursuant to the Order of the Honourable Justice Hainey, Chaitons LLP was appointed by the Court as counsel for all the Investors across all 16 SMIs (in such capacity, "**Representative Counsel**"), unless and until written notice is provided by a particular Investor to Representative Counsel pursuant to a specified opt-out procedure if such Investor does not wish to be represented by Representative Counsel (the "**Representative Counsel Order**"). A copy of the Representative Counsel Order (together with His Honour's endorsement) is attached as **Appendix "3"**.

The Trustee's Previous Reports to Court and Status of The Proceedings

10. The Trustee has issued seven previous reports to Court and certain supplements thereto (collectively, the "**Previous Reports**") prior to the issuance of this Eighth Report, namely:

- (i) the Trustee filed its first report dated November 10, 2016 (the "**First Report**") in the context of a motion brought before the Ontario Superior Court of Justice (Divisional Court) (the "**Divisional Court**") by 11 of the Developers for whom Mr. John Davies is the principal (the "**Davies Developers**").¹ The motion sought a stay of certain paragraphs of the Appointment Order (the "**Stay Motion**") pending the hearing of the Davies Developers' further motion for leave to appeal the Appointment Order. The Divisional Court dismissed the Stay Motion and ordered the Davies Developers to pay to the Trustee \$5,000 for its costs within 30 days (the "**Cost Award**"). The Davies Developers ultimately abandoned their appeal of the Appointment Order. As of the date of this Eighth Report, the Davies Developers have not satisfied the Cost Award. The First Report also outlined the various degrees to which each of Mr. Davies, Mr. Singh and H+H were cooperating with the Trustee. A copy of the First Report is available on the

¹ The Davies Developers are Textbook (525 Princess Street) Inc., Textbook (555 Princess Street) Inc., Textbook (Ross Park) Inc., 1703858 Ontario Inc., Memory Care Investments (Oakville) Ltd., Memory Care Investments (Kitchener) Ltd., Textbook (774 Bronson Ave) Inc., Legacy Lane Investments Ltd., Scollard Development Corporation, McMurray Street Investments Inc. and Textbook (445 Princess Street) Inc.

Trustee's website at www.grantthornton.ca/tier1 (the "**Trustee's Website**");

- (ii) the Trustee filed its second report dated November 28, 2016 (the "**Second Report**"), which provided stakeholders with an update on the challenges encountered by the Trustee in performing its mandate as a result of the actions of certain parties, including the lack of information provided by the Davies Developers. The Second Report was not filed in connection with a specific motion or court attendance. A copy of the Second Report is available on the Trustee's Website;
- (iii) the Trustee filed its third report dated December 13, 2016 (the "**Third Report**") in response to an application brought by nine of the Davies Developers (and one of Mr. Davies' related companies) (collectively, the "**CCAA Applicants**")² for protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA Application**") and for the appointment of KSV Kofman Inc. ("**KSV**") as proposed "super" monitor. The CCAA Application was dismissed by the Honourable Justice Penny. A copy of the Third Report is available on the Trustee's Website;
- (iv) the Trustee filed its fourth report dated January 20, 2017 (the "**Fourth Report**") and supplement thereto dated January 26, 2017 (the "**Fourth Report Supplement**") to prevent the immediate forced sale of the real property of one of the Davies Developers (the "**Boathaus Property**") by its first mortgagee. The Fourth Report and Fourth Report Supplement were filed in support of the Trustee's motion to have KSV appointed by the Court as receiver and manager of the Boathaus Property³ (in such capacity, the "**Receiver**") to, amongst other things, market and solicit offers for

² The two Davies Developers that were not CCAA Applicants were McMurray Street Investments Inc. and Textbook (445 Princess Street) Inc.

³ Together with all the assets, undertakings and properties of the Davies Boathaus Developer acquired for or used in relation to the Boathaus Property.

the investment in, development of and/or sale of the Boathaus Property (the "**Boathaus Proceedings**"). The Honourable Justice Wilton-Siegel granted the Trustee's motion, and KSV was appointed as the Receiver pursuant to the terms of a Court Order made February 2, 2017 (the "**Original Boathaus Receivership Order**"). A copy of the Fourth Report and the Fourth Report Supplement, both without appendices, together with the Original Boathaus Receivership Order, corresponding ancillary Order and His Honour's written reasons are attached collectively, as **Appendix "4"**;

- (v) the Trustee filed its fifth report dated January 23, 2017 (the "**Fifth Report**") and supplement thereto dated April 4, 2017 (the "**Fifth Report Supplement**") to provide the Court with information concerning one of the non-Davies Developers' projects ("**Vaughan Crossings**"), a Court-appointed receivership application brought by a mortgagee registered first on title to the Vaughan Crossings' real property (the "**Vaughan Crossings Property**") and a proposed transaction in respect of the Vaughan Crossings Property (the "**Vaughan Crossings Transaction**"). The receivership application in respect of the Vaughan Crossings Property was granted by the Honourable Justice Conway pursuant to an Order made February 14, 2017 and effective March 1, 2017 (the "**Vaughan Crossings Receivership Order**") and the Vaughan Crossings Transaction was approved by the Honourable Justice Myers pursuant to an Order made April 10, 2017 (the "**Vaughan Crossings Transaction Order**"). A copy of the Fifth Report and the Fifth Report Supplement, both without appendices, together with the Vaughan Crossings Receivership Order, the Vaughan Crossings Transaction Order, corresponding ancillary Order and the written reasons therefor are attached collectively as **Appendix "5"**;
- (vi) the Trustee filed its sixth report dated April 18, 2017 (the "**Sixth Report**") and supplement thereto dated April 21, 2017 (the "**Sixth**

Report Supplement") to support the Trustee's motion to, amongst other things, expand the Boathaus Proceedings (as expanded, the **"Expanded Receivership Proceedings"**) to include additional properties of the Davies Developers, being those defined in the Sixth Report as the **"Legacy Lane Property"**, the **"525 Princess Property"**, the **"555 Princess Property"** and the three **"Memory Care Properties"**. The expansion of the Boathaus Proceedings was granted by the Honourable Justice Myers pursuant to an Order made April 28, 2017 (as subsequently amended, the **"Expanded Receivership Order"**). A copy of the Sixth Report and the Sixth Report Supplement, both without appendices, together with the Expanded Receivership Order and His Honour's written reasons are attached collectively as **Appendix "6"**; and

(vii) the Trustee filed its seventh report dated August 23, 2017 (the **"Seventh Report"**) to support the Trustee's motion to, amongst other things, approve a claims process to be conducted by the Trustee in respect of claims against the Tier 1 Trustee Corporations (the **"Claims Procedure Order"**) and approve an executed agreement and release between one of the Developers (Hazelton Development Corporation) and the Trustee. A copy of the Seventh Report, Claims Procedure Order, corresponding ancillary Order and the written reasons therefor are attached collectively as **Appendix "7"**.

11. All the Previous Reports and activities of the Trustee described therein have been approved by the Court. At the request of Mr. Raj Singh and Tier 1 Transaction, and on consent of the Trustee, the Court's approval of certain of the Previous Reports is not deemed to be a finding of fact or proof of any allegations or claims relating to the actions or omissions of Mr. Singh or Tier 1 Transaction.
12. Copies of materials filed in the Trustee's proceedings are available on the Trustee's website at www.grantthornton.ca/tier1.

13. KSV, in its capacity as the Receiver in the Expanded Receivership Proceedings, has also filed several reports to Court (collectively, the "**Receiver Reports**"). The Expanded Receivership Proceedings have proceeded separately from the present proceedings (with a separate Court file number) in order to maintain independence between Court officers and maximize procedural efficiency. Copies of the materials filed in the Expanded Receivership Proceedings are available on the Receiver's website at www.ksvadvisory.com/insolvency-cases/scollard-development-corporation.
14. Amongst other things, the Receiver Reports identify extensive transfers of money from and to certain of the Davies Developers to and from various related entities, including other Davies Developers, entities and trusts controlled by Mr. Davies and entities controlled by Mr. Singh. The Receiver obtained a *Mareva* injunction against each of Mr. Davies and his wife (both in their personal capacities and in their capacities as trustee and/or representative of the Davies Arizona Trust and the Davies Family Trust), Gregory Harris of H+H (solely in his capacity as trustee and/or representative of the Davies Family Trust) and Aeolian Investments Ltd. (collectively, the "**Mareva Order**").⁴ A copy of the Mareva Order, which was amended and extended on several occasions, and reasons therefor are attached collectively as **Appendix "8"**. Amongst other things, the reasons of the Honourable Justice Myers made August 30, 2017 expressly identify Mr. Davies as having engaged in a "Ponzi Scheme." The Trustee understands from the Receiver that Mr. Davies and Aeolian Investments Ltd. have taken steps to seek leave from the Divisional Court to appeal the Mareva Order.
15. On the application of Kingsett Mortgage Corporation ("**Kingsett**"), KSV was also appointed as receiver over certain real property owned by Generx (Byward Hall) Inc. a.k.a. Textbook (256 Rideau Street) Inc. (collectively, "**Rideau**"). Rideau is not a developer that was loaned money by any of the SMIs. However, the Trustee understands from the Receiver Reports that certain funds lent by the SMIs to certain of the Davies Developers were transferred, either directly or

⁴ The Trustee understands from the Receiver that each of the Davies Arizona Trust, the Davies Family Trust and Aeolian Investments Ltd. (an entity controlled, directly or indirectly, by Mr. Davies and/or related parties) was a recipient of funds, either directly or indirectly, from one or more of the Davies Developers.

indirectly, to Rideau. A copy of the receivership Order in respect of Rideau and reasons therefor are attached collectively as **Appendix "9"**. Copies of the materials filed in connection with the Rideau receivership are available at www.ksvadvisory.com/insolvency-cases/generx-byward-hall-inc.

PURPOSE OF THE EIGHTH REPORT

16. The purpose of this Eighth Report is to: (1) provide an update in respect to certain of the SMIs; and (2) provide the Court with information to support the Trustee's request for Orders:
- (i) approving the executed assignment agreement and release dated October 10, 2017 between 1416958 Ontario Inc. (the "**Guildwood Developer**") and the Trustee (collectively, the "**Guildwood Agreement**");
 - (ii) requiring Olympia Trust Company ("**OTC**") to consent to the discharge of its portion of the Guildwood Mortgage (as defined herein) on the same terms and conditions as the Guildwood Agreement requires the Trustee to consent to the discharge of its portion of the Guildwood Mortgage;
 - (iii) approving the executed assignment agreement and release dated October 16/18, 2017 amongst Silver Seven Corporate Centre Inc. (the "**Silver Seven Developer**"), John Anava, David Yarmus, Silver Seven Holdings Inc. ("**Silver Seven Mortgage Corp**") and the Trustee (the "**Silver Seven Agreement**");
 - (iv) requiring OTC to be bound by the assignment of the Silver Seven SMI Loan Agreement (as defined below) and the Silver Seven SMI Security (as defined below), in accordance with the terms of the Silver Seven Agreement;
 - (v) authorizing the Trustee to provide certain Investor information to the Royal Canadian Mounted Police (the "**RCMP**") and the Ontario

Provincial Police (the "OPP") to assist in any investigations in connection with the Developers;

- (vi) approving this Eighth Report and the conduct and activities of the Trustee as described herein;
- (vii) approving the fees and disbursements of the Trustee and its counsel from July 1, 2017 to September 30, 2017 and an allocation of such fees and disbursements; and
- (viii) for each SMI other than Vaughan Crossings, authorizing the Trustee to make distributions to the Investors, without further Order of this Court and net of the applicable Holdback (as defined herein), up to the amount of their Proven Claims (as defined in the Claims Procedure Order).

DISCLAIMER

17. This Eighth Report has been prepared for the use of the Court and the Tier 1 Trustee Corporations' stakeholders as general information relating to the Tier 1 Trustee Corporations. Accordingly, the reader is cautioned that this Eighth Report may not be appropriate for any other purpose. The Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Eighth Report for any other purpose.
18. In preparing this Eighth Report, the Trustee has relied upon certain unaudited financial information provided by parties who had knowledge of the affairs of the Tier 1 Trustee Corporations, including Gregory Harris of H+H, Raj Singh and John Davies. The Trustee has also relied on information provided to it by KSV in its capacity as the Receiver, including the Receiver Reports. The Trustee has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Trustee expresses no opinion or other form of assurance with respect to such information.

19. All references to dollars in this Eighth Report are in Canadian currency unless otherwise noted.

THE SINGH DEVELOPERS, GUILDWOOD AGREEMENT AND KEELE MEDICAL

20. Apart from the 11 Davies Developers, the SMIs also loaned money to five other Developers (the “**Non-Davies Developers**”). The principal of three of the five Non-Davies Developers is Raj Singh (the “**Singh Developers**”). As set out in the Seventh Report (Appendix 10), the Trustee previously entered into an agreement with one of the Singh Developers (Hazelton Development Corporation), which agreement was approved by this Court.

The Guildwood Agreement

21. One of the other Singh Developers is the Guildwood Developer. The Tier 1 Trustee Corporation that holds an SMI from the Guildwood Developer is 2223947 Ontario Limited (the “**Guildwood Trustee Corporation**”).
22. Based on its review of a loan agreement dated November 20, 2012 between the Guildwood Developer and the Guildwood Trustee Corporation (the “**Guildwood SMI Loan Agreement**”) and registrations on title, the Trustee understands that the Guildwood Trustee Corporation received a mortgage on the real property legally described by PIN No. 06401-0113 (LT) (the “**Guildwood Property**”) in the principal amount of \$6,000,000 (collectively, the “**Guildwood SMI**”) in exchange for a loan of \$6,433,856 to the Guildwood Developer. As is the case with the SMIs generally, the Guildwood SMI is held jointly with OTC for the benefit of those Investors holding their underlying positions in RRSPs.
23. Copies of the material components of the Guildwood SMI are attached collectively as **Appendix “10”**, being: (i) the Guildwood SMI Loan Agreement; (ii) a syndicated mortgage participation agreement dated November 20, 2012 between the Guildwood Trustee Corporation and the Investors (the “**Guildwood SMI Participation Agreement**”); and (iii) the charge registered on title to the Guildwood Property (the “**Guildwood SMI Charge**”).

24. The Trustee understands that the intended use for the Guildwood Property is a condominium project in Scarborough, Ontario.
25. The parcel register in respect of the Guildwood Property is attached as **Appendix "11"** and reflects, *inter alia*, the following:
- (i) the Guildwood Developer purchased the Guildwood Property on or about October 14, 2005 for what appears to be total consideration of \$760,000;
 - (ii) the Guildwood SMI Charge was registered on title on December 24, 2012 for \$4,000,000, which registration was later: (a) increased to \$6,000,000; and (b) amended to reflect that OTC would ultimately hold the Guildwood SMI Charge jointly with the Guildwood Trustee Corporation to accommodate RRSP and other Investors, respectively;
 - (iii) a charge/mortgage in favour of The Guarantee Company of North America ("**Guarantee Co**") in the principal amount of \$2,530,000 was registered on title on November 6, 2014, which is attached as **Appendix "12"** (the "**Guildwood Guarantee Charge**");
 - (iv) a charge/mortgage in favour of several parties⁵ (the "**Other Guildwood Mortgagees**") in the principal amount of \$1,200,000 was registered on title on October 19, 2015, which is attached as **Appendix "13"** (the "**Other Guildwood Charge**");
 - (v) the Guildwood SMI Charge and the Guarantee Charge were then immediately postponed to the Other Guildwood Charge, which postponements are attached as **Appendix "14"**; and
 - (vi) the Appointment Order was registered on title on November 3, 2016.

⁵ Being 1884871 Ontario Limited (the President of which, as registered on title, is Rob Thompson), Joy Roberts, David Roberts, Kenneth Scott, Ruth Ann Scott, Chaim Silberstein, Paulina Silberstein and 1875443 Ontario Limited (the principal for which, as registered on title, is Gary Connolly).

26. Guarantee Co and Williams Scotsman of Canada Inc. have also made one or more registration against the Guildwood Developer under the *Personal Property Security Act (Ontario)* (the "PPSA"). The Trustee is not aware of the Guildwood Trustee Corporation holding any personal property security against the Guildwood Developer. For completeness sake, a copy of the certified PPSA search results against the Guildwood Developer, with currency to October 22, 2017, is attached as **Appendix "15"**.
27. As set out in the Trustee's letter to the Investors in the Guildwood SMI (the "**Guildwood Investors**") dated December 23, 2016, a copy of which is attached as **Appendix "16"**, the Guildwood SMI was purportedly extended to May 31, 2017. It was not repaid on that date.
28. Shortly before May 31, 2017, Mr. Singh proposed to the Trustee that the Guildwood Developer be granted an additional six-month extension (plus other concessions) to seek refinancing to repay the principal amount of the Guildwood SMI. Subsequent to having made this proposal, Mr. Singh then advised the Trustee that the Guildwood Developer would not be able to fulfill its terms. At that point, the Trustee sought opinions of value of the Guildwood Property from two qualified real estate experts. These valuations indicate that, in its current state, the Guildwood Property is valued at materially less than the outstanding combined principal of the Other Guildwood Charge (which ranks on title ahead of the Guildwood SMI Charge) and the Guildwood SMI Charge.
29. Meanwhile, the Trustee understands that the Guildwood Developer continued to seek refinancing, and negotiations amongst the Guildwood Developer, its principals, the Trustee, their respective counsel and Representative Counsel ultimately resulted in the Guildwood Agreement, a copy of which is attached as **Appendix "17"**.
30. The Guildwood Agreement is conditional upon approval by this Court and, in substance, provides that:
- (i) the Guildwood Developer shall pay to the Trustee \$4,100,000, or approximately 68.3% of the principal amount of the Guildwood

SMI Charge, in two stages ending by no later than November 17, 2017;

- (ii) none of the amounts in the above sub-paragraph shall under any circumstances be refundable to the Guildwood Developer unless this Court refuses to approve the Guildwood Agreement;
- (iii) the Guildwood Developer provides a standard release in favour of the Trustee, the Guildwood Trustee Corporation and the Guildwood Investors;
- (iv) provided that the Guildwood Developer is in full compliance with the Guildwood Agreement:
 - (1) the balance of any and all amounts owing under the Guildwood SMI shall be waived;
 - (2) the Trustee shall consent to the discharge of the Guildwood SMI Charge, and OTC shall provide the same consent by way of Court Order; and
 - (3) the Trustee and the Guildwood Trustee Corporation shall provide a standard release in favour of the Guildwood Developer; and
- (ii) if the Guildwood Developer does not comply, in full, with the Guildwood Agreement, the Trustee shall still retain all its enforcement rights in respect of the Guildwood SMI Charge and not be required to return any funds already paid by the Guildwood Developer.

31. As of the date of this Eighth Report, the Guildwood Developer has already paid \$2,000,000 towards the amounts owing under the Guildwood Agreement, which amounts are being held in escrow by the Trustee's counsel pending approval of the Guildwood Agreement by this Court.

32. As set out in the Trustee's letter to the Guildwood Investors dated October 16, 2017, a copy of which is attached as **Appendix "18"**, the Trustee anticipates that recoveries to the Guildwood Investors will be significantly higher as a result of the Guildwood Agreement and the amount already paid thereunder than if the Trustee had taken enforcement steps without negotiating and entering into the Guildwood Agreement.
33. Accordingly, the Trustee, with the support of Representative Counsel, is of the view that the Guildwood Agreement is in the best interests of the Guildwood Trustee Corporation.
34. As mentioned earlier in this Eighth Report, the Receiver Reports identify transfers of money from and to certain of the Davies Developers to and from various related entities, including other Davies Developers, entities and trusts controlled by Mr. Davies and entities controlled by Mr. Singh. However, the Receiver Reports do not identify the Guildwood Developer as having participated in these transfers, and the Trustee has confirmed with the Receiver that it is not aware of any such participation by the Guildwood Developer.
35. For the reasons set out above, the Trustee recommends that this Court approve the Guildwood Agreement, and the Trustee understands that Representative Counsel supports the Trustee's recommendation.

Keele Medical

36. The final Singh Developer is Keele Medical Properties Ltd. (the "**Keele Medical Developer**"), in respect of which the underlying SMI (the "**Keele Medical SMI**") was to have matured in the ordinary course on November 1, 2017 (after having been extended by one year from November 1, 2016). The Keele SMI went into default on July 1, 2017 when the Keele Medical Developer failed to remit its quarterly interest payment to the Trustee. On July 19, 2017, the Trustee made formal demand on the Keele Medical Developer for all amounts owing under the Keele Medical SMI, a copy of which demand and corresponding notice of intention to enforce security is attached as **Appendix "19"**. The Trustee recently provided a status update to Investors in the Keele Medical SMI by way of a letter

dated October 3, 2017, a copy of which is attached as **Appendix "20"**. Further updates will be provided to the Investors and this Court in due course.

THE SILVER SEVEN AGREEMENT

37. The Silver Seven Developer is one of the two Developers that is neither a Davies Developer nor a Singh Developer. The principals of the Silver Seven Developer are John Anava and David Yarmus. The Tier 1 Trustee Corporation that holds an SMI from the Silver Seven Developer is Scollard Trustee Corporation (the "**Silver Seven Trustee Corporation**").⁶
38. Based on its review of a loan agreement dated November 4, 2014 between the Silver Seven Developer and the Silver Seven Trustee Corporation (the "**Silver Seven SMI Loan Agreement**") and registrations on title, the Trustee understands that the Silver Seven Trustee Corporation received a mortgage on the real property legally described by PIN Nos. 04509-0069 (LT), 04509-0140 (LT) and 04509-0141 (LT) (the "**Silver Seven Property**") in exchange for a loan of \$6,000,000 (of which \$5,984,750 was advanced) to the Silver Seven Developer (collectively, the "**Silver Seven SMI**"). As is the case with the SMIs generally, the Silver Seven SMI is held jointly with OTC for the benefit of those Investors holding their underlying positions in RRSPs.
39. Copies of the material components of the Silver Seven SMI are attached collectively as **Appendix "21"**, being: (i) the Silver Seven SMI Loan Agreement; (ii) a syndicated mortgage participation agreement dated November 4, 2014 between the Silver Seven Trustee Corporation and the Investors (the "**Silver Seven SMI Participation Agreement**"); (iii) the charge registered on title to the Silver Seven Property (the "**Silver Seven SMI Charge**"); (iv) the general assignment of rents registered on title to the Silver Seven Property (the "**Silver Seven GAR**"); (v) the specific assignment of rents registered on title to the Silver Seven Property (the "**Silver Seven SAR**"); and (vi) a promissory note given by the Silver Seven Developer in favour of the Silver Seven Trustee Corporation (collectively with the Silver Seven SMI Charge, the Silver Seven GAR and the Silver Seven SAR, the "**Silver Seven SMI Security**").

⁶ This Tier 1 Trustee Corporation also holds SMIs from two other Developers.

40. The Trustee understands that the intended use for the Silver Seven Property is a commercial development project in Kanata, Ontario (the "**Silver Seven Development**"). The Silver Seven Development consists of:

- (i) an athletic facility, which has already been completed and is paying rent to the Silver Seven Developer (the "**Athletic Facility**");
- (ii) two single-storey commercial buildings (referred to as "**C1**" and "**C2**"), providing a total 23 commercial condominium units with associated surface parking and landscaping;
- (iii) a third single-storey commercial building (referred to as "**C3**"); and
- (iv) a medical/office building (the "**Medical/Office Building**").

41. The parcel registers in respect of the Silver Seven Property are attached as **Appendix "22"** and reflect the following:

- (i) the Silver Seven Developer purchased the Silver Seven Property on or about October 19, 2011 for what appears to be total consideration of \$7,500,000;
- (ii) a mortgage (the "**Vector Mortgage**") in favour of Vector Financial Services Limited ("**Vector**") was registered on title on August 5, 2014 for \$21,500,000, along with a notice of assignments of rents, which are attached collectively as **Appendix "23"**;
- (iii) notices of lease were subsequently registered on title on November 5, 2014, which are attached collectively as **Appendix "24"**;
- (iv) the Silver Seven SMI Charge for \$6,000,000, Silver Seven GAR and Silver Seven SAR were registered on title on January 22, 2015;
- (v) several adjustments were subsequently made on title to the Silver Seven SMI Charge to reflect that OTC would ultimately hold the Silver Seven SMI Charge jointly with the Silver Seven Trustee

Corporation to accommodate RRSP and other Investors, respectively;

- (vi) a mortgage in favour of Silver Seven Holdings Inc. ("**Silver Seven Mortgage Corp**"), which is also controlled by John Anava and David Yarmus, was registered on title on January 8, 2016 for \$3,500,000, a copy of which is attached as **Appendix "25"**; and
- (vii) the Appointment Order was registered on title on November 3, 2016.

- 42. Vector and Bank of Montreal have made one or more registrations against the Silver Seven Developer under the PPSA. The Trustee is not aware of the Silver Seven Trustee Corporation holding any personal property security against the Silver Seven Developer. For completeness sake, a copy of the certified PPSA search results against the Silver Seven Developer, with currency to October 22, 2017, is attached as **Appendix "26"**.
- 43. The Silver Seven SMI Charge provides for an ordinary course maturity date of January 22, 2016. This appears to be consistent with the Silver Seven SMI Loan Agreement, which provides for a maturity date of the first anniversary of the first advance under the Silver Seven SMI Loan Agreement, which occurred on January 22, 2015.
- 44. As set out in the Trustee's letter to the Investors in the Silver Seven SMI (the "**Silver Seven Investors**") dated December 23, 2016, a copy of which is attached as **Appendix "27"**, the Silver Seven SMI was purportedly extended to January 22, 2017. It was not repaid on that date, and has been in default since that date.
- 45. Since its appointment, the Trustee and its counsel have remained in regular contact with the Silver Seven Developer, its counsel and Crowe Soberman Inc., which has been retained to assist the Silver Seven Developer (the "**Silver Seven Consultant**"). As part of these communications, the Trustee has learned, amongst other things, that:

- (i) Vector, as first mortgagee, has refused to advance additional funds into the Silver Seven Development since October 2016. The Vector Mortgage matured on February 10, 2017, and was thereafter being extended on a monthly basis. Vector issued a default notice to the Silver Seven Developer on September 15, 2017, a copy of which is attached as **Appendix "28"**;
 - (ii) in order to continue to advance the Silver Seven Development, Silver Seven Mortgage Corp has been advancing funds into the Silver Seven Development. Silver Seven Mortgage Corp takes the position that these advances are made under the Vector Mortgage, and therefore rank in priority to the Silver Seven SMI Charge, pursuant to a mortgage participation and servicing agreement entered into between Vector and Silver Seven Mortgage Corp on February 9, 2016, a copy of which is attached as **Appendix "29"**. As at July 13, 2017, Vector had advanced \$10,950,000, and Silver Seven Mortgage Corp had advanced \$4,444,706.24, for a total of \$15,394,706.24 owing under the Vector Mortgage; and
 - (iii) the Silver Seven Developer has made efforts to seek alternate financing to replace either the Vector Mortgage, the Silver Seven SMI Charge, or both, but was ultimately not successful.
46. Since April 2017, the Trustee, through counsel, has been negotiating with the Silver Seven Developer, its counsel and the Silver Seven Consultant regarding a settlement of the Silver Seven SMI indebtedness. As part of these negotiations, the Trustee asked the Silver Seven Developer for a quantity surveyor's report to provide an independent assessment of the status of the Silver Seven Development.
47. The Silver Seven Developer retained Pelican Woodcliff Inc. ("**Pelican Woodcliff**") to complete an analysis of the cost to date and cost to complete of the Silver Seven Development. The Trustee met with Pelican Woodcliff to review its analysis, and has reviewed Pelican Woodcliff's responses to the Trustee's

follow-up questions. This analysis supplements the information provided to the Trustee by the Silver Seven Developer, its counsel and the Silver Seven Consultant.

48. As at June 20, 2017:
- (i) construction of building C2 was substantially complete, and all units had been sold with closing dates scheduled for later in 2017;
 - (ii) construction of building C1 had commenced, with foundation and underslab work appearing to be complete;
 - (iii) construction of building C3 had not yet commenced. The Silver Seven Developer planned to commence construction once the units from building C2 are sold; and
 - (iv) construction of the Medical/Office Building had not yet commenced. The Silver Seven Developer had no immediate plans to commence construction.
49. On August 17, 2017, the Trustee wrote to Representative Counsel to provide an update with regard to the Silver Seven SMI and the proposed settlement options. A copy of this correspondence is attached as **Appendix "30"**.
50. Negotiations amongst the Silver Seven Developer, its principals, the Silver Seven Consultant, the Trustee and their respective counsel ultimately resulted in the Silver Seven Agreement, a copy of which is attached as **Appendix "31"**.
51. The Silver Seven Agreement is conditional upon approval by this Court and, in substance, provides that:
- (i) the Silver Seven Developer shall pay to the Trustee \$2,900,000, or approximately 48% of the principal amount of the Silver Seven SMI, within 45 days of the Silver Seven Agreement being approved by this Court;

- (ii) none of the amounts in the above sub-paragraph shall under any circumstances be refundable to the Silver Seven Developer unless this Court refuses to approve the Silver Seven Agreement;
- (iii) the Trustee shall assign to Silver Seven Mortgage Corp all of the Trustee's and Silver Seven Trustee Corporation's right, title and interest in and to the Silver Seven SMI and the Silver Seven Security (the "**Assignment**");
- (iv) notwithstanding the Assignment, the Trustee shall retain an interest in \$3,084,750 of the Silver Seven SMI debt (the "**Retained Debt**"), together with a corresponding interest in the Silver Seven Security sufficient to secure the Retained Debt (the "**Retained Security**" and, together with the Retained Debt, the "**Retained Interest**"). Silver Seven Mortgage Corp shall hold the Retained Interest in trust for the Trustee for a period of one year, pending the Trustee's exercise of the Call Right (defined below);
- (v) the Silver Seven Developer, John Anava and David Yarmus make a number of representations regarding the flow of funds relating to the Silver Seven Development (the "**Representations**");
- (vi) if the Trustee determines that any of the Representations are inaccurate, untrue or were negligently or fraudulently made (collectively, the "**Misrepresentation Allegations**"), the Trustee shall have the right to take proceedings against any one or more of the Silver Seven Developer, John Anava, David Yarmus, Attilio Lio or Albert Guido (the latter two being the former principals of the Silver Seven Developer) for damages arising from the Misrepresentation Allegations, provided that the Trustee initiates such proceedings within one year of the date of the Silver Seven Agreement. The Trustee's rights in this regard are referred to as the "**Call Right**". The Trustee shall retain the Retained Interest for the purpose of exercising the Call Right. If the Trustee does not exercise the Call Right before it expires, the Retained Interest

shall be deemed to have been irrevocably assigned, transferred and set over to Silver Seven Mortgage Corp in the same manner and on the same date as the Assignment;

(vii) the Silver Seven Developer, John Anava and David Yarmus provide a standard release in favour of the Trustee, the Silver Seven Trustee Corporation and the Silver Seven Investors;

(i) the Trustee, the Silver Seven Trustee Corporation and the Silver Seven Investors provide a standard release in favour of the Silver Seven Developer, John Anava and David Yarmus, subject to the Call Right; and

(ii) the balance of any and all amounts owing to the Silver Seven Trustee Corporation under the Silver Seven SMI shall be waived.

52. As of the date of this Eighth Report, the Silver Seven Developer has already paid \$150,000 towards the amounts owing under the Silver Seven Agreement, which amounts are being held in escrow by the Trustee's counsel pending approval of the Silver Seven Agreement by this Court.

53. The Trustee is of the view that the Silver Seven Agreement is in the best interests of the Silver Seven Trustee Corporation and the Silver Seven Investors for the following reasons (amongst others):

(i) in light of the current value of the Silver Seven Property and the amounts outstanding under the Vector Mortgage, any enforcement efforts are likely to result in minimal or negative recovery for the Silver Seven Investors. In addition, Vector, as first mortgagee, would likely seek to control this process independent from the Trustee and the interests of the Silver Seven Investors;

(ii) given that the Vector Mortgage is in default, it is unclear whether the Silver Seven Developer will be able to obtain the funding necessary to continue construction of the Silver Seven

Development, and thereby increase the value of the Silver Seven Property;

- (iii) if the Silver Seven Developer does secure financing to continue construction, it projects that buildings C1 and C3 will not be completed for at least 18 months. The Trustee's analysis suggests that, even without accounting for real estate price risk, construction risk and interest rate risk, amongst others, the Silver Seven Investors could never reasonably expect to collect more than approximately 67% of their principal, before professional costs, once these buildings are complete;
- (iv) Representative Counsel has advised the Trustee that the Silver Seven Investors have concerns relating to the manner in which the Silver Seven Developer and its current and former principals dealt with the funds that were to be used for the Silver Seven Development. The Trustee has been unable to identify any evidence that would support a cause of action against any of these parties. Nonetheless, in order to provide additional protection to the Silver Seven Investors, the Trustee has negotiated a carve-out in the release to be provided to the Silver Seven Developer, to permit the Trustee to pursue such a cause of action should any improprieties be discovered in the future; and
- (v) the Trustee has consulted with Representative Counsel with regard to the form of the Silver Seven Agreement. Representative Counsel has not voiced any objection to the approval of the Silver Seven Agreement.

54. As mentioned earlier in this Eighth Report, the Receiver Reports identify transfers of money from and to certain of the Davies Developers to and from various related entities, including other Davies Developers, entities and trusts controlled by Mr. Davies and entities controlled by Mr. Singh. However, the Receiver Reports do not identify the Silver Seven Developer as having

participated in these transfers, and the Trustee has confirmed with the Receiver that it is not aware of any such participation by the Silver Seven Developer.

55. For the reasons set out above, the Trustee recommends that this Court approve the Silver Seven Agreement.

VAUGHAN CROSSINGS

56. The remaining developer that was neither a Davies Developer nor a Singh Developer was the Developer that previously owned the Vaughan Crossings Property. As set out above in the introduction section of this Eighth Report, and as detailed in the Fifth Report and the Fifth Report Supplement (both included as part of Appendix 5), the Vaughan Crossings Property was the subject of the Vaughan Crossings Transaction, which was previously approved by the Court.

57. The Trustee understands that the proceeds of the Vaughan Crossings Transaction have been distributed by Ira Smith Trustee & Receiver Inc., in its capacity as Court-appointed receiver, in accordance with the terms of the Vaughan Crossings Transaction Order. As a result of the Vaughan Crossings Transaction, the Investors in respect of Vaughan Crossings (the "**Vaughan Crossings Investors**") became shareholders in the Purchaser (as defined in the Vaughan Crossings Transaction Order), and the ancillary relief obtained in connection with the Vaughan Crossings Transaction Order provides, amongst other things, that the Trustee shall have no further interests, duties or obligations in respect of the Purchaser.

58. Notwithstanding the Vaughan Crossings Transaction, the Trustee (via the applicable Tier 1 Trustee Corporation) continues to hold the right to commence legal proceedings against the previous owner of the property, its principals and others for any wrongdoing that may have occurred. However, there has never been any money available to the Trustee in the Vaughan Crossings' estate to investigate or pursue any such potential claims, and the Trustee is not in possession of any information that it believes would lead to a definitive claim or claims. The Trustee has also been in communication with the sole director and officer of the Purchaser of the property, Dennis Jewitt, who has also advised that

he would not assume any responsibility for pursuing a claim absent adequate funding.

59. Accordingly, by way of letter to the Vaughan Crossings Investors dated September 7, 2017, a copy of which is attached as **Appendix "32"**, the Trustee advised of the foregoing, indicated that the Trustee intends to allow any such potential claims to expire unless one or more of the Vaughan Crossings Investors raises sufficient funds to engage counsel to pursue the matter (whether on a contingency basis or otherwise) and requested that any Investors prepared to contribute toward such funding exercise contact the Trustee as soon as possible. To date, the Trustee has not been contacted by any Vaughan Crossings Investor who has indicated a willingness to make a funding contribution to this exercise.

THE REMAINING DAVIES DEVELOPERS

60. As a result of the Expanded Receivership Proceedings, John Davies no longer has control of seven of the 11 Davies Developers to which the SMIs loaned money. The remaining four Davies Developers are:
- (i) Textbook (445 Princess Street) Inc. (the "**Davies 445 Princess Developer**");
 - (ii) the Davies McMurray Developer (as defined in the Sixth Report);
 - (iii) the Davies Bronson Developer (as defined in the Sixth Report);
and
 - (iv) the Davies Ross Park Developer (as defined in the Sixth Report).
61. At this time, the Trustee is able to provide an update in respect of the SMIs registered on the properties owned by two of the four remaining Davies Developers. The Trustee has and will continue to issue update communications to the Investors as matters unfold, and the Trustee expects to provide further updates on all four Davies Developers as part of its future reports to Court.

The 445 Princess Davies Developer

62. As set out in the Sixth Report, the 445 Princess Davies Developer was the one Davies Developer that was not believed to be in default to its corresponding Tier 1 Trustee Corporation, being Textbook Student Suites (445 Princess Street) Trustee Corporation ("**445 Princess Trustee Corporation**"). Amongst other things, the 445 Princess Davies Developer was the only Davies Developer that did not file for CCAA protection.
63. However, the 445 Princess Davies Developer has failed to make certain scheduled interest payments to the Trustee. Furthermore, the Receiver Reports identify that certain funds lent by the 445 Princess Trustee Corporation to the 445 Princess Davies Developer were transferred, either directly or indirectly, to Rideau. This constitutes a further default under the 445 Princess Trustee Corporation's SMI (the "**445 Princess SMI**").
64. The principal amount of the 445 Princess SMI is \$8.45 million. In light of the default, the Trustee has been in contact with Kingsett, which holds a prior-ranking mortgage on the property in the principal amount of \$7 million. Kingsett advised that its mortgage is being kept in good standing (despite any possible technical default) by way of regular interest payments from the property's tenant, Shoppers Drug Mart. Kingsett also advised that it has no intention of enforcing on its mortgage at this time, and, moreover, that the Trustee is precluded from enforcing on the 445 Princess SMI as a result of a subordination and standstill agreement dated July 5, 2016 amongst Kingsett, the 445 Princess Trustee Corporation, OTC and the 445 Princess Davies Developer (collectively, the "**445 Princess Standstill Agreement**"), a copy of which is attached as **Appendix "33"**.
65. The 445 Princess Standstill Agreement was not produced or disclosed to the Trustee by the 445 Princess Trustee Corporation, the 445 Princess Davies Developer or H+H as part of the loan documentation in respect of the 445 Princess SMI. The Trustee received a copy of the 445 Princess Standstill Agreement from Kingsett's counsel on October 11, 2017.

66. The 445 Princess Standstill Agreement provides, amongst other things, that no enforcement steps may be taken in respect of the 445 Princess SMI *"without reasonable prior notice to and the written consent of [Kingsett], which consent may be given or withheld by [Kingsett] in its sole and arbitrary decision."* Accordingly, notwithstanding the fact that John Davies does not appear to have any ability to advance the property's development or repay the principal amount on either Kingsett's mortgage or the SMI, the Trustee does not appear to have the right to take any enforcement steps without Kingsett's consent or intervention of this Court.
67. The Trustee has also learned of an excess balance each month of approximately \$7,700 to \$8,800, after payment by the 445 Princess Davies Developer to Kingsett on account of its mortgage, that the 445 Princess Davies Developer is transferring to one or more of its related corporations (the **"445 Monthly Excess"**).
68. The Trustee reported its discovery of the 445 Monthly Excess to Kingsett and requested Kingsett's consent to allow the Trustee to: (i) issue formal written demand to the 445 Princess Davies Developer; and (ii) take enforcement steps to require the 445 Princess Davies Developer to remit its 445 Princess SMI quarterly interest obligations to the Trustee.
69. In light of the Mareva Order obtained by the Receiver against Mr. Davies' assets, the Trustee also reported its discovery to the Receiver so that the Receiver could take appropriate action.
70. Copies of the Trustee's communications to Kingsett and the Receiver dated October 24, 2017 (without attachments) are attached collectively as **Appendix "34"**. As reflected therein, and despite repeated follow-ups, no substantive response has been given by Kingsett as of the date of this Eighth Report. The Receiver has advised that it is investigating the matter.

The McMurray Developer

71. As set out in detail in the Sixth Report (which is included as part of Appendix 6), the McMurray Developer was unable to close the McMurray Transaction (as

defined in the Sixth Report) in January 2017 under questionable circumstances. As also set out in the Sixth Report, the prior-ranking mortgagee then issued a notice of sale in an amount of approximately \$2 million, and the Trustee issued a letter to the SMI's Investors, cautioning that: (i) the Trustee did not have access to a pool of funds to take-out the prior-ranking mortgage; and (ii) it was unclear what amount, if any, would remain to satisfy the SMI in the event that the property were sold privately in accordance with the notice of sale.

72. The Trustee understands that the McMurray property was sold by the first-ranking mortgagee on or about August 21, 2017 for \$2,805,756, of which \$2,463,501 was required to discharge the first mortgage, tax arrears and selling costs and related expenditures. The Trustee further understands that the remaining sale proceeds of \$342,255 are being held in trust by the first mortgagee's counsel, which will first be used to discharge the eligible expenses of Trisura Guarantee Insurance Company (which is registered on title ahead of the SMI), with any remaining balance to be delivered to the Trustee.
73. Given that the principal amount of the McMurray SMI was \$3.5 million, Investors should not expect to receive a material realization from the sale of the McMurray property.
74. The Trustee continues to investigate the circumstances of the failed McMurray Transaction from January 2017, including, without limitation, who has rightful entitlement to the deposit paid by the proposed purchaser in respect of that failed transaction, which deposit the Trustee understands is still being held in trust on the same conditions as stipulated in the Sixth Report.
75. Moreover, the Trustee understands that the OPP's Anti-Rackets Branch has opened an investigation in respect of McMurray. At the OPP's request, the Trustee forwarded a letter from the OPP to the McMurray Investors on October 16, 2017, a copy of which letter is attached as **Appendix "35"**.

INFORMATION REQUEST BY POLICE

76. As set out in certain of the Previous Reports, the Trustee has been in contact with the RCMP, which is aware of the Investors' concerns regarding certain

conduct of the principals of the Tier 1 Trustee Corporations and the Developers, as well as the mortgage brokers and investment advisors that promoted and sold the SMIs. In this regard, and as set out above, the Trustee has also been in contact with the OPP.

77. To assist with ongoing investigations, the OPP has asked the Trustee to provide a list of impacted Investors in the McMurray SMI. Although the request has only been made in respect of the McMurray SMI at this time, the Trustee expects that future requests by the OPP and/or the RCMP may be made in the future in regards to other SMIs.
78. The Trustee understands from its legal counsel that section 7(3) of the *Personal Information Protection and Electronic Documents Act* (Canada) authorizes an organization such as the Trustee to:

disclose personal information without the knowledge or consent of the individual only if the disclosure is

...

(d) made on the initiative of the organization to a government institution or a part of a government institution and the organization

(i) has reasonable grounds to believe that the information relates to a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed

...

79. Given the circumstances of its Appointment and the Trustee's findings disclosed in the Previous Reports and this Eighth Report, the Trustee believes that the above statutory exemption applies and that the Trustee would therefore be entitled to provide lists of impacted Investors and corresponding contact information to the OPP and/or the RCMP, as applicable.
80. However, given the permissive (rather than mandatory) nature of the above statutory exemption, and with a view to protecting Investor privacy generally, the Trustee seeks the Court's authorization before releasing such information. Moreover, the Trustee proposes that any such information not be released by the Trustee until December 16, 2017. In addition, the Trustee further recommends that any Investor in any of the SMIs not wanting to have its name or contact

information released to the OPP and/or the RCMP be required to notify the Trustee, in writing, by no later than December 15, 2017, and that the names and contact information of any such Investors then be redacted by the Trustee from any information provided by the Trustee to the OPP and/or the RCMP, as applicable.

APPROVAL OF THE TRUSTEE'S ACTIVITIES AND PROFESSIONAL FEES

81. The Trustee's activities since the Seventh Report include, without limitation:

- administering the SMI portfolio;
- investigating the history of the 16 SMIs and reviewing, with legal counsel, the various encumbrances on the underlying properties and the terms and conditions of the various agreements comprising the SMIs;
- reviewing and interpreting the Books and Records (as defined in the Seventh Report);
- holding meetings with Representative Counsel and, in some cases, certain representatives of the Investors Committee;
- holding meetings with brokers and other stakeholders;
- corresponding with the Developers, their principals and their counsel;
- *corresponding with OTC;*
- corresponding with and fielding extensive written and telephone enquiries from Investors, the Investors Committee and Representative Counsel, including disseminating formal updates to Investors on matters related to these proceedings and the Expanded Receivership Proceedings;
- engaging in extensive written and telephone communications with the Receiver and its counsel;

- reviewing the progress of the Expanded Receivership Proceedings and the parallel proceedings in respect of Rideau and the materials filed therein, and, through counsel, attending in Court where necessary;
- holding discussions, exchanging correspondence and holding meetings in respect of the projects underlying the SMIs that are not subject to the Expanded Receivership Proceedings;
- holding discussions and exchanging correspondence with the first mortgagees on various properties;
- maintaining and updating the Trustee's website;
- carrying out the Trustee's obligations in accordance with the terms of the Claims Procedure Order;
- corresponding with H+H in respect of the books and records of the Tier 1 Trustee Corporations;
- negotiating the terms of the Guildwood Agreement; and
- negotiating the terms of the Silver Seven Agreement.

82. Pursuant to the terms of the Appointment Order, the Trustee and its counsel shall be paid their reasonable fees and disbursements and shall pass their accounts before the Court.

83. The Trustee and its independent legal counsel, Aird & Berlis LLP, have maintained detailed records of their professional time and costs since the Appointment Order was granted.

84. The fees and disbursements of the Trustee and its legal counsel up to and including June 30, 2017, together with an allocation thereof amongst the 16 different SMIs, were previously approved by this Court.

85. The total fees of the Trustee from July 1, 2017 to and including September 30, 2017 amount to \$124,963.50, plus expenses and disbursements in the amount of \$50.84 and HST in the amount of \$16,251.86, totalling \$141,266.20. The details

of the time spent and services provided by the Trustee (including an allocation of such fees and disbursements across the 16 SMIs) are more particularly described in the Affidavit of Jonathan Krieger, Senior Vice-President of GTL who is involved in this matter, sworn November 3, 2017 in support hereof, a copy of which is attached as **Appendix "36"**.

86. The total legal fees incurred by the Trustee for services provided to it by its independent legal counsel, Aird & Berlis LLP, from July 1, 2017 to and including September 30, 2017 amount to \$156,466.50, plus expenses and disbursements in the amount of \$2,811.18 and HST in the amount of \$20,671.90, totalling \$179,949.58. The details of the time spent and services provided by Aird & Berlis LLP (including an allocation of such fees and disbursements across the 16 SMIs) are more particularly described in the Affidavit of Steven L. Graff, sworn October 23, 2017 in support hereof, a copy of which is attached as **Appendix "37"**.
87. The Trustee is of the view that these accounts are reasonable in the challenging circumstances of these proceedings. To date, the Trustee has dealt with almost a thousand stakeholders, including investors and their advisors, developers, other mortgagees, lien claimants, creditors, contractors, financiers, and investor committee representatives. The Trustee respectfully requests that the Court approve its fees and disbursements and those of its legal counsel.

PROPOSED ALLOCATION OF PROFESSIONAL FEES

88. At the time of the Appointment Order, and as set out in certain of the Previous Reports, the Trustee and its counsel set up various groupings of dockets specific to certain Developers/properties in order to account for their work in respect of the administration of these proceedings. Where applicable, the Trustee and its counsel have recorded time to specific dockets in respect of a Developer. However, a significant amount of the Trustee's and its counsel's work to date has been of a general nature, and not specifically allocable to a specific property. This general time includes, amongst other things, consulting with the Superintendent, consulting with the Financial Services Commission of Ontario, attending in Court, drafting related Court materials, preparing and administering

general investor correspondence, maintaining the designated website for investor communications, maintaining the toll free telephone line, maintaining the designated email account and answering and responding to thousands of investor emails and/or telephone calls. In respect of these services, the Trustee and its counsel have recorded their professional time to a general account (the "General Costs").

89. The Trustee has carefully reviewed its dockets, including the nature of the work expended and the proportionate amount of time expended in respect of each of the SMIs. The Trustee has prepared the summary below (the "Allocation Summary") in respect of the Trustee's and its counsel's dockets, and proposes to allocate the fees, including the General Costs, as follows:

Tier 1
Trustee's Allocation of Time
for the period Jul -Sep 2017

July 1, 2017 to September 30, 2017									
	Project Specific Time	Textbook/		Raj Singh Projects	All Projects	Subtotal	Disbursements		Total
		Davies Allocation					HST		
		\$29,439.50	\$20,623.50		\$38,615.00		\$50.84		
Properties									
McMurray	4,374.50	883.19		2,574.33	7,832.02	3.19	1,018.58	8,853.78	
Vaughan Crossings	448.00				448.00	0.18	58.26	506.45	
Boathaus	7,663.00	2,060.77		2,574.33	12,298.10	5.00	1,599.40	13,902.50	
445 Princess	4,452.00	4,710.32		2,574.33	11,736.65	4.77	1,526.39	13,267.81	
525 Princess		2,355.16		2,574.33	4,929.49	2.01	641.09	5,572.59	
555 Princess		2,355.16		2,574.33	4,929.49	2.01	641.09	5,572.59	
Legacy Lane		2,355.16		2,574.33	4,929.49	2.01	641.09	5,572.59	
Ross Park		4,121.53		2,574.33	6,695.86	2.72	870.82	7,569.40	
Bronson		3,532.74		2,574.33	6,107.07	2.48	794.24	6,903.80	
Memory Care- Burlington		2,355.16		2,574.33	4,929.49	2.01	641.09	5,572.59	
Memory Care- Oakville		2,355.16		2,574.33	4,929.49	2.01	641.09	5,572.59	
Memory Care- Kitchener		2,355.16		2,574.33	4,929.49	2.01	641.09	5,572.59	
Silver Seven	19,348.00			2,574.33	21,922.33	8.92	2,851.06	24,782.31	
Guildwood			9,280.58	2,574.33	11,854.91	4.82	1,541.77	13,401.50	
Hazelton			9,280.58	2,574.33	11,854.91	4.82	1,541.77	13,401.50	
Keele Medical			2,062.35	2,574.33	4,636.68	1.89	603.01	5,241.58	
	\$36,285.50	\$29,439.50	\$20,623.50	\$38,615.00	\$124,963.50	\$50.84	\$16,251.86	\$141,266.20	

Tier 1
A&B's Allocation of Time
for the period July 1, 2017 to September 30, 2017

	July 1, 2017 to September 30, 2017				
	Percentage Allocation	WIP Allocation Subtotal	Disbursements	HST	Total
		\$ 156,466.50	\$ 2,811.18	\$ 20,671.90	\$ 179,949.58
Properties					
McMurray	5.0%	\$ 7,823.33	\$ 140.56	\$ 1,033.60	\$ 8,997.48
Vaughan Crossings	0.5%	782.33	14.06	103.36	899.75
Boathaus	2.0%	3,129.33	56.22	413.44	3,598.99
445 Princess	8.0%	12,517.32	224.89	1,653.75	14,395.97
525 Princess	3.0%	4,694.00	84.34	620.16	5,398.49
555 Princess	3.0%	4,694.00	84.34	620.16	5,398.49
Legacy Lane	3.0%	4,694.00	84.34	620.16	5,398.49
Ross Park	10.0%	15,646.65	281.12	2,067.19	17,994.96
Bronson	4.0%	6,258.66	112.45	826.88	7,197.98
Memory Care- Burlington	3.0%	4,694.00	84.34	620.16	5,398.49
Memory Care- Oakville	3.0%	4,694.00	84.34	620.16	5,398.49
Memory Care- Kitchener	3.0%	4,694.00	84.34	620.16	5,398.49
Silver Seven	21.0%	32,857.97	590.35	4,341.10	37,789.41
Guildwood	15.0%	23,469.98	421.68	3,100.79	26,992.44
Hazelton	6.5%	10,170.32	182.73	1,343.67	11,696.72
Keele Medical	10.0%	15,646.65	281.12	2,067.19	17,994.96
	100.0%	\$ 156,466.50	\$ 2,811.18	\$ 20,671.90	\$ 179,949.58

90. The Trustee respectfully requests that this Court issue an Order approving the Allocation Summary outlined above. If approved, the Trustee will present to this Court in a later report an allocation of professional fees and disbursements for the period of October 1, 2017 onwards, which allocation may differ from the Allocation Summary, based on the nature of work expended and area of focus going forward.
91. While the Trustee has prepared this Allocation Summary and seeks approval of the Trustee's and its counsel's fees and disbursements, there are certain Tier 1 Trustee Corporations where there are currently no funds available to satisfy the fees and disbursements as set out in the Allocation Summary.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

92. A copy of the Trustee's interim statement of receipts and disbursements as at September 30, 2017 is attached hereto as **Appendix "38"** (the "**Interim R&D**"). The Interim R&D reflects the cash currently in the respective trust accounts, as well as the fees and disbursements that have been approved but not yet paid where there are insufficient funds to satisfy the approved fees and disbursements.

PROPOSED AUTHORITY TO MAKE FUTURE DISTRIBUTIONS

93. In addition to the anticipated recoveries for the Guildwood Investors and the Silver Seven Investors contemplated by this Eighth Report, the Seventh Report describes anticipated recoveries for the Hazelton Investors and the Boathaus Investors. It is also the Trustee's continued understanding that further distributions may be made to it from the Expanded Receivership Proceedings and/or from other sources at a later date.
94. To facilitate distributions by the Trustee to Investors, the Trustee sought and obtained the Claims Procedure Order (attached as part of Appendix 10). The Claims Procedure Order serves as the mechanism to determine the amounts of claims against the Tier 1 Trustee Corporations, which is a precondition before any distributions to Investors can commence.
95. In accordance with the terms and provisions of the Claims Procedure Order, the Trustee called for all claims against the Tier 1 Trustee Corporations other than those in respect of Vaughan Crossings (for which there will be no distribution from the Trustee) by:
- (i) delivering an acknowledgment of claim to each of the underlying Investors in the relevant Tier 1 Trustee Corporations based on the Books and Records; and
 - (ii) requiring any non-Investor creditors of the relevant Tier 1 Trustee Corporations, if any, to file proofs of claim.

96. Also in accordance with the terms and provisions of the Claims Procedure Order, any and all claims against the relevant Tier 1 Trustee Corporations will be barred if not received by 5:00 p.m. (Toronto time) on October 31, 2017 (the "**Claims Bar Date**").
97. The Trustee recommends that it be authorized by this Court to make distributions to the Investors, without further Order of this Court and net of the applicable Holdback (as defined herein), up to the amount of their Proven Claims and from the applicable SMI realizations.
98. For each SMI, the Trustee recommends that it be required by this Court to holdback the following amounts (the "**Holdback**") before distributing any funds to that SMI's Investors:
- (i) sufficient amounts to satisfy all disputed claims filed pursuant to the Claims Procedure Order before November 1, 2017 as against the applicable Tier 1 Trustee Corporation (or, where the applicable Tier 1 Trustee Corporation held more than one SMI, as against the applicable project); and
 - (ii) sufficient amounts, at the Trustee's discretion, to satisfy the Court-ordered charges.
99. As set out earlier in this Eighth Report, there are certain Tier 1 Trustee Corporations where there are currently no material funds available, and Investors should therefore not expect to receive any distributions from those corresponding SMIs at this time.
100. The Trustee proposes that any distributions to Investors would be delivered to them, along with a covering letter, pursuant to the contact information in the Books and Records, as amended by any revised contact information obtained in accordance with the terms of the Claims Procedure Order.

CONCLUSION AND RECOMMENDED RELIEF

101. In light of the foregoing, the Trustee respectfully recommends that the Court issue the Orders in the form attached to the Trustee's motion record.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS COURT-APPOINTED
TRUSTEE OF THE TIER 1 TRUSTEE CORPORATIONS
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Per: 

Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice President

TAB G

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

BETWEEN:

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*

NINTH REPORT OF THE TRUSTEE

FEBRUARY 26, 2018



Grant Thornton

Grant Thornton Limited
200 King Street W., 11th Floor
Toronto, ON M5H 3T4

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- Appendix 5 Fifth Report dated January 23, 2017 (without appendices), Fifth Report Supplement dated April 4, 2017 (without appendices), Vaughan Crossings Receivership Order made February 14, 2017, related endorsement, Vaughan Crossings Transaction Order made April 10, 2017, corresponding Order re ancillary matters and related endorsement
- Appendix 6 Sixth Report dated April 18, 2017 (without appendices), Sixth Report Supplement dated April 21, 2017 (without appendices), Expanded Receivership Order made April 28, 2017 and related endorsement
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

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**

NINTH REPORT OF THE TRUSTEE

FEBRUARY 26, 2018

INTRODUCTION AND BACKGROUND

1. This report (this "**Ninth Report**") is filed by Grant Thornton Limited ("**GTL**") in its capacity as the court-appointed trustee (in such capacity, the "**Trustee**") of each of the 11 above-named Respondents (collectively, the "**Tier 1 Trustee Corporations**", and individually, a "**Tier 1 Trustee Corporation**"). **GTL** was appointed as the Trustee pursuant to the Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "**Commercial List Court**") made October 27, 2016 (the "**Appointment Order**"), a copy of which is attached hereto as **Appendix "1"** (together with His Honour's endorsement).

2. The purpose of the Trustee's appointment (the "**Appointment**") is to protect the interests of the investing public, who, through the Trustee, are mortgagees with secured lending positions registered on title to real property owned by 16 borrowers/developers (the "**Developers**"). The Developers are distinct entities from the Tier 1 Trustee Corporations.
3. Detailed background information pertaining to the circumstances leading to the Trustee's Appointment is contained in the affidavit of Mohammed Ali Marfatia sworn October 20, 2016 (the "**Marfatia Affidavit**"), which was filed by the Superintendent of Financial Services (the "**Superintendent**") in support of the Appointment. A copy of the Marfatia Affidavit, without exhibits, is attached as **Appendix "2"**.
4. In summary, the Marfatia Affidavit describes a series of 16 syndicated mortgage investments ("**SMIs**") sold to the investing public (the "**Investors**"), in respect of which, amongst other things:
 - (i) the 16 Developers were the owners of the real property, borrowers in the mortgage transactions and developers of the underlying real estate projects;
 - (ii) the 11 Tier 1 Trustee Corporations (prior to the Appointment of the Trustee) were special purpose entities required under their relevant constating agreements to hold the mortgages in trust for the Investors and to act in a fiduciary capacity to administer and enforce the mortgages (some of the Tier 1 Trustee Corporations held more than one mortgage); and
 - (iii) other entities, being First Commonwealth Mortgage Corporation ("**First Commonwealth**") and Tier 1 Mortgage Corporation ("**Tier 1 Mortgage Corp**"), were amongst those licensed mortgage brokers that promoted and sold the SMIs, and a third entity, being Tier 1 Transaction Advisory Services Inc. ("**Tier 1 Transaction**"), was also heavily involved in the SMIs and had applied for a mortgage brokerage licence.

5. The Marfatia Affidavit further describes how Mr. Raj Singh, who was simultaneously the President, the CEO and a shareholder of Tier 1 Transaction, a mortgage agent of First Commonwealth, a director, officer, shareholder (either directly or indirectly) and/or profit participation interest holder in at least 11 of the Developers and the sole director, officer and shareholder of all but two of the Tier 1 Trustee Corporations, was in a clear conflict of interest position not properly disclosed to the Investors, in that, amongst other things, he was required to administer and enforce the SMIs on behalf of the Investors as against borrowers in which he had a financial interest in the majority of cases.
6. As discussed in the Marfatia Affidavit, the Superintendent also discovered systematic and recurrent failures by First Commonwealth and Tier 1 Mortgage Corp to abide by the basic consumer protection measures put in place by the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), which resulted in the Superintendent issuing: (i) a Notice of Proposal to revoke the licenses of First Commonwealth, Tier 1 Mortgage Corp and Mr. Singh (amongst others) and to refuse the licence surrender application of First Commonwealth; (ii) an Interim Suspension Order against these same entities/persons, preventing them from dealing or trading in mortgages in Ontario; and (iii) an Interim Compliance Order against Tier 1 Transaction, requiring that it cease and desist unlicensed activity. (The Trustee understands that a final Compliance Order and a final Order to Revoke Licence and Order to Refuse Licence in respect of these entities/persons were issued by the Superintendent on January 23, 2018.)
7. Finally (and without being exhaustive), the Marfatia Affidavit also discussed the Superintendent's concern that the appraisal values provided to the Investors did not reflect the value of the real property at the time of the mortgage, such that the true values may be inadequate to cover the respective SMIs but rather, reflected the value of the developed project.
8. Apart from the Marfatia Affidavit, responding affidavits to the Superintendent's application were sworn by each of John Davies (a principal for 11 of the 16 Developers, which affidavit was filed in opposition to the Appointment) and Gregory Harris (a lawyer at Harris + Harris LLP ("**H+H**"), counsel involved in the

SMI transactions). The Appointment Order was granted notwithstanding the submissions of these stakeholders and their counsel to the Court.

9. On January 24, 2017, pursuant to the Order of the Honourable Justice Hainey, Chaitons LLP was appointed by the Court as counsel for all the Investors across all 16 SMIs (in such capacity, "**Representative Counsel**"), unless and until written notice is provided by a particular Investor to Representative Counsel pursuant to a specified opt-out procedure if such Investor does not wish to be represented by Representative Counsel (the "**Representative Counsel Order**"). A copy of the Representative Counsel Order (together with His Honour's endorsement) is attached as **Appendix "3"**.

The Trustee's Previous Reports to Court and Status of The Proceedings

10. The Trustee has issued eight previous reports to Court and certain supplements thereto (collectively, the "**Previous Reports**") prior to the issuance of this Ninth Report, namely:
 - (i) the Trustee filed its first report dated November 10, 2016 (the "**First Report**") in the context of a motion brought before the Ontario Superior Court of Justice (Divisional Court) (the "**Divisional Court**") by 11 of the Developers for whom Mr. John Davies is the principal (the "**Davies Developers**").¹ The motion sought a stay of certain paragraphs of the Appointment Order (the "**Stay Motion**") pending the hearing of the Davies Developers' further motion for leave to appeal the Appointment Order. The Divisional Court dismissed the Stay Motion and ordered the Davies Developers to pay to the Trustee \$5,000 for its costs within 30 days (the "**Cost Award**"). The Davies Developers ultimately abandoned their appeal of the Appointment Order. As of the date of this Ninth Report, the Davies Developers have not satisfied the Cost Award. The First Report also outlined the various degrees to

¹ The Davies Developers are Textbook (525 Princess Street) Inc., Textbook (555 Princess Street) Inc., Textbook (Ross Park) Inc., 1703858 Ontario Inc., Memory Care Investments (Oakville) Ltd., Memory Care Investments (Kitchener) Ltd., Textbook (774 Bronson Ave) Inc., Legacy Lane Investments Ltd., Scollard Development Corporation, McMurray Street Investments Inc. and Textbook (445 Princess Street) Inc.

which each of Mr. Davies, Mr. Singh and H+H were cooperating with the Trustee. A copy of the First Report is available on the Trustee's website at www.grantthornton.ca/tier1 (the "**Trustee's Website**");

- (ii) the Trustee filed its second report dated November 28, 2016 (the "**Second Report**"), which provided stakeholders with an update on the challenges encountered by the Trustee in performing its mandate as a result of the actions of certain parties, including the lack of information provided by the Davies Developers. The Second Report was not filed in connection with a specific motion or court attendance. A copy of the Second Report is available on the Trustee's Website;
- (iii) the Trustee filed its third report dated December 13, 2016 (the "**Third Report**") in response to an application brought by nine of the Davies Developers (and one of Mr. Davies' related companies) (collectively, the "**CCAA Applicants**")² for protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA Application**") and for the appointment of KSV Kofman Inc. ("**KSV**") as proposed "super" monitor. The CCAA Application was dismissed by the Honourable Justice Penny. A copy of the Third Report is available on the Trustee's Website;
- (iv) the Trustee filed its fourth report dated January 20, 2017 (the "**Fourth Report**") and supplement thereto dated January 26, 2017 (the "**Fourth Report Supplement**") to prevent the immediate forced sale of the real property of one of the Davies Developers (the "**Boathaus Property**") by its first mortgagee. The Fourth Report and Fourth Report Supplement were filed in support of the Trustee's motion to have KSV appointed by the Court as receiver

² The two Davies Developers that were not CCAA Applicants were McMurray Street Investments Inc. and Textbook (445 Princess Street) Inc.

and manager of the Boathaus Property³ (in such capacity, the “**Receiver**”) to, amongst other things, market and solicit offers for the investment in, development of and/or sale of the Boathaus Property (the “**Boathaus Proceedings**”). The Honourable Justice Wilton-Siegel granted the Trustee’s motion, and KSV was appointed as the Receiver pursuant to the terms of a Court Order made February 2, 2017 (the “**Original Boathaus Receivership Order**”). A copy of the Fourth Report and the Fourth Report Supplement, both without appendices, together with the Original Boathaus Receivership Order, corresponding ancillary Order and His Honour’s written reasons are attached collectively, as **Appendix “4”**;

- (v) the Trustee filed its fifth report dated January 23, 2017 (the “**Fifth Report**”) and supplement thereto dated April 4, 2017 (the “**Fifth Report Supplement**”) to provide the Court with information concerning one of the non-Davies Developers’ projects (“**Vaughan Crossings**”), a Court-appointed receivership application brought by a mortgagee registered first on title to the Vaughan Crossings’ real property (the “**Vaughan Crossings Property**”) and a proposed transaction in respect of the Vaughan Crossings Property (the “**Vaughan Crossings Transaction**”). The receivership application in respect of the Vaughan Crossings Property was granted by the Honourable Justice Conway pursuant to an Order made February 14, 2017 and effective March 1, 2017 (the “**Vaughan Crossings Receivership Order**”) and the Vaughan Crossings Transaction was approved by the Honourable Justice Myers pursuant to an Order made April 10, 2017 (the “**Vaughan Crossings Transaction Order**”). A copy of the Fifth Report and the Fifth Report Supplement, both without appendices, together with the Vaughan Crossings Receivership Order, the Vaughan Crossings Transaction Order, corresponding ancillary

³ Together with all the assets, undertakings and properties of the Davies Boathaus Developer acquired for or used in relation to the Boathaus Property.

Order and the written reasons therefor are attached collectively as **Appendix "5"**;

- (vi) the Trustee filed its sixth report dated April 18, 2017 (the "**Sixth Report**") and supplement thereto dated April 21, 2017 (the "**Sixth Report Supplement**") to support the Trustee's motion to, amongst other things, expand the Boathaus Proceedings (as expanded, the "**Expanded Receivership Proceedings**") to include additional properties of the Davies Developers, being those defined in the Sixth Report as the "**Legacy Lane Property**", the "**525 Princess Property**", the "**555 Princess Property**" and the three "**Memory Care Properties**". The expansion of the Boathaus Proceedings was granted by the Honourable Justice Myers pursuant to an Order made April 28, 2017 (as subsequently amended, the "**Expanded Receivership Order**"). A copy of the Sixth Report and the Sixth Report Supplement, both without appendices, together with the Expanded Receivership Order and His Honour's written reasons are attached collectively as **Appendix "6"**;
- (vii) the Trustee filed its seventh report dated August 23, 2017 (the "**Seventh Report**") to support the Trustee's motion to, amongst other things, approve a claims process to be conducted by the Trustee in respect of claims against the Tier 1 Trustee Corporations (the "**Claims Procedure Order**") and approve an executed agreement and release between one of the Developers (Hazelton Development Corporation (the "**Hazelton Developer**")) and the Trustee. A copy of the Seventh Report, Claims Procedure Order, corresponding ancillary Order and the written reasons therefor are attached collectively as **Appendix "7"**; and
- (viii) the Trustee filed its eighth report dated November 3, 2017 (the "**Eighth Report**") to support the Trustee's motion to, amongst other things, authorize the Trustee to make distributions to the Investors without further Order of the Court, authorize the Trustee to provide certain information to the Royal Canadian Mounted

Police and the Ontario Provincial Police and approve executed agreements and releases between two of the Developers (1416958 Ontario Inc. (the "**Guildwood Developer**") and Silver Seven Corporate Centre Inc. (the "**Silver Seven Developer**")) and the Trustee. A copy of the Eighth Report, corresponding Order and written reasons therefor are attached collectively as **Appendix "8"**.

11. All the Previous Reports and activities of the Trustee described therein have been approved by the Court. At the request of Mr. Raj Singh and Tier 1 Transaction, and on consent of the Trustee, the Court's approval of certain of the Previous Reports is not deemed to be a finding of fact or proof of any allegations or claims relating to the actions or omissions of Mr. Singh or Tier 1 Transaction.
12. Copies of materials filed in the Trustee's proceedings are available on the Trustee's website at www.grantthornton.ca/tier1.
13. KSV, in its capacity as the Receiver in the Expanded Receivership Proceedings, has also filed several reports to Court (collectively, the "**Receiver Reports**"). The Expanded Receivership Proceedings have proceeded separately from the present proceedings (with a separate Court file number) in order to maintain independence between Court officers and maximize procedural efficiency. Copies of the materials filed in the Expanded Receivership Proceedings are available on the Receiver's website at www.ksvadvisory.com/insolvency-cases/scollard-development-corporation.
14. Amongst other things, the Receiver Reports identify extensive transfers of money from and to certain of the Davies Developers to and from various related entities, including other Davies Developers, entities and trusts controlled by Mr. Davies and entities controlled by Mr. Singh. The Receiver obtained a *Mareva* injunction against each of Mr. Davies and his wife (both in their personal capacities and in their capacities as trustee and/or representative of the Davies Arizona Trust and the Davies Family Trust), Gregory Harris of H+H (solely in his capacity as trustee and/or representative of the Davies Family Trust) and Aeolian Investments Ltd.

(collectively, the "**Mareva Order**").⁴ A copy of the Mareva Order, which was amended and extended on several occasions, and reasons therefor are attached collectively as **Appendix "9"**. Amongst other things, the reasons of the Honourable Justice Myers made August 30, 2017 expressly identify Mr. Davies as having engaged in a "Ponzi Scheme." The Trustee understands from the Receiver that Mr. Davies and Aeolian Investments Ltd. have obtained leave to appeal the Mareva Order.

15. On the application of Kingsett Mortgage Corporation ("**Kingsett**"), KSV was also appointed as receiver over certain real property owned by Generx (Byward Hall) Inc. a.k.a. Textbook (256 Rideau Street) Inc. (collectively, "**Rideau**"). Rideau is not a developer that was loaned money by any of the SMIs. However, the Trustee understands from the Receiver Reports that certain funds lent by the SMIs to certain of the Davies Developers were transferred, either directly or indirectly, to Rideau. A copy of the receivership Order in respect of Rideau and reasons therefor are attached collectively as **Appendix "10"**. Copies of the materials filed in connection with the Rideau receivership are available at www.ksvadvisory.com/insolvency-cases/generx-byward-hall-inc.
16. On the application of Kingsett, KSV was also appointed on January 9, 2018 as receiver and manager over certain real property (the "**445 Princess Property**") owned by Textbook (445 Princess Street) Inc. (the "**Davies 445 Princess Developer**") (collectively, the "**445 Princess Receivership Proceedings**"). The Davies 445 Princess Developer was loaned a principal amount of approximately \$8.45 million by one of the SMIs, being Textbook Student Suites (445 Princess Street) Trustee Corporation ("**445 Princess Trustee Corporation**"), which holds a mortgage on title to the 445 Princess Property that is registered behind Kingsett's mortgage. The 445 Princess Davies Developer was one of two Davies Developers that did not file for CCAA protection. However, as set out in the Eighth Report and/or the Receiver Reports, as applicable, the 445 Princess Davies Developer failed to make certain scheduled interest payments to the

⁴ The Trustee understands from the Receiver that each of the Davies Arizona Trust, the Davies Family Trust and Aeolian Investments Ltd. (an entity controlled, directly or indirectly, by Mr. Davies and/or related parties) was a recipient of funds, either directly or indirectly, from one or more of the Davies Developers.

Trustee, transferred certain funds to Rideau (directly or indirectly) that had been lent by the 445 Princess Trustee Corporation and transferred a further balance of approximately \$7,700 to \$8,800 each month to one or more of the 445 Princess Davies Developer's related corporations. A copy of the receivership Order in respect of the 445 Princess Receivership Proceedings and reasons therefor are attached collectively as **Appendix "11"**. Copies of the materials filed in connection with the 445 Princess Receivership Proceedings are available at <http://www.ksvadvisory.com/insolvency-cases/textbook-445-princess-street-inc>.

PURPOSE OF THE NINTH REPORT

17. The purpose of this Ninth Report is to: (1) provide an update in respect to certain of the SMIs; and (2) provide the Court with information regarding the Trustee's request and/or support, as applicable, for Orders:
 - (i) appointing MNP Ltd. ("**MNP**"), in accordance with subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101 of the *Courts of Justice Act* (Ontario), as the court-appointed receiver (in such capacity, the "**Proposed Ross Park Receiver**") of the lands legally described in PIN Nos. 08079-0004 (LT), 08079-0016 (LT), 08079-0017 (LT), 08079-0018 (LT), 08079-0019 (LT) and 08079-0020 (LT) (the "**Ross Park Property**") and of certain other related assets, undertakings and properties of Textbook Ross Park Inc. (the "**Davies Ross Park Developer**");
 - (ii) approving the sale transaction (the "**Proposed Ross Park Transaction**") contemplated by an agreement of purchase and sale between the Proposed Ross Park Receiver, as vendor, and Rise Real Estate Inc., in Trust for a Corporation to Be Incorporated (the "**Proposed Ross Park Purchaser**"), as purchaser, dated February 21, 2018 (the "**Ross Park Sale Agreement**"), and vesting in the Proposed Ross Park Purchaser the Davies Ross Park Developer's right, title and interest in and to

the property described as the "Purchased Assets" in the Ross Park Sale Agreement;

- (iii) approving the settlement (the "**Proposed Ross Park Settlement**") contemplated by a settlement agreement amongst the Trustee, 2377358 Ontario Limited ("**237**") and Creek Crest Holdings Inc. ("**Creek**") dated February 21, 2018 (the "**Ross Park Settlement Agreement**");
- (iv) approving this Ninth Report and the conduct and activities of the Trustee as described herein;
- (v) approving the Report of the Proposed Ross Park Receiver to be filed (the "**Proposed Ross Park Receiver Report**") and the conduct of the Proposed Ross Park Receiver as described therein;
- (vi) approving the fees and disbursements of the Trustee and its counsel from October 1, 2017 to December 31, 2017 and an allocation of such fees and disbursements;
- (vii) approving the fees and disbursements of the Proposed Ross Park Receiver and its counsel, including an accrual of such fees and disbursements to the discharge of the Proposed Ross Park Receiver (the "**Proposed Ross Park Fee Accrual**");
- (viii) after satisfying the fees and disbursements of the Proposed Ross Park Receiver and its counsel, including the Proposed Ross Park Fee Accrual, authorizing the Proposed Ross Park Receiver to distribute the remainder of the funds received from the closing of the Proposed Ross Park Transaction in accordance with the terms and conditions of the Ross Park Settlement Agreement; and
- (ix) discharging MNP as the Proposed Ross Park Receiver upon it filing a certificate certifying that all matters to be attended to in connection with the receivership of the Ross Park Property have

been completed to the satisfaction of the Proposed Ross Park Receiver, and releasing MNP from liability in connection therewith.

DISCLAIMER

18. This Ninth Report has been prepared for the use of the Court and the Tier 1 Trustee Corporations' stakeholders as general information relating to the Tier 1 Trustee Corporations. Accordingly, the reader is cautioned that this Ninth Report may not be appropriate for any other purpose. The Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Ninth Report for any other purpose.
19. In preparing this Ninth Report, the Trustee has relied upon certain unaudited financial information provided by parties who had knowledge of the affairs of the Tier 1 Trustee Corporations, including Gregory Harris of H+H, Raj Singh and John Davies. The Trustee has also relied on information provided to it by KSV in its capacity as the Receiver, including the Receiver Reports. The Trustee has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Trustee expresses no opinion or other form of assurance with respect to such information.
20. All references to dollars in this Ninth Report are in Canadian currency unless otherwise noted.

THE REMAINING DAVIES DEVELOPERS

21. As a result of the Expanded Receivership Proceedings and the 445 Princess Receivership Proceedings, John Davies no longer has control of eight of the 11 Davies Developers to which the SMLs loaned money. The remaining three Davies Developers are:
 - (i) the Davies Ross Park Developer, which is the primary focus of this Ninth Report;

(ii) the Davies Bronson Developer (as defined in the Sixth Report);
and

(iii) the Davies McMurray Developer (as defined in the Sixth Report).

22. The Eighth Report contained an update in respect of the Davies McMurray Developer. At this time, the Trustee is able to provide an update in respect of the SMIs granted by the Davies Ross Park Developer and the Davies Bronson Developer. The Trustee has and will continue to issue update communications to the Investors as matters unfold, including in respect to the status of each of the other Developers and SMIs not referenced in this Ninth Report.

The Davies Ross Park Developer, the Ross Park Property and the Ross Park SMI

23. The Ross Park Property consists of six parcels of land in London, Ontario that are owned by the Davies Ross Park Developer, which is one of the Davies Developers that was a CCAA Applicant. The Davies Ross Park Developer is a separate and distinct entity from Textbook Student Suites (Ross Park) Trustee Corporation (the "**Ross Park Trustee Corporation**"), which is the Tier 1 Trustee Corporation that holds an SMI on the Ross Park Property (the "**Ross Park SMI**").

24. The parcel registers for the Ross Park Property are attached as **Appendix "12"** and reflect the following registrations having been made on July 15, 2015:

(i) first, the Davies Ross Park Developer purchased the Ross Park Property from 237-Creek for a reported consideration of \$7,000,000; and

(ii) second, three charges were registered on title, being:

(1) first, a charge in favour of Trisura Guarantee Insurance Company ("**Trisura**") for \$12,500,000 (the "**Trisura Ross Park Charge**"), which the Trustee understands is meant to protect deposits given by purchasers of planned residential/other units, a copy of which Trisura Ross Park Charge is attached as **Appendix "13"**;

- (2) second, a vendor take-back mortgage in favour of 237-Creek for \$4,000,000 (the "**237-Creek Ross Park Mortgage**"), a copy of which is attached as **Appendix "14"**; and
 - (3) third, the Ross Park SMI in favour of the Ross Park Trustee Corporation for \$7,880,500, which Ross Park SMI was subsequently amended on title to increase the principal amount to \$11,617,300 and to reflect that Olympia Trust Company ("**OTC**") would hold the Ross Park SMI jointly with the Ross Park Trustee Corporation to accommodate RRSP and other Investors. A copy of the Ross Park SMI is attached as **Appendix "15"**. A copy of the loan agreement dated May 1, 2015 between the Davies Ross Park Developer, as developer/borrower, and the Ross Park Trustee Corporation, as lender on behalf of the Investors, is attached as **Appendix "16"** (the "**Ross Park SMI Loan Agreement**"). A copy of the syndicated mortgage participation agreement dated May 1, 2015 between the Ross Park Trustee Corporation and the Investors is attached as **Appendix "17"**.
25. A copy of the certified search results under the *Personal Property Security Act* (Ontario) (the "**PPSA**") against the Davies Ross Park Developer, with currency to February 21, 2018 is attached as **Appendix "18"**. The only PPSA registration was made by Trisura (and, as discussed below, the Trustee is not seeking to interfere with Trisura's rights). The Trustee has also subsequently filed a PPSA registration against the Davies Ross Park Developer.
26. As indicated in the corporate profile report attached as **Appendix "19"**, the Davies Ross Park Developer's registered office is located in Mississauga, Ontario, with John Davies and Walter Thompson being the directors and officers. According to the evidence filed by John Davies in the CCAA Application, the shares of the Davies Ross Park Developer are held as follows: (i) 72.2% by Textbook Student Suites Inc. (the ultimate shareholders of which, according to

Mr. Davies' evidence, are Mr. Davies' wife and children, a trust in favour of Mr. Thompson and other unidentified persons, members of Mr. Harris' family and Mr. Singh); and (ii) 27.8% by RS Consulting Group Inc. (the ultimate shareholder of which, according to Mr. Davies' evidence, is Mr. Singh).

27. According to the evidence filed by Mr. Davies in the CCAA Application, the intended use for the Ross Park Property is the construction of "*a purpose built, 15 storey student residence located a short distance from Western University.*" The Trustee understands from Trisura that deposits in respect of sales of this development are being held in trust by Chaitons LLP.
28. Also according to the evidence filed by Mr. Davies in the CCAA Application, approval of a revised building design for the Ross Park Property was approved by all municipal and provincial agencies having jurisdiction, save and except for the Upper Thames River Conservation Authority (the "UTRCA"), which determined that the Ross Park Property is situated in a floodway (as opposed to a flood fringe). The Trustee understands that, prior to the CCAA Application, the Davies Ross Park Developer commenced several appeals before the Ontario Municipal Board (the "OMB"), which, in substance, seek to permit – notwithstanding the original determination of the UTRCA – the development on the Ross Park Property of a 15-storey apartment building with 199 residential units and commercial uses on the ground floor (the "OMB Proceedings").
29. Attached collectively as **Appendix "20"** are interim decisions in the OMB Proceedings dated, respectively, September 26, 2017 and December 19, 2017. In substance, they reflect the following:
 - (i) a substantive hearing of the matter was to have occurred on October 23, 2017; however, during a telephone attendance before the OMB on September 15, 2017, the Davies Ross Park Developer advised "*that [its] mortgage finance company is no longer operating, and that [it] is working to resolve its financing as well as attempting to retain new counsel;*"

- (ii) the substantive hearing that was to have proceeded on October 23, 2017 was adjourned, and a telephone attendance before the OMB was scheduled for December 1, 2017;
 - (iii) during the December 1, 2017 telephone attendance, Mr. Davies advised *"that while [the Davies Ross Park Developer's] difficulties continue, he has been in discussions with developers who may be interested in a co-venture that would entail [the Davies Ross Park Developer] securing financing to proceed with its appeals. To that end, Mr. Davies requested that the [OMB] delay the scheduling of the hearing until March, 2018, so that he may finalize these agreements;"* and
 - (iv) the OMB ordered that a further telephone attendance would occur on March 2, 2018, which would be peremptory on the Davies Ross Park Developer, *"meaning that if [it] is not in a position to set hearing dates at that time, its appeals would be dismissed."*
30. Notwithstanding the statements made by Mr. Davies before the OMB on December 1, 2017, the Davies Ross Park Developer has not presented any such plans or proposals to the Trustee regarding the Ross Park Property.
31. Given the UTRCA's original floodway determination, and in the event that the OMB Proceedings are dismissed prior to some form of monetization of the Ross Park SMI, the Trustee anticipates that the market value of the Ross Park Property – and, therefore, the Ross Park SMI – would be adversely affected.
32. At the same time, the Trustee also understands that the 237-Creek Ross Park Mortgage, which is registered on title ahead of the Ross Park SMI, contains a clause whereby 237-Creek has agreed to discharge the 237-Creek Ross Park Mortgage on or before July 15, 2019 and without further payment,⁵ provided that *"[the Davies Ross Park Developer] is not able to obtain or is not provided with confirmation that the [Ross Park Property] is in the flood fringe or its equivalent including reasonable grading and flood proofing measures and engineering*

⁵ The Trustee understands that \$500,000 in principal had previously been paid in respect of the 237-Creek Ross Park Mortgage.

alternatives, and all appeal processes to obtain or confirm flood fringe or its equivalent status for the [Ross Park Property] have been exhausted."

33. Accordingly, both the Trustee and 237-Creek believe that it is in their mutual interest to reduce the uncertainty surrounding the Ross Park Property and the OMB Proceedings. In this regard, the Trustee and 237-Creek have entered into the Ross Park Settlement Agreement.

The Ross Park Settlement Agreement

34. A copy of the Ross Park Settlement Agreement is attached as **Appendix "21"**. For convenience, a summary of the terms of the Ross Park Settlement Agreement is provided below; however, readers should review the Ross Park Settlement Agreement in its entirety.

35. Subject to the approval of this Court and the closing of the Proposed Ross Park Transaction, the Ross Park Settlement Agreement recognizes the priority of the Trisura Ross Park Charge and the Court-ordered charges to both the 237-Creek Ross Park Mortgage and the Ross Park SMI. Once the Trisura Ross Park Charge and the Court-ordered charges are satisfied by way of sufficient holdbacks from the proceeds of the Proposed Ross Park Transaction (being in Trisura's case, a sufficient reserve to, in substance, return the deposits to unit purchasers, arrange for the cancellation of the underlying bond with Tarion Warranty Corporation and address ancillary matters related to these steps), the Ross Park Settlement Agreement further provides that the remaining proceeds of the Ross Park Transaction would be divided as follows:

- (i) 30% in respect of the 237-Creek Ross Park Mortgage, subject to an increase equal to 30% of the amount by which the Court-ordered charges in respect of the Ross Park Property (the "**Ross Park Charges**") exceed \$100,000; and

- (ii) 70% in respect of the Ross Park SMI, subject to a decrease equal to 30% of the amount by which the Ross Park Charges exceed \$100,000.⁶

36. As set out in the Ross Park Settlement Agreement, the above division of proceeds between the 237-Creek Ross Park Mortgage and the Ross Park SMI is further subject to 237-Creek being limited from receiving more than \$2,250,000 from the Proposed Ross Park Transaction.⁷

The Proposed Ross Park Transaction

37. A copy of the Ross Park Sale Agreement, which sets out the terms and conditions of the Proposed Ross Park Transaction, is attached as **Appendix "22"**. For convenience, a summary of the terms of the Proposed Ross Park Transaction is provided below; however, readers should review the Ross Park Sale Agreement in its entirety.

38. The Proposed Ross Park Transaction contemplates the appointment by this Court of MNP as the Proposed Ross Park Receiver for the purpose of, in substance, selling the Ross Park Property and related assets to the Proposed Ross Park Purchaser, free and clear of the Trisura Ross Park Charge, the Court-ordered charges, the 237-Creek Ross Park Mortgage, the Ross Park SMI and the Appointment Order, for an adjustable purchase price of \$7,250,000 (the "**Proposed Ross Park Purchase Price**"), comprised of a \$2,750,000 fixed cash component (the "**Proposed Ross Park Cash Component**") and a \$4,500,000 new mortgage to be registered on title to the Ross Park Property in favour of 237-Creek, the Trustee and OTC (the "**Proposed Ross Park New Mortgage**").

39. A \$500,000 initial deposit towards the Proposed Ross Park Cash Component has already been made by the Proposed Ross Park Purchaser, which deposit is

⁶ As set out in more detail in the Ross Park Settlement Agreement, the 30% increase/decrease adjustment for the Ross Park Charges exceeding \$100,000 is limited to the amount of cash received on closing (i.e., the adjustment does not apply to the Proposed Ross Park New Mortgage, as defined herein) and is further limited to the amount that the Trustee would have otherwise received from cash on closing (i.e., the adjustment cannot result in a net amount owing by the Trustee on closing).

⁷ Excluding any default interest, if any, should the Proposed Ross Park New Mortgage go into default.

presently being held by the Trustee subject to the terms of the Deposit Escrow Agreement that is attached as **Appendix “23”**, which provides, amongst other things, that this initial deposit will be released by the Trustee to the Proposed Ross Park Receiver provided that the latter is appointed by this Court by no later than March 1, 2018.

40. The Ross Park Sale Agreement further provides that the Proposed Ross Park Purchaser is required to pay two additional deposits directly to the Proposed Ross Park Receiver – one of \$250,000 due by no later than March 31, 2018 and another for an additional \$250,000 due by no later than April 30, 2018 – such that a total deposit of \$1,000,000 will have been paid prior to closing of the Proposed Ross Park Transaction on May 31, 2018.
41. While the quantum of the Proposed Ross Park Cash Component is fixed at \$2,750,000 (i.e., the \$1,000,000 cumulative deposit plus a further \$1,750,000 due on closing), the quantum of the Proposed Ross Park New Mortgage is adjustable depending upon the maximum number of aggregate storeys authorized for construction on the Ross Park Property (the “**Approved Ross Park Maximum Density**”).
42. The baseline principal amount of \$4,500,000 for the Proposed Ross Park New Mortgage assumes that the Proposed Ross Park Purchaser will be authorized by the appropriate governmental authorities to proceed with an Approved Ross Park Maximum Density of 13 storeys, which is two storeys less than what the Trustee understands from Mr. Davies is presently before the OMB. The Ross Park Sale Agreement requires the Proposed Ross Park Purchaser to pursue an Approved Ross Park Maximum Density that is equal to or greater than 13 storeys, and to do so with due diligence and good faith, as expeditiously as reasonably possible.
43. In the event that the Proposed Ross Park Purchaser obtains an Approved Ross Park Maximum Density that exceeds 15 storeys, then the principal amount of the Proposed Ross Park New Mortgage would increase by the following formula (yielding an increase of approximately \$1,038,460 for a 16th storey and a further increase of approximately \$346,153 per additional storey thereafter), and as described in more detail in the Ross Park Sale Agreement:

$$\% \text{ Increase} = \frac{\text{Approved Ross Park Maximum Density}}{13 \text{ storeys}} - 1$$

44. If, despite the Proposed Ross Park Purchaser's pursuit with due diligence and good faith as expeditiously as reasonably possible, it is unable to obtain an Approved Ross Park Maximum Density equal to at least 13 storeys but does obtain an Approved Ross Park Maximum Density that is equal to or greater than six storeys, then the principal amount of the Proposed Ross Park New Mortgage would decrease by the following formula (yielding a decrease of approximately \$346,153 per deficient storey), and as described in more detail in the Ross Park Sale Agreement:

$$\% \text{ Decrease} = 1 - \frac{\text{Approved Ross Park Maximum Density}}{13 \text{ storeys}}$$

45. If, despite the Proposed Ross Park Purchaser's pursuit with due diligence and good faith as expeditiously as reasonably possible, it is unable to obtain an Approved Ross Park Maximum Density equal to at least six storeys by the fifth anniversary of the closing date of the Proposed Ross Park Transaction, then the Proposed Ross Park Purchaser would have the option of nonetheless constructing less than six storeys on the Ross Park Property (such that the principal amount of the Proposed Ross Park New Mortgage would decrease by the above decreasing formula) or not constructing any structure on the Ross Park Property (in which case the principal amount of the Proposed Ross Park New Mortgage would be nil). However, even in this case, the Proposed Ross Park Cash Component would remain fixed at \$2,750,000.
46. Subject to the aforementioned adjustments in paragraphs 42 to 45 of this Ninth Report, the Proposed Ross Park New Mortgage would be payable in two stages, as follows:
- (i) 63.9% of the principal amount (i.e., \$2,875,000 of the \$4,500,000 in the event that the Approved Ross Park Maximum Density equals 13, 14 or 15 storeys) (the "First Ross Park New Mortgage Payment") would be payable upon receipt by the

Proposed Ross Park Purchaser of zoning and site plan approval to construct residences on the Ross Park Property; and

(ii) 36.1% of the principal amount (i.e., the remaining \$1,625,000 of the \$4,500,000 in the event that the Approved Ross Park Maximum Density equals 13, 14 or 15 storeys) (the "**Second Ross Park New Mortgage Payment**") would be payable upon the expiry of the term of the mortgage, being the earlier of:

(1) five years from the closing of the Proposed Ross Park Transaction; and

(2) the date of receipt of a certificate evidencing that a structure on the Ross Park Property has been authorized for occupancy by the relevant governmental authority or other authority.

47. Provided that the Proposed Ross Park New Mortgage is in good standing, there would be no accrual or payment of interest thereunder. The Ross Park Sale Agreement provides that the Proposed Ross Park New Mortgage would be open at any time or times for prepayment for any amount, without notice, bonus or penalty.

48. The Ross Park Sale Agreement provides that the Proposed Ross Park New Mortgage may initially be registered on title behind no more than \$1.75 million of third-party financing, provided that such request is made to the Proposed Ross Park Receiver on commercially-reasonable terms. After the Approved Ross Park Maximum Density has been obtained and the First Ross Park New Mortgage Payment made, the Ross Park Sale Agreement provides that the Proposed Ross Park Purchaser may make a written request to the Trustee that the balance of the Ross Park New Mortgage (i.e., the Second Ross Park New Mortgage Payment) be postponed to third-party financing used to fund physical construction on the Ross Park Property, and, provided that such request for construction financing is made on commercially-reasonable terms, the Trustee shall postpone the balance of the Ross Park New Mortgage to such financing and on such commercially-reasonable terms.

49. The Trustee has regularly updated Representative Counsel as to the unique challenges and timelines surrounding the Ross Park Property and the negotiation and execution of the Ross Park Sale Agreement and the Ross Park Settlement Agreement. The Trustee understands that Representative Counsel is supportive of proceeding with the Proposed Ross Park Transaction. Notwithstanding the unfavourable flood ruling from UTRCA, the sale price set out in the Ross Park Sale Transaction (\$7.25 million, of which \$2.75 million is to be paid upfront in cash) is on par with the reported consideration given by the Davies Ross Park Developer for the Ross Park Property in July 2015 (\$7.0 million, of which \$3.0 million was reportedly paid upfront in cash). The Trustee understands that the Proposed Ross Park Purchaser is also the owner of a property adjacent to the Ross Park Property, and is familiar with (and prepared to assume the risk associated with) the unique challenges surrounding this specific geographical location and the ongoing OMB Proceedings.
50. Provided that this Court approves the Proposed Ross Park Transaction and associated vesting relief by no later than March 1, 2018, the Ross Park Sale Agreement provides that closing of the Proposed Ross Park Transaction shall occur on May 31, 2018.

The Proposed Ross Park Receiver

51. As set out in both the Ross Park Sale Agreement and the Ross Park Settlement Agreement, a condition precedent to the Proposed Ross Park Transaction is the appointment by this Court of the Proposed Ross Park Receiver to complete the Proposed Ross Park Transaction.
52. Accordingly (and notwithstanding the rejected CCAA Application), the Trustee made formal written demand on the Davies Ross Park Developer on February 13, 2018, which demand was accompanied by a notice of intention to enforce security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada), copies of which are attached collectively as **Appendix “24”**. As requested in these materials, the balance owing under the Ross Park SMI exceeds \$12.9 million in principal and interest, exclusive of recovery costs and accruing interest.

53. As of the date of this Ninth Report, the Davies Ross Park Developer has failed to make payment in accordance with the demand or make alternative arrangements acceptable to the Trustee.
54. In the circumstances set out above, including, most notably, the imminent resumption of the OMB Proceedings on March 2, 2018 that are peremptory on the Davies Ross Park Developer, the Trustee believes that it is just and equitable that MNP be appointed as the Proposed Ross Park Receiver for the purpose of effecting the Proposed Ross Park Transaction and distributing the proceeds generated therefrom in accordance with the terms of the Ross Park Settlement Agreement. It is the Trustee's view that these steps are necessary for the immediate protection of the Investors of the Ross Park SMI, as well as the other encumbrancers on title. The Trustee believes that the requested relief would enhance the prospect of recovery by the Trustee for the Ross Park Investors and protect all stakeholders.
55. The Trustee, with the support of 237-Creek and Representative Counsel, recommends that MNP be appointed as the Proposed Ross Park Receiver. MNP is licensed to act in this capacity and is familiar with the Ross Park Property, the Ross Park Sale Agreement and the Ross Park Settlement Agreement. MNP has consented to act as the Proposed Ross Park Receiver should the Court so appoint it, a copy of which consent is attached as **Appendix "25"**.
56. The Trustee understands that the Proposed Ross Park Receiver shall be filing the Proposed Ross Park Receiver Report prior to the return of the Trustee's motion, wherein the Proposed Ross Park Receiver shall, amongst other things: (i) recommend the approval of the Ross Park Sale Agreement, the Ross Park Settlement Agreement and the related vesting relief; (ii) report on the validity and enforceability of the Ross Park SMI, which appears to constitute the fulcrum encumbrance on title; (iii) recommend that the proceeds of the Proposed Ross Park Transaction be distributed in accordance with the terms of the Ross Park Settlement Agreement, subject to reasonable holdbacks to satisfy the Court-ordered charges and Trisura; (iv) seek the approval of the Proposed Ross Park Receiver Report and the actions described therein; (v) seek the approval of the

fees and disbursements of the Proposed Ross Park Receiver and its counsel, including the Proposed Ross Park Fee Accrual; and (vi) seek the discharge of MNP as the Proposed Ross Park Receiver upon it filing a certificate certifying that all matters to be attended to in connection with the receivership of the Ross Park Property have been completed to the satisfaction of the Proposed Ross Park Receiver, and releasing MNP from liability in connection therewith.

The Davies Bronson Developer

57. As set out in the Sixth Report (attached without appendices as Appendix "6" to this Ninth Report), the Davies Bronson Developer granted a mortgage to Textbook Student Suites (774 Bronson Avenue) Trustee Corporation (the "**Bronson Trustee Corporation**") in the principal amount of \$10.875 million (the "**Bronson SMI**") over the real property known municipally as 774 Bronson Avenue and 557 Cambridge Street South in Ottawa, Ontario (the "**Bronson Property**"). The Davies Bronson Developer is a separate and distinct entity from the Bronson Trustee Corporation, which is the Tier 1 Trustee Corporation that holds the Bronson SMI on the Bronson Property.
58. As also set out in the Sixth Report, Vector Financial Services Limited ("**Vector**") issued a notice of intention to enforce security dated January 19, 2017 in respect of the Bronson Property. Vector held a mortgage in the principal amount of \$5.7 million (the "**Vector Bronson Mortgage**"), which was registered on title to the Bronson Property in priority to the Bronson SMI.
59. The Trustee cautioned in the Sixth Report that the Trustee could not take meaningful steps to preclude enforcement by a prior-ranking mortgagee in the absence of take-out financing (which was not available) or other acceptable arrangements being made with such mortgagee. The Trustee nonetheless required that Vector keep the Trustee apprised of Vector's private enforcement proceedings for the Bronson Property, which the Trustee understands ultimately culminated with a power of sale transaction that closed on or about December 21, 2017 for a sale price of \$7.2 million. The Trustee understands that the sale price had originally been \$8.0 million, but was lowered by \$800,000 because of environmental concerns.

60. After accounting for its mortgage (including interest and legal and other fees), property tax arrears and the costs of disposition, Vector remitted the excess proceeds on the \$7.2 million sale of \$740,427.17 to the Trustee. At the time of the Trustee's Appointment in October 2016, a further \$428,763.35 in interest reserves for the Bronson SMI were also transferred to the Trustee, yielding a gross total of \$1,169,190.52. In accordance with the authorization previously granted to the Trustee by this Court to make distributions to the Investors without further Order of the Court (see Appendix 8 to this Ninth Report), the Trustee anticipates making an interim distribution to Investors in the Bronson SMI in the coming weeks, the quantum of which interim distribution has not yet been determined.

APPROVAL OF THE TRUSTEE'S ACTIVITIES AND PROFESSIONAL FEES

61. The Trustee's activities since the Eighth Report include, without limitation:

- administering the SMI portfolio;
- investigating the history of the 16 SMIs and reviewing, with legal counsel, the various encumbrances on the underlying properties and the terms and conditions of the various agreements comprising the SMIs;
- reviewing and interpreting the Books and Records (as defined in the Seventh Report);
- holding meetings with Representative Counsel and, in some cases, certain representatives of the Investors Committee;
- holding meetings with brokers and other stakeholders;
- corresponding with the Developers, their principals and their counsel;
- corresponding with OTC;
- corresponding with and fielding extensive written and telephone enquiries from Investors, the Investors Committee and Representative Counsel, including disseminating formal updates to Investors on matters

related to these proceedings, the Expanded Receivership Proceedings and the 445 Princess Receivership Proceedings, and compiling a list of answers to frequently asked questions by Investors, a copy of which is attached as **Appendix “26”**;

- engaging in extensive written and telephone communications with the Receiver and its counsel;
- reviewing the progress of the Expanded Receivership Proceedings, the parallel proceedings in respect of Rideau and the 445 Princess Receivership Proceedings and the materials filed therein, and; through counsel, attending in Court where necessary;
- holding discussions, exchanging correspondence and holding meetings in respect of the projects underlying the SMLs that are not subject to the Expanded Receivership Proceedings or the 445 Princess Receivership Proceedings;
- holding discussions and exchanging correspondence with the first mortgagees on various properties;
- maintaining and updating the Trustee's website;
- carrying out the Trustee's obligations in accordance with the terms of the Claims Procedure Order;
- corresponding with H+H in respect of the books and records of the Tier 1 Trustee Corporations;
- facilitating the preparation of annual investor tax slips, as required;
- negotiating the terms of the Ross Park Sale Agreement, the Ross Park Settlement Agreement and the deposit escrow arrangements related thereto; and
- communicating with Vector in respect of the Bronson Property and the accounting of funds received therefrom.

62. Pursuant to the terms of the Appointment Order, the Trustee and its counsel shall be paid their reasonable fees and disbursements and shall pass their accounts before the Court.
63. The Trustee and its independent legal counsel, Aird & Berlis LLP, have maintained detailed records of their professional time and costs since the Appointment Order was granted.
64. The fees and disbursements of the Trustee and its legal counsel up to and including September 30, 2017, together with an allocation thereof amongst the 16 different SMIs, were previously approved by this Court.
65. The total fees of the Trustee from October 1, 2017 to and including December 31, 2017 amount to \$101,172.50, plus expenses and disbursements in the amount of \$3,841.63 and HST in the amount of \$13,651.84, totalling \$118,665.97. The details of the time spent and services provided by the Trustee (including an allocation of such fees and disbursements across the 16 SMIs) are more particularly described in the Affidavit of Jonathan Krieger, Senior Vice-President of GTL who is involved in this matter, sworn February 23, 2018 in support hereof, a copy of which is attached as **Appendix "27"**.
66. The total legal fees incurred by the Trustee for services provided to it by its independent legal counsel, Aird & Berlis LLP, from October 1, 2017 to and including December 31, 2017 amount to \$178,237.50, plus expenses and disbursements in the amount of \$6,672.46 and HST in the amount of \$23,981.37, totalling \$208,891.33. The details of the time spent and services provided by Aird & Berlis LLP (including an allocation of such fees and disbursements across the 16 SMIs) are more particularly described in the Affidavit of Steven L. Graff, sworn February 22, 2018 in support hereof, a copy of which is attached as **Appendix "28"**.
67. The Trustee is of the view that these accounts are reasonable in the challenging circumstances of these proceedings. To date, the Trustee has dealt with almost a thousand stakeholders, including investors and their advisors, developers, other mortgagees, lien claimants, creditors, contractors, financiers, and investor

committee representatives. The Trustee respectfully requests that the Court approve its fees and disbursements and those of its legal counsel.

PROPOSED ALLOCATION OF PROFESSIONAL FEES

68. At the time of the Appointment Order, and as set out in certain of the Previous Reports, the Trustee and its counsel set up various groupings of dockets specific to certain Developers/properties in order to account for their work in respect of the administration of these proceedings. Where applicable, the Trustee and its counsel have recorded time to specific dockets in respect of a Developer. However, a significant amount of the Trustee's and its counsel's work to date has been of a general nature, and not specifically allocable to a specific property. This general time includes, amongst other things, consulting with the Superintendent, consulting with the Financial Services Commission of Ontario, attending in Court, drafting related Court materials, preparing and administering general investor correspondence, preparing and administering the claims process in accordance with the Claims Procedure Order, maintaining the designated website for investor communications, maintaining the toll free telephone line, maintaining the designated email account and answering and responding to thousands of investor emails and/or telephone calls. In respect of these services, the Trustee and its counsel have recorded their professional time to a general account (the "**General Costs**").
69. The Trustee has carefully reviewed its dockets, including the nature of the work expended and the proportionate amount of time expended in respect of each of the SMIs. The Trustee has prepared the summary below (the "**Allocation Summary**") in respect of the Trustee's and its counsel's dockets, and proposes to allocate the fees, including the General Costs, as follows:

Tier 1

Trustee's Allocation of Time for the period October 1, 2017 to December 31, 2017

	October 1, 2017 to December 31, 2017							
	Project Specific	Textbook /Davies Allocation	Raj Singh Projects	All Projects	Subtotal	Disbursements		
	Time					HST	Total	
		26,078.50	15,965.50	49,690.00		3,841.63		
Properties								
McMurray	395.00	521.57		3,312.67	4,229.24	160.59	570.68	4,960.50
Vaughan Crossings	1,775.00				1,775.00	67.40	239.51	2,081.91
Boathaus	2,041.50	7,301.98		3,312.67	12,656.15	480.57	1,707.77	14,844.49
445 Princess	3,381.00	1,825.50		3,312.67	8,519.16	323.48	1,149.54	9,992.19
525 Princess		1,043.14		3,312.67	4,355.81	165.39	587.76	5,108.96
555 Princess		1,043.14		3,312.67	4,355.81	165.39	587.76	5,108.96
Legacy Lane		1,043.14		3,312.67	4,355.81	165.39	587.76	5,108.96
Ross Park		2,607.85		3,312.67	5,920.52	224.81	798.89	6,944.22
Bronson		1,303.93		3,312.67	4,616.59	175.30	622.95	5,414.83
Memory Care- Burlington		1,043.14		3,312.67	4,355.81	165.39	587.76	5,108.96
Memory Care- Oakville		7,301.98		3,312.67	10,614.65	403.05	1,432.30	12,450.00
Memory Care- Kitchener		1,043.14		3,312.67	4,355.81	165.39	587.76	5,108.96
Silver Seven	1,846.00			3,312.67	5,158.67	195.88	696.09	6,050.64
Guildwood			5,587.93	3,312.67	8,900.59	337.97	1,201.01	10,439.57
Hazelton			5,587.93	3,312.67	8,900.59	337.97	1,201.01	10,439.57
Keele Medical			4,789.65	3,312.67	8,102.32	307.65	1,093.30	9,503.27
	9,438.50	26,078.50	15,965.50	49,690.00	101,172.50	3,841.63	13,651.84	118,665.97

Tier 1

A&B's Allocation of Time for the period October 1, 2017 to December 31, 2017

	October 1, 2017 to December 31, 2017				
	Percentage Allocation	WIP Allocation		HST	Total
		Subtotal	Disbursements		
		\$ 178,237.50	\$ 6,672.46	\$ 23,981.37	\$ 208,891.33
Properties					
McMurray	5.0%	\$ 8,911.88	\$ 333.62	\$ 1,199.07	\$ 10,444.57
Vaughan Crossings	0.5%	891.19	33.36	119.91	1,044.46
Boathaus	4.0%	7,129.50	266.90	959.25	8,355.65
445 Princess	12.0%	21,388.50	800.70	2,877.76	25,066.96
525 Princess	4.0%	7,129.50	266.90	959.25	8,355.65
555 Princess	4.0%	7,129.50	266.90	959.25	8,355.65
Legacy Lane	4.0%	7,129.50	266.90	959.25	8,355.65
Ross Park	16.0%	28,518.00	1,067.59	3,837.02	33,422.61
Bronson	5.5%	9,803.06	366.99	1,318.98	11,489.02
Memory Care- Burlington	4.0%	7,129.50	266.90	959.25	8,355.65
Memory Care- Oakville	4.0%	7,129.50	266.90	959.25	8,355.65
Memory Care- Kitchener	4.0%	7,129.50	266.90	959.25	8,355.65
Silver Seven	8.0%	14,259.00	533.80	1,918.51	16,711.31
Guildwood	11.0%	19,606.13	733.97	2,637.95	22,978.05
Hazelton	3.0%	5,347.13	200.17	719.44	6,266.74
Keele Medical	11.0%	19,606.13	733.97	2,637.95	22,978.05
	100.0%	\$ 178,237.50	\$ 6,672.46	\$ 23,981.37	\$ 208,891.33

70. The Trustee respectfully requests that this Court issue an Order approving the Allocation Summary outlined above. If approved, the Trustee will present to this Court in a later report an allocation of professional fees and disbursements for the period of January 1, 2018 onwards, which allocation may differ from the Allocation Summary, based on the nature of work expended and area of focus going forward.
71. While the Trustee has prepared this Allocation Summary and seeks approval of the Trustee's and its counsel's fees and disbursements, there are certain Tier 1 Trustee Corporations where there are currently no funds available to satisfy the fees and disbursements as set out in the Allocation Summary.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

72. A copy of the Trustee's interim statement of receipts and disbursements as at December 31, 2017 is attached hereto as **Appendix "29"** (the "**Interim R&D**"). The Interim R&D reflects the cash currently in the respective trust accounts, as well as the fees and disbursements that have been approved but not yet paid where there are insufficient funds to satisfy the approved fees and disbursements.

CONCLUSION AND RECOMMENDED RELIEF

73. In light of the foregoing, the Trustee respectfully recommends that the Court issue the Orders in the form attached to the Trustee's motion record.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS COURT-APPOINTED
TRUSTEE OF THE TIER 1 TRUSTEE CORPORATIONS
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Per 

Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice President

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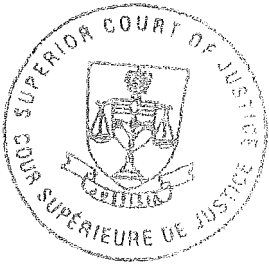
TAB H

TAB I

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR)
JUSTICE T McOWEN)

THURSDAY, THE 1ST
DAY OF MARCH, 2018



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*

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 Textbook Student Suites (Ross Park) Trustee Corporation (the "Mortgagee"), 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 MNP Ltd. ("**MNP**") as receiver (in such capacity, the "**Receiver**"), without security, of all the real property registered on title as being owned by Textbook Ross Park Inc. (the "**Debtor**") and that is listed on **Schedule "A"** hereto (collectively, the "**Real Property**") and of all the assets (excluding the Deposits defined in paragraph 28 below), undertakings and properties of the Debtor that are listed on **Schedule "B"** hereto (together with the Real Property, the "**Property**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Ninth Report of the Trustee dated February 26, 2018 and the appendices thereto (the "**Ninth Report**"), including, without limitation, the consent of MNP dated February 26, 2018 to act as the Receiver, 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 affidavit of service of Susy Moniz sworn February 26, 2018,

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.

APPOINTMENT

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

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- a) to take possession of and exercise control over the Real Property;

- b) to receive, preserve, and protect the Real Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of independent security personnel and the placement of such insurance coverage as may be necessary or desirable;
- c) to engage 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;
- d) to execute, assign, issue and endorse documents of whatever nature in respect of the Real Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order, including, without limitation, for the purpose of taking any and all steps (in consultation and cooperation with Trisura Guarantee Insurance Company and Everest Insurance Company of Canada (collectively, "**Trisura**")) that the Receiver may deem necessary to bring about the cancellation of the Tarion Bond (as defined below);
- e) 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 Real Property or the Receiver, including, without limitation, any and all such proceedings pending or hereafter instituted before the Ontario Municipal Board (the "**OMB Proceedings**"), but excluding any and all proceedings now initiated or hereafter initiated by KSV Kofman Inc. 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. (the "**Scollard Proceedings**") or by the Trustee (together with the Scollard Proceedings, the "**Excluded 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;
- f) subject to paragraphs 27 and 28 of this Order, to sell, convey, transfer, lease or assign the Real Property, together with any part or parts of the other Property (which, for greater

certainty, excludes the Deposits), out of the ordinary course of business with the approval of this Court, and in such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* and section 31 of the Ontario *Mortgages Act* shall not be required;

- g) to apply for any vesting order or other orders necessary to convey the Real Property, together with any part or parts of the other Property, to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- h) 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;
- i) to register a copy of this Order and any other Orders in respect of the Real Property against title to the Real Property;
- j) 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 Real Property for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- k) 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 the Real Property;
- l) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have in respect to the Real Property; and
- m) 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, except that the Receiver shall coordinate and cooperate with Trisura in the case of the Deposits, the Tarion Bond and the Indemnity Agreement (defined below).

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, 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 Real Property to the Receiver, and shall deliver the Real 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 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 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**"), including, without limitation, the OMB Proceedings and the Excluded Proceedings, 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 REAL PROPERTY

8. **THIS COURT ORDERS** that, subject to paragraph 10 of this Order, no Proceeding, including, without limitation, the OMB Proceedings, against or in respect of the Debtor or the Real Property shall be commenced or continued except in the case of the Excluded Proceedings or 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 Real Property, including, without limitation, the OMB Proceedings, but excluding the Excluded Proceedings, are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that, subject to paragraph 10 of this Order, all rights and remedies against the Debtor, the Receiver or affecting the Real Property, including, without limitation, the continuation or dismissal of the OMB Proceedings, are hereby stayed and suspended except in the case of the Excluded Proceedings or 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.

10. **THIS COURT ORDERS** that nothing in this Order shall prevent Trisura from commencing one or more Proceeding(s) against the Debtor and Trisura's other indemnitors (excluding the Debtor, the "**Indemnitors**") where the commencement of such Proceeding(s) against the 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 Receiver.

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 (except Deposits from purchasers in respect of sales of condominium units, which shall be delivered to Chaitons LLP to be held and form part of the Deposits (as defined in paragraph 28 of this Order)), including, without limitation, the sale of the Real Property, together with all or any of the other Property, 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 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.

PIPEDA

15. **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 a sale of the Property (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. **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 Real 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 Real Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **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. 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

18. **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.

19. **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.

20. **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.

SERVICE AND NOTICE

21. **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 of the Rules of Civil Procedure (the "**Rules**") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules 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: www.mnpdebt.ca/textbookcrosspark.


22. **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 Debtor's 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

23. **THIS COURT ORDERS AND DIRECTS** that the within proceedings in respect of the Debtor, 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 24 of this Order and proceed separately from the proceedings in respect of the Mortgagee, the Trustee and the assets, properties and undertakings of the Mortgagee.

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


Court File No. CV-18-593063300CL

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

IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK ROSS PARK 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**

25. **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.

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

27. **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 (the "**Future Purchaser**") or the Debtor), any right, title, entitlement, benefit or interest in or to Tarion Bond

No. TDS0990147 issued by Everest Insurance Company of Canada (the "**Tarion Bond**") or the Deposits. 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 Bond or the Deposits for any purpose whatsoever.

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

29. **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 Debtor or to any other Indemnitor pursuant to the Tarion Bond or Indemnity Agreement defined below from any proceeds of sale resulting from any Transaction (as defined below) in respect of the Real Property.

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

- (a) fully and finally discharge Trisura from any and all liability related to the Tarion Bond; and
- (b) fully indemnify Trisura under the Indemnity Agreement dated June 5, 2015 (the "**Indemnity Agreement**").

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

31. **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.

32. **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.

33. **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 the Mortgagee's security or, if not so provided by the Mortgagee's security, then on a substantial indemnity basis to be paid by the Receiver from the Property with such priority and at such time as this Court may determine.

34. **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.



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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 01 2018

PER / PAR:



SCHEDULE "A"

LEGAL DESCRIPTION OF THE REAL PROPERTY

The real property legally described by the following PINs:

- (a) 08079-0004 (LT);
- (b) 08079-0016 (LT);
- (c) 08079-0017 (LT);
- (d) 08079-0018 (LT);
- (e) 08079-0019 (LT);
- (f) 08079-0020 (LT).

SCHEDULE "B"

DESCRIPTION OF THE PROPERTY OTHER THAN THE REAL PROPERTY

All the Debtor's right, title and interest, if any, in and to the following:

- (a) the full benefit of all prepaid expenses and all deposits with any Person relating to the Real Property;
- (b) the OMB Proceedings;
- (c) to the extent transferable to a third-party purchaser or such purchaser's permitted assignees, all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any governmental authority in respect of the Real Property; and
- (d) to the extent transferable to a third-party purchaser or such purchaser's permitted assignees, all the contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Debtor is a party,

provided, however, that the Property does not include any of the Debtor's other assets, undertakings or properties (other than the Real Property), if any, including, without limitation, any of the Debtor's right, title or interest, if any, in and to any of the following:

- (e) any of the Debtor's cash or cash equivalents;
- (f) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Debtor that do not relate exclusively or primarily to any of the Property; or
- (g) the benefit of any refundable Taxes (as defined herein) payable or paid by the Debtor in respect of the Property or any claim or right of the Debtor to any refund, rebate or credit of Taxes. The term "**Taxes**" means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any governmental authority, and whether disputed or not.

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

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

Applicant

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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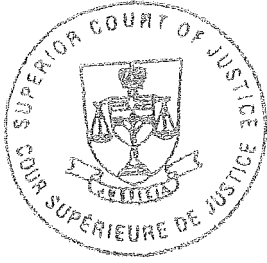
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Lawyers for Grant Thornton Limited, in its capacity as the court-appointed trustee of Textbook Student Suites (Ross Park) Trustee Corporation



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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE *MR*)
JUSTICE *T. McEwen*)

THURSDAY, THE 1ST
DAY OF MARCH, 2018

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*

- AND -

pm pm
Court File No. CV-18-593063-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK ROSS PARK 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 Grant Thornton Limited, in its capacity as the Court-appointed trustee (in such capacity, the “**Trustee**”) of Textbook Student Suites (Ross Park) Trustee Corporation (the “**Syndicated Mortgagee**”), for an order, *inter alia*: (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between MNP Ltd. (“**MNP**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of certain assets, properties and undertakings of Textbook Ross Park Inc. (the “**Debtor**”), as vendor, and Rise Real Estate Inc., in Trust for a Corporation to Be Incorporated, as purchaser, dated February 21, 2018 (the “**Sale Agreement**”), a copy of which is attached as Appendix “22” to the Ninth Report of the Trustee dated February 26, 2018 (the “**Ninth Report**”), and vesting in 2411208 Ontario Inc. (the “**Purchaser**”) the Debtor’s right, title and interest in and to the property described as the “Purchased Assets” in the Sale Agreement (the “**Purchased Assets**”); and (ii) approving the settlement (the “**Settlement**”) contemplated by a settlement agreement amongst the Syndicated Mortgagee, 2377358 Ontario Limited (“**237**”) and Creek Crest Holdings Inc. (“**Creek**”) dated February 21, 2018 (the “**Settlement Agreement**”), a copy of which is attached as Appendix “21” to the Ninth Report, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Ninth Report, the report of MNP in its proposed capacity as the Receiver dated February 27, 2018 (the “**Receiver’s Report**”) and the appendices to the Ninth Report and the Receiver’s Report, and on hearing the submissions of counsel for the Trustee, 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 Susy Moniz sworn February 26, 2018, filed,

1. **THIS COURT ORDERS AND DECLARES** that:

(a) the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver and by the Trustee is hereby authorized and approved, with such minor amendments as the Receiver and the Trustee may deem necessary. The Receiver and the Trustee are 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; and

(b) the Settlement is hereby approved, and the execution of the Settlement Agreement by the Trustee is hereby authorized and approved, with such minor amendments as the Trustee may deem necessary. The Trustee 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 Settlement.

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 of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement, including, without limitation, all of the Debtor's right, title and interest in and to the Real Property (as defined herein) listed on Schedule B hereto, shall vest absolutely in the Purchaser, 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, 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 Newbould made October 27, 2016 (the "**Appointment Order**"); (ii) any encumbrances or charges created by the Order of the Honourable Mr. Justice Hainey made January 24, 2017 (the "**Representative Counsel Order**"); (iii) any encumbrances or charges created by the Order of this Court appointing the Receiver made today; (iv) 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 (v) 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 that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

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 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, subject to the Ancillary and Discharge Order of this Court dated today, 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** that the entitlements of 237, Creek and the Trustee to their respective shares of the net proceeds from the sale of the Purchased Assets shall:

- (a) rank in priority behind the entitlement of Trisuara Guarantee Insurance Company to the net proceeds from the sale of the Purchased Assets; and
- (b) be limited to and determined by the Settlement Agreement, the Appointment Order and the Representative Counsel Order.

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

7. **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 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.

8. **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, the Trustee and their respective 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 and the Trustee, as officers of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver, the Trustee and their respective agents in carrying out the terms of this Order.*



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

MAR 01 2018

PER / PAR:



Schedule "A" – Form of Receiver's Certificate

Court File No. CV-18-_____ -00CL

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

IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK ROSS PARK 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 Ontario Superior Court of Justice (Commercial List) (the "Court") made March 1, 2018, MNP Ltd. ("MNP") was appointed as receiver (in such capacity, the "Receiver"), without security, of certain assets, undertakings and properties of Textbook Ross Park Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including the proceeds thereof (the "Property").

- II. Pursuant to an Order of the Court made March 1, 2018, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and Rise Real Estate Inc., in Trust for a Corporation to Be Incorporated, as purchaser, dated February 21, 2018 (the "Sale Agreement") and the execution of the Sale Agreement by the Receiver, and provided for the vesting in 2411208 Ontario Inc. (the "Purchaser") of all 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 satisfaction 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 in accordance with the terms and conditions of the Sale Agreement; 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 satisfied the Purchase Price for the Purchased Assets due 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 in accordance with the terms and conditions of the Sale Agreement; and
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].

MNP Ltd., solely in its capacity as the Court-appointed receiver of certain assets, properties and undertakings of the Debtor, and not in its personal capacity or in any other capacity

Per:

Name: Rob Smith

Title: Senior Vice-President

SCHEDULE "B"
LEGAL DESCRIPTION OF THE REAL PROPERTY

PIN 08079-0004 (LT)

LOT 1, PLAN 493 LONDON/LONDON TOWNSHIP

PIN 08079-0016 (LT)

LOTS 11 AND 12 PLAN 460 LONDON/LONDON TOWNSHIP

PIN 08079-0017 (LT)

LOT 13, PLAN 460 LONDON/LONDON TOWNSHIP

PIN 08079-0018 (LT)

LOT 14 AND PART LOT 15 PLAN 460, AS IN 778474 LONDON/LONDON TOWNSHIP

PIN 08079-0019 (LT)

PART LOTS 15 AND 16 PLAN 460, AS IN 812726 LONDON/LONDON TOWNSHIP

PIN 08079-0020 (LT)

PART LOTS 16 AND LOT 17 PLAN 460, AS IN 797474 LONDON/LONDON TOWNSHIP

SCHEDULE "C"
INSTRUMENTS TO BE DELETED FROM TITLE TO PROPERTY

a) **Instruments to be deleted from PIN 08079-0004 (LT)**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
ER993377	2015/07/15	Transfer	\$7,000,000	2377358 Ontario Limited Creek Crest Holdings Inc. Creek Crest Holdings Inc.	Textbook Ross Park Inc.
ER993378	2015/07/15	Charge	\$12,500,000	Textbook Ross Park Inc.	Trisura Guarantee Insurance Company
ER993379	2015/07/15	Charge	\$4,000,000	Textbook Ross Park Inc.	2377358 Ontario Limited Creek Crest Holdings Inc.
ER993380	2015/07/15	Charge	\$7,880,500	Textbook Ross Park Inc.	Textbook Student Suites (Ross Park) Trustee Corporation
ER993393	2015/07/15	Transfer of Charge		Textbook Student Suites (Ross Park) Trustee Corporation	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1000135	2015/08/21	Notice	\$2	Textbook Ross Park Inc.	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1000137	2015/08/21	Transfer of Charge		Textbook Student Suites (Ross Park) Trustee Corporation	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1072635	2016/11/03	Apl Court Order		Ontario Superior Court of Justice	Grant Thornton Limited

b) **Instruments to be deleted from PIN 08079-0016 (LT)**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
ER993377	2015/07/15	Transfer	\$7,000,000	2377358 Ontario Limited Creek Crest Holdings Inc. Creek Crest Holdings Inc.	Textbook Ross Park Inc.
ER993378	2015/07/15	Charge	\$12,500,000	Textbook Ross Park Inc.	Trisura Guarantee Insurance Company
ER993379	2015/07/15	Charge	\$4,000,000	Textbook Ross Park Inc.	2377358 Ontario Limited Creek Crest Holdings Inc.
ER993380	2015/07/15	Charge	\$7,880,500	Textbook Ross Park Inc.	Textbook Student Suites (Ross Park) Trustee Corporation
ER993393	2015/07/15	Transfer of Charge		Textbook Student Suites (Ross Park) Trustee Corporation	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1000135	2015/08/21	Notice	\$2	Textbook Ross Park Inc.	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1000137	2015/08/21	Transfer of Charge		Textbook Student Suites (Ross Park) Trustee Corporation	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1072635	2016/11/03	Apl Court Order		Ontario Superior Court of Justice	Grant Thornton Limited

c) Instruments to be deleted from PIN 08079-0017 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
ER993377	2015/07/15	Transfer	\$7,000,000	2377358 Ontario Limited Creek Crest Holdings Inc. Creek Crest Holdings Inc.	Textbook Ross Park Inc.
ER993378	2015/07/15	Charge	\$12,500,000	Textbook Ross Park Inc.	Trisura Guarantee Insurance Company
ER993379	2015/07/15	Charge	\$4,000,000	Textbook Ross Park Inc.	2377358 Ontario Limited Creek Crest Holdings Inc.
ER993380	2015/07/15	Charge	\$7,880,500	Textbook Ross Park Inc.	Textbook Student Suites (Ross Park) Trustee Corporation
ER993393	2015/07/15	Transfer of Charge		Textbook Student Suites (Ross Park) Trustee Corporation	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1000135	2015/08/21	Notice	\$2	Textbook Ross Park Inc.	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1000137	2015/08/21	Transfer of Charge		Textbook Student Suites (Ross Park) Trustee Corporation	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1072635	2016/11/03	Apl Court Order		Ontario Superior Court of Justice	Grant Thornton Limited

d) Instruments to be deleted from PIN 08079-0018 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
ER993377	2015/07/15	Transfer	\$7,000,000	2377358 Ontario Limited Creek Crest Holdings Inc. Creek Crest Holdings Inc.	Textbook Ross Park Inc.
ER993378	2015/07/15	Charge	\$12,500,000	Textbook Ross Park Inc.	Trisura Guarantee Insurance Company
ER993379	2015/07/15	Charge	\$4,000,000	Textbook Ross Park Inc.	2377358 Ontario Limited Creek Crest Holdings Inc.
ER993380	2015/07/15	Charge	\$7,880,500	Textbook Ross Park Inc.	Textbook Student Suites (Ross Park) Trustee Corporation
ER993393	2015/07/15	Transfer of Charge		Textbook Student Suites (Ross Park) Trustee Corporation	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1000135	2015/08/21	Notice	\$2	Textbook Ross Park Inc.	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1000137	2015/08/21	Transfer of Charge		Textbook Student Suites (Ross Park) Trustee Corporation	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1072635	2016/11/03	Apl Court Order		Ontario Superior Court of Justice	Grant Thornton Limited

e) Instruments to be deleted from PIN 08079-0019 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
ER993377	2015/07/15	Transfer	\$7,000,000	2377358 Ontario Limited Creek Crest Holdings Inc. Creek Crest Holdings Inc.	Textbook Ross Park Inc.
ER993378	2015/07/15	Charge	\$12,500,000	Textbook Ross Park Inc.	Trisura Guarantee Insurance Company
ER993379	2015/07/15	Charge	\$4,000,000	Textbook Ross Park Inc.	2377358 Ontario Limited Creek Crest Holdings Inc.
ER993380	2015/07/15	Charge	\$7,880,500	Textbook Ross Park Inc.	Textbook Student Suites (Ross Park) Trustee Corporation
ER993393	2015/07/15	Transfer of Charge		Textbook Student Suites (Ross Park) Trustee Corporation	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1000135	2015/08/21	Notice	\$2	Textbook Ross Park Inc.	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1000137	2015/08/21	Transfer of Charge		Textbook Student Suites (Ross Park) Trustee Corporation	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1072635	2016/11/03	Apl Court Order		Ontario Superior Court of Justice	Grant Thornton Limited

f) Instruments to be deleted from PIN 08079-0020 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
ER993377	2015/07/15	Transfer	\$7,000,000	2377358 Ontario Limited Creek Crest Holdings Inc. Creek Crest Holdings Inc.	Textbook Ross Park Inc.
ER993378	2015/07/15	Charge	\$12,500,000	Textbook Ross Park Inc.	Trisura Guarantee Insurance Company
ER993379	2015/07/15	Charge	\$4,000,000	Textbook Ross Park Inc.	2377358 Ontario Limited Creek Crest Holdings Inc.
ER993380	2015/07/15	Charge	\$7,880,500	Textbook Ross Park Inc.	Textbook Student Suites (Ross Park) Trustee Corporation
ER993393	2015/07/15	Transfer of Charge		Textbook Student Suites (Ross Park) Trustee Corporation	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1000135	2015/08/21	Notice	\$2	Textbook Ross Park Inc.	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1000137	2015/08/21	Transfer of Charge		Textbook Student Suites (Ross Park) Trustee Corporation	Textbook Student Suites (Ross Park) Trustee Corporation Olympia Trust Company
ER1072635	2016/11/03	Apl Court Order		Ontario Superior Court of Justice	Grant Thornton Limited

SCHEDULE "D"
PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS

a) **Assumed Encumbrances from PIN 08079-0004 (LT)**

Reg. No.	Date	Instrument Type
118887	1959/04/09	Bylaw

b) **Assumed Encumbrances from PIN 08079-0016 (LT)**

Reg. No.	Date	Instrument Type
118887	1959/04/09	Bylaw

c) **Assumed Encumbrances from PIN 08079-0017 (LT)**

Reg. No.	Date	Instrument Type
118887	1959/04/09	Bylaw

d) **Assumed Encumbrances from PIN 08079-0018 (LT)**

Reg. No.	Date	Instrument Type
118887	1959/04/09	Bylaw

e) **Assumed Encumbrances from PIN 08079-0019 (LT)**

Reg. No.	Date	Instrument Type
118887	1959/04/09	Bylaw

f) **Assumed Encumbrances from PIN 08079-0020 (LT)**

Reg. No.	Date	Instrument Type
118887	1959/04/09	Bylaw

THE SUPERINTENDENT OF FINANCIAL SERVICES -and-

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

Applicant

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

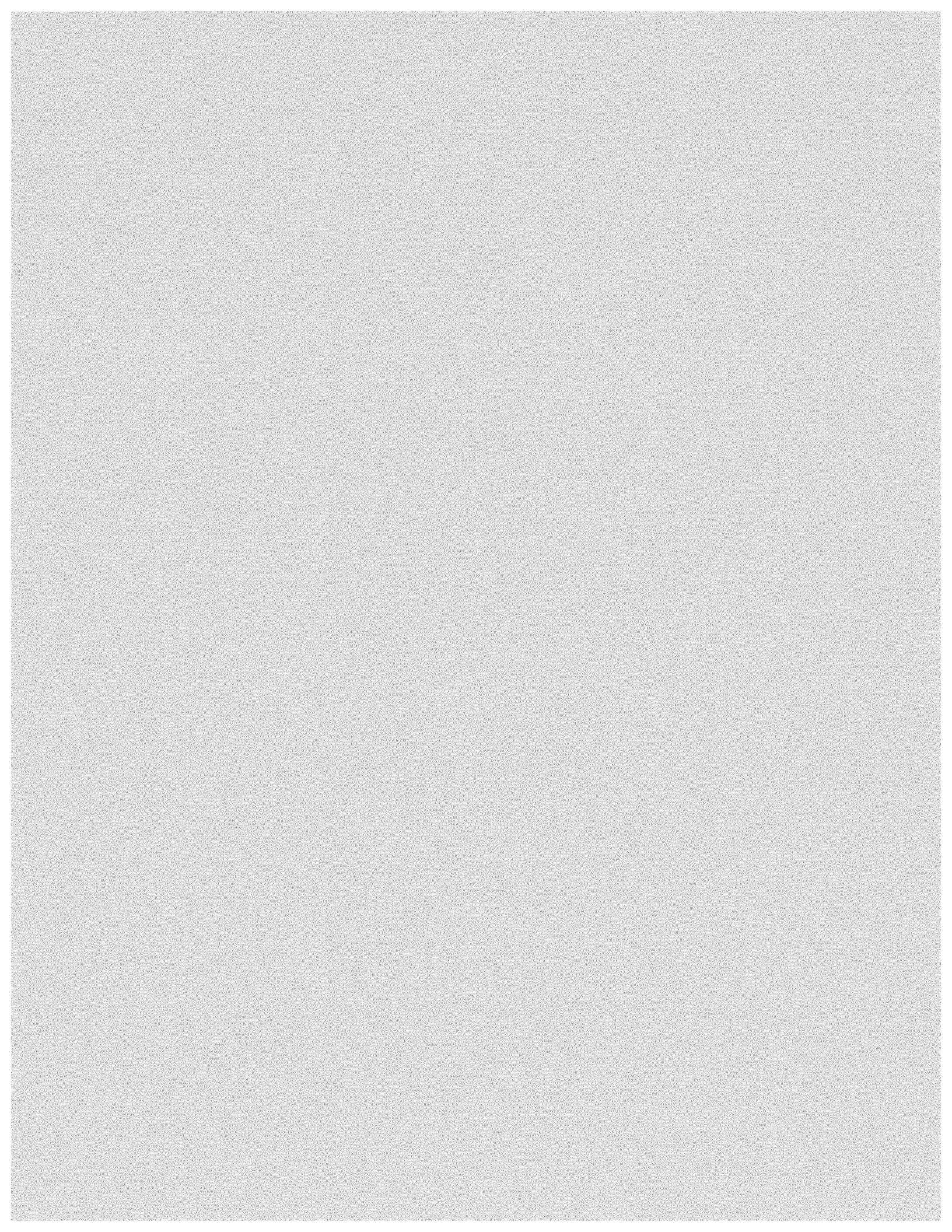
AIRD & BERLIS LLP
Barristers and Solicitors
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181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)
Tel: (416) 865-7726
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Jeremy Nemers (LSUC # 66410Q)
Tel: (416) 865-7724
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Email: inemers@airdberlis.com

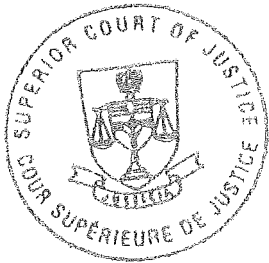
Lawyers for the Trustee



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE *ME*)
JUSTICE *T Moser*)

THURSDAY, THE 1ST
DAY OF MARCH, 2018



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*

- AND -

JM
Court File No. CV-18-593003-00CL *MM*

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK ROSS PARK 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*

ANCILLARY AND DISCHARGE ORDER

THIS MOTION, made by Grant Thornton Limited (“GTL”), in its capacity as the Court-appointed trustee (in such capacity, the “Trustee”) of each of the Respondents in the proceedings bearing Court File No. CV-16-11567-00CL, for an Order, *inter alia*: (i) approving the Ninth Report of the Trustee dated February 26, 2018 (the “Ninth Report”) and the activities of the Trustee set out therein; (ii) approving the Report of MNP Ltd. (“MNP”), in its capacity as the Court-appointed receiver (in such capacity, the “Receiver”) of the lands legally described in PIN Nos. 08079-0004 (LT), 08079-0016 (LT), 08079-0017 (LT), 08079-0018 (LT), 08079-0019 (LT) and 08079-0020 (LT) (the “Ross Park Property”) and of certain other related assets, undertakings and properties of Textbook Ross Park Inc., dated February 27, 2018 (the “Receiver’s Report”) and the activities of the Receiver set out therein; (iii) approving the fees and disbursements of the Trustee and its counsel and an allocation of such fees and disbursements; (iv) approving the fees and disbursements of the Receiver and its counsel, including an accrual of such fees and disbursements to the discharge of the Receiver (the “Receiver’s Fee Accrual”); (v) authorizing and directing the Receiver to holdback and distribute monies; (vi) discharging MNP as the Receiver effective upon the filing of a certificate by the Receiver certifying that all matters to be attended to in connection with the receivership have been completed to the satisfaction of the Receiver, in substantially the form attached hereto as Schedule “A” (the “Discharge Certificate”); and (vii) releasing MNP from any and all liability, as set out in paragraph 12 of this Order, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Ninth Report and the Receiver’s Report, including the fee affidavits in the Ninth Report and the Receiver’s Report (the “Fee Affidavits”), and on hearing the submissions of counsel for the Trustee, counsel for the Receiver 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 affidavit of service of Susy Moniz sworn February 26, 2018,

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 Ninth Report and the activities of the Trustee described therein be and are hereby approved.
3. **THIS COURT ORDERS** that the Receiver's Report and the activities of the Receiver described therein be and are hereby approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel and an allocation of such fees and disbursements, as described in the Ninth Report and as set out in the Fee Affidavits appended to the Ninth Report, be and are hereby approved.
5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as described in the Receiver's Report and as set out in the Fee Affidavits appended to the Receiver's Report, be and are hereby approved.
6. **THIS COURT ORDERS** that the Receiver's Fee Accrual in the amount of \$80,000, excluding disbursements and taxes, be and is hereby approved for the purpose of allowing the Receiver and its counsel to carry out the Receiver's duties.
7. **THIS COURT ORDERS** that following completion of the sale transaction (the "**Ross Park Transaction**") contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Rise Real Estate Inc., in Trust for a Corporation to Be Incorporated (the "**Purchaser**"), as purchaser, dated February 21, 2018 (the "**Ross Park Sale Agreement**"), the Receiver shall:
 - (a) distribute the amount of \$161,844.18 to Trisura Guarantee Insurance Company ("**Trisura**") on account of its expenses and those of Everest Insurance Company ("**Everest**") incurred to December 31, 2017 in respect of the Tarion Bond (as defined in the Receivership Order of this Court dated today (the "**Receivership Order**"));
 - (b) hold the further amount of \$1,000,000 in reserve (the "**Ross Park Reserve Amount**") for Trisura and Everest until the Tarion Bond is returned to Trisura and Everest for cancellation. The Receiver shall, from time to time, pay such amounts from the Ross Park Reserve Amount to Trisura on

behalf of Trisura and Everest as directed by Trisura as is required to fully indemnify Trisura and Everest for any and all losses, damages, liabilities, costs and expenses pursuant to the Tarion Bond and the Indemnity Agreement (as defined in the Receivership Order) in accordance with paragraphs 29 and 30 of the Receivership Order, provided that the Receiver shall have first received evidence satisfactory to it with respect to such losses, damages, liabilities, costs and expenses; and

- (c) hold a further amount of \$125,000 in reserve (the “**Chaitons Reserve Amount**”) for the payment of the fees and expenses of Chaitons LLP, inclusive of disbursements and taxes, associated with the return of the Deposits (as defined in the Receivership Order) to the Unit Purchasers (as defined in the Receivership Order), in consultation and cooperation with Tarion Warranty Corporation, Trisura, Chaitons LLP and in accordance with the Deposit Refund Protocol (the “**Protocol**”), which Protocol be and is hereby approved and which Protocol is attached as Appendix “1” to this Order. The Receiver shall, from time to time, pay such amounts from the Chaitons Reserve Amount to Chaitons LLP for this purpose, upon receipt of satisfactory evidence of such fees and expenses from Chaitons LLP.

8. **THIS COURT ORDERS** that, after payment of the amount herein approved by paragraph 7(a) of this Order and setting aside the Ross Park Reserve Amount herein approved by paragraph 7(b) of this Order and the Chaitons Reserve Amount herein approved by paragraph 7(c) of this Order, and after further payment of the fees and disbursements herein approved by paragraphs 4, 5 and 6 of this Order, the Receiver be and is hereby authorized and directed, without further Order of this Court, to distribute the balance of the net sale proceeds from the Ross Park Transaction to the Trustee, 2377358 Ontario Limited (“**237**”) and Creek Crest Holdings Inc. (together with 237, “**237-Creek**”) as provided in the Settlement Agreement between the Trustee and 237-Creek dated February 21, 2018 (the “**Ross Park Settlement Agreement**”).

9. **THIS COURT ORDERS** that after payment of the amount herein approved by paragraph 7(a) of this Order and setting aside the Ross Park Reserve Amount herein approved by paragraph 7(b) of this Order and the Chaitons Reserve Amount herein approved by paragraph 7(c) of this Order, after further payment of the fees and disbursements herein approved by paragraphs 4, 5 and 6 of this Order, after making the distributions contemplated in paragraphs 7(b), 7(c) and 8 of this Order and after the Tarion Bond has been returned to Trisura and Everest for cancellation and all expenses of Trisura and Everest relating to the Tarion Bond have been paid in accordance with paragraph 30 of the Receivership Order, the Receiver be and is hereby authorized and directed, without further Order of this Court, to distribute the balance of the Ross Park Reserve Amount and the balance of the Chaitons Reserve Amount to the Trustee and 237-Creek as provided in the Ross Park Settlement Agreement.

10. **THIS COURT ORDERS** that following the completion of the Ross Park Transaction and subject to paragraphs 7 and 9 of this Order, the Trustee be and is hereby authorized, without further Order of this Court, to distribute any amounts received from the New Mortgage (as defined in the Ross Park Sale Agreement) as provided in the Settlement Agreement.

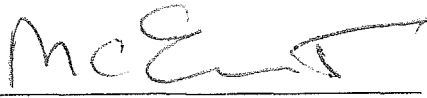
11. **THIS COURT ORDERS** that following the return of the Tarion Bond and Trisura receiving payment of all its and Everest's expenses to indemnify them in regards to the Tarion Bond, the Receiver may file its Discharge Certificate, upon which filing of the Discharge Certificate the Receiver shall be discharged as Receiver, provided however that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of MNP, in its capacity as the Receiver.

12. **THIS COURT ORDERS** that this Court's approval of the Ninth Report is not deemed to be a finding of fact or proof of any allegations or claims relating to the actions or omissions of Mr. Raj Singh or Tier 1 Transaction Advisory Services Inc.

13. **THIS COURT ORDERS AND DECLARES** that, upon the Receiver filing the Discharge Certificate, MNP is hereby released and discharged from any and all liability that

MNP now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of MNP while acting in its capacity as the Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, MNP is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

14. **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 Trustee and the Receiver and their respective 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 Trustee and to the Receiver, each being an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee, the Receiver and their respective agents in carrying out the terms of this Order.



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

MAR 01 2018

PER / PAR:



SCHEDULE "A"

Court File No. CV-18-_____ -00CL

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

IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK ROSS PARK 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 DISCHARGE CERTIFICATE

RECITALS

(A) Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made March 1, 2018, MNP Ltd. ("MNP") was appointed as receiver (in such capacity, the "Receiver"), without security, of the lands legally described in PIN Nos. 08079-0004 (LT), 08079-0016 (LT), 08079-0017 (LT), 08079-0018 (LT), 08079-0019 (LT) and 08079-0020 (LT) (the "Ross Park Property") and of certain other related assets, undertakings and properties of Textbook Ross Park Inc.

(B) Pursuant to an Order of the Court made March 1, 2018 (the "Discharge Order"), MNP was discharged as the Receiver to be effective upon the filing by the Receiver with the Court of a certificate confirming that all matters to be attended to in connection with the receivership have been completed to the satisfaction of the Receiver, provided, however, that notwithstanding its discharge: (a) the Receiver will remain the Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership; and (b) the Receiver will continue to have the benefit of the provisions of all Orders made in this

proceeding, including all approvals, protections and stays of proceedings in favour of MNP, in its capacity as the Receiver.

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE RECEIVER CERTIFIES the following:

1. all matters to be attended to in connection with the receivership have been completed to the satisfaction of the Receiver; and
2. this Certificate was filed by the Receiver with the Court on the ____ day of _____, 2018.

MNP LTD., solely in its capacity as the Receiver, and not in its personal capacity

Per: _____

Name: Rob Smith

Title: Senior Vice-President

APPENDIX "1"
Deposit Refund Protocol re Textbook Ross Park Inc.
February 28, 2018
(the "Protocol")

- 1) Grant Thornton Limited, in its capacity as the Court-appointed trustee (in such capacity, the "**Trustee**") of Textbook Student Suites (Ross Park) Trustee Corporation will use its best efforts to obtain the following orders from the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on March 1, 2018:
 - a) an order (the "**Receivership Order**"), *inter alia*, appointing MNP Ltd. ("**MNP**") as the court-appointed receiver (in such capacity, the "**Receiver**") of the lands legally described in PIN Nos. 08079-0004 (LT), 08079-0016 (LT), 08079-0017 (LT), 08079-0018 (LT), 08079-0019 (LT) and 08079-0020 (LT) (the "**Ross Park Property**") and certain related assets, undertakings and properties of Textbook Ross Park Inc. (the "**Ross Park Developer**");
 - b) an order (the "**Approval and Vesting Order**"), *inter alia*, approving the sale transaction (the "**Proposed Ross Park Transaction**") contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Rise Real Estate Inc., in Trust for a Corporation to Be Incorporated (the "**Purchaser**"), as purchaser, dated February 21, 2018 (the "**Ross Park Sale Agreement**"), and vesting in the Purchaser the Ross Park Developer's right, title and interest in and to the property defined and described as the "Purchased Assets" in the Ross Park Sale Agreement; and
 - c) an order (the "**Ancillary and Discharge Order**" and, together with the Receivership Order and the Approval and Vesting Order, the "**Court Orders**"), *inter alia*, authorizing and directing the Receiver to holdback and distribute proceeds from the Ross Park Sale Agreement and discharging MNP as the Receiver effective upon the filing of a certificate by the Receiver certifying that all matters to be attended to in connection with the receivership proceedings have been completed to the satisfaction of the Receiver.
- 2) The Receiver acknowledges that the Ross Park Developer has been de-registered by Tarion Warranty Corporation ("**Tarion**").
- 3) The Receiver will reimburse Trisura Guarantee Insurance Company ("**Trisura**") for its outstanding expenses related to Tarion Bond No. TDS0990147 issued by Everest Insurance Company of Canada (the "**Tarion Bond**") from the net sale proceeds of the Proposed Ross Park Transaction.
- 4) The Receiver will provide the Statutory Declaration, in the form attached as **Schedule "A"**, to Tarion.
- 5) The Receiver's counsel will request that the Ross Park Developer's principal provide the Statutory Declaration in the form attached as **Schedule "B"**. The failure by the Ross Park Developer's principal to provide the aforementioned Statutory Declaration will not prevent the return of the Deposits (as defined herein) to the Unit Purchasers (as defined herein).

- 6) The Receiver and/or Chaitons LLP will provide Tarion with copies of all unit agreements of purchase and sale with respect to the Ross Park Property (the “Unit APS(s)”) in an electronic format.
- 7) The Receiver will send a letter to all of the known purchasers under the Unit APSs (the “Unit Purchasers”) (with a copy to Trisura and Tarion), in the form attached as **Schedule “C”**, advising that the deposits (the “Deposits”) that the Purchasers provided under the Unit APSs will be returned and attach the Release Agreement, in the in the form attached as **Schedule “D”** (the “Release Agreement”).
- 8) Unit Purchasers will return the Release Agreement to the Receiver.
- 9) The Receiver will assemble a binder (the “Closing Binder”), which includes the following (if available):
 - a) the executed Release Agreements along with copies of the Unit Purchasers’ photo ID; and
 - b) copies of the Unit APSs and records of any assignments, if any, of Unit APSs.
- 10) The Receiver will send Trisura a Closing Binder of documentation once a month.
- 11) On a monthly basis, upon Tarion confirming to Trisura that the documentation is complete and that its liability to the relevant Unit Purchasers for claims in respect of their respective Deposits will be extinguished once Chaitons LLP releases such Deposit to such Unit Purchaser, Trisura will instruct Chaitons LLP (with notice to the Receiver) to release the Deposits to the relevant Unit Purchasers.
- 12) Chaitons LLP will provide the respective deposit refund cheques in the name of such Unit Purchaser on such Unit APS to the Receiver for distribution to such Unit Purchaser.
- 13) Upon release of the Deposits, Chaitons LLP will provide Tarion the Statutory Declaration in the form attached as **Schedule “E”** and the Receiver will provide Tarion the Statutory Declaration in the form attached as **Schedule “F”**.
- 14) Upon receipt of the Statutory Declarations referenced in paragraph 13 and being satisfied that its liability to the relevant Unit Purchasers for claims in respect of their respective Deposits has been extinguished, Tarion will provide confirmation to Trisura on a monthly basis that the Tarion Bond is reduced by the relevant amount on a unit-by-unit basis.
- 15) Chaitons LLP will provide Tarion with a monthly ledger of the Deposits released and the Deposits not released. Chaitons LLP will also provide such ledger to Tarion or the Receiver upon request.
- 16) Once all Deposits have been returned to Unit Purchasers and upon being satisfied that its liability to the relevant Unit Purchasers for claims in respect of their respective Deposits has been extinguished, Tarion will correspondingly reduce the amount of the Tarion Bond; provided, however, that Tarion shall at all times be entitled to retain a sufficient portion of the Tarion Bond to cover Taron’s liabilities in respect of amounts secured by the Tarion

Bond that have not been extinguished at the time of any reduction. Upon being satisfied that all of its liability in respect of amounts secured by the Tarion Bond has been extinguished, Tarion will return the Tarion Bond to Trisura for cancellation and the Receiver will issue a cheque to Trisura from the Ross Park Reserve Amount for final reimbursement of all its reasonable expenses related to the Tarion Bond.


- 17) Once Trisura receives the return of the Tarion Bond and the payment of the final reimbursement amount from the Receiver in accordance with this Protocol and the Court Orders, Trisura shall have no further interest in the Ross Park Reserve Amount (as defined in the Ancillary and Discharge Order of the Court made March 1, 2018).

31861317.5

SCHEDULE "A"



STATUTORY DECLARATION

CANADA	)	IN THE MATTER OF the proposed development of a
	)	condominium project (the "Project") by Textbook Ross
PROVINCE OF ONTARIO	)	Park Inc. (the "Vendor") situated in the City of London
	)	on those lands and premises owned by the Vendor, set
	)	out in PINs 08079-0004 (LT), 08079-0016 (LT), 08079-
	)	0017 (LT), 08079-0018 (LT), 08079-0019 (LT) and
	)	08079-0020 (LT) and located at 1234, 1236, 1238,
	)	1240, 1244 and 1246 Richmond Street, London, Ontario
TO WIT:	)	(the "Property")

I, Rob Smith, of the City of  DO SOLEMNLY DECLARE THAT:

1. I am a Senior Vice-President of MNP Ltd., which has been appointed as the receiver of the Property pursuant to the *Bankruptcy and Insolvency Act* and the *Courts of Justice Act* (in such capacity, the "Receiver").
2. To the best of my knowledge and belief, the Vendor owned a 100% beneficial interest in the Property prior to it being sold in the Vendor's receivership proceedings.
3. To the best of my knowledge and belief, the Vendor is not proceeding with the Project known as "Ross Park" that the Vendor had proposed to construct on the Property (the "Project").
4. To the best of my knowledge and belief: (i) the Vendor entered into two-hundred and nineteen (219) agreements of purchase and sale with respect to units in the Project (collectively, the "Condominium Sales Agreements"); and (ii) aside from, and since the time of, the Condominium Sales Agreements and the agreement pursuant to which the Property was sold in the receivership proceeding, no other agreements of purchase and sale have been entered into in respect of the Project or the Property.
5. Nothing has come to my attention that would suggest that sales of units in the Project were agreed to by the Vendor other than pursuant to the Condominium Sales Agreements.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME in)
City of Toronto, in the Province of)
Ontario, this  day of)
, 2018.)

Name: Rob Smith
Title: Senior Vice-President

A COMMISSIONER, ETC.)

SCHEDULE "B"

STATUTORY DECLARATION

CANADA)
PROVINCE OF ONTARIO)
TO WIT:)
IN THE MATTER OF the proposed development of a condominium project (the "Project") by Textbook Ross Park Inc. (the "Vendor") situated in the City of London on those lands and premises owned by the Vendor, set out in PINs 08079-0004 (LT), 08079-0016 (LT), 08079-0017 (LT), 08079-0018 (LT), 08079-0019 (LT) and 08079-0020 (LT) and located at 1234, 1236, 1238, 1240, 1244 and 1246 Richmond Street, London, Ontario (the "Property")

I, [Signature], of the City of Toronto, DO SOLEMNLY DECLARE THAT:

- 1. I am the [Signature] of the Vendor, and as such have knowledge of the matters hereinafter declared.
2. The Vendor is not proceeding with the Project known as "Ross Park" that the Vendor had proposed to construct on the Property (the "Project").
3. The Vendor has provided all deposits it received in respect of the sale of condominium units in the Project to Chaitons LLP, the escrow agent for the Vendor.
4. The Vendor entered into only two hundred nineteen (219) agreements of purchase and sale for condominium units in the Project and did not enter into any other agreements of purchase and sale for the condominium units in the Project.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME in)
City of Toronto, in the Province of)
Ontario, this [Signature] day of)
[Signature], 2018.)
A COMMISSIONER, ETC.)

Name:
Title:

SCHEDULE "C"

[LETTERHEAD OF MNP LTD.]

2018

Dear Ross Park Residence Purchaser,

**Re: Textbook Ross Park Inc.
Proposed Condominium Plan, London, Ontario**

Pursuant to an order (the "Receivership Order") of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on March 1, 2018, MNP Ltd. was appointed as receiver (the "Receiver") of the lands legally described in PIN Nos. 08079-0004 (LT), 08079-0016 (LT), 08079-0017 (LT), 08079-0018 (LT), 08079-0019 (LT) and 08079-0020 (LT) (the "Ross Park Property") and certain related assets, undertakings and properties of Textbook Ross Park Inc. (the "Company"). A copy of the Receivership Order and other Court materials are available on the Receiver's website at: [www.mnp.ca](#) (the "Website").

In our capacity as the Receiver, we are writing to you with respect to the condominium unit(s) you purchased from the Company in the project known as the "Ross Park Project".

Pursuant to an Order of the Court also made on March 1, 2018, the Court approved the sale transaction (the "Ross Park Transaction") contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Rise Real Estate Inc., in Trust for a Corporation to Be Incorporated (the "Ross Park Purchaser"), as purchaser, dated February 21, 2018 (the "Ross Park Sale Agreement"), and vesting in the Ross Park Purchaser the Company's right, title and interest in and to the property defined and described as the "Purchased Assets" in the Ross Park Sale Agreement. The Ross Park Transaction is scheduled to close May 31, 2018.

Of importance to you, the Ross Park Purchaser is not purchasing the deposit(s) paid by you pursuant to the unit purchase agreement(s) entered into between the Company and you, or any other deposits paid by any other purchaser, and it is intended that such deposits will be returned.

The Receiver has been advised that any deposits paid in connection with your purchase are being held in a trust account with Chaitons LLP. **In order for these funds to be released to you, the enclosed Release Agreement must be signed and returned to us, together with a photocopy of your photo identification. Please email Rob Smith of our office (rob.smith@mnp.ca) or send a fax with this information to (519) 964-2210.** Once we have received your documentation, your deposits will be returned to you as quickly as possible.

Please contact the Receiver directly at (519) 964-2212 and speak to Rob Smith if you have any questions or concerns.

Yours truly,

MNP Ltd., in its capacity as the Court-appointed Receiver
of certain assets of Textbook Ross Park Inc.

cc: Trisura Guarantee Insurance Company
Tarion Warranty Corporation

SCHEDULE "D"

RELEASE AGREEMENT

TO: TRISURA GUARANTEE INSURANCE COMPANY ("Trisura") and EVEREST INSURANCE COMPANY OF CANADA ("Everest" and, together with Trisura, the "Surety")

AND TO: TARION WARRANTY CORPORATION ("Tarion")

AND TO: TEXTBOOK ROSS PARK INC. (the "Vendor")

AND TO: MNP LTD., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER OF CERTAIN ASSETS OF TEXTBOOK ROSS PARK INC. (the "Receiver")

AND TO: ██████████ (the "Purchaser")

AND TO: CHAITONS LLP (the "Escrow Agent")

DEPOSIT AMOUNT: ██████████

WHEREAS:

- (a) The Purchaser and the Vendor entered into an agreement of purchase and sale dated the ██████████ day of ██████████, ██████████ (as it may have been amended from time to time, the "**Purchase Agreement**") pertaining to the Purchaser's acquisition from the Vendor of DWELLING UNIT NO. ██████████, Level ██████████, Suite ██████████, together with an undivided interest in the common elements appurtenant thereto (hereinafter referred to as the "**Purchased Unit**"), in accordance with condominium plan proposed to be registered against those lands and premises situated in the City of London, municipally known as 1234 – 1246 Richmond Street, London Ontario and more particularly described in the Purchase Agreement (hereinafter referred to as the "**Real Property**");
- (b) The Surety issued Tarion Bond No TDS 0990147 dated June 5, 2015 (the "**Bond**") to Tarion on behalf of the Vendor;
- (c) The Purchaser is being returned its Purchaser Deposit (as hereinafter defined) related to the Purchased Unit and the Vendor has no objection to the refund by the Surety of the Purchaser Deposit related to the Purchased Unit; and
- (d) As a result of the sale of the Real Property, the Vendor and the Purchaser wish to release each other, the Surety, the Escrow Agent and Tarion from any and all claims that they may have arising under (or in connection with) the Purchase Agreement, the Purchaser Deposit, the Bond, the *Act* (as hereinafter defined) and the *Plan Act* (as hereinafter defined) and have accordingly entered into these presents in order to evidence same.

NOW THEREFORE THESE PRESENTS WITNESSETH that in consideration of the releases hereinafter set forth, the sum of TEN (\$10.00) DOLLARS of lawful money of Canada now paid by each of the parties hereto to the other and other good and valid consideration (the

SCHEDULE "D"

receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby covenant and agree to the following:

1. In this Release:
 - (a) "Act" means the *Condominium Act*, R.S.O. 1990, chapter C.26 and any amendments thereto and the regulations thereunder;
 - (b) "Claim" or "Claims" means all actions, causes of action, suits, proceedings, debts, accounts, bonds, covenants, contracts, claims, liabilities, damages, grievances, executions, judgments and demands of any kind whatever, both in law and in equity, whether implied or express, direct or indirect, which any Releasing Party ever had, now has or can, shall or may have in future against any Released Party by reason of, arising out of, by virtue of or with respect to or in any way connected with, any act, omission, cause, matter or thing existing up to the present time, including, but without limiting the generality of the foregoing, by reason of, arising out of, by virtue of or with respect to or in any way connected with any act, omission, cause, matter or thing whatsoever connected with, arising out of or being the subject matter of the Purchase Agreement, the Purchaser Deposit, the Bond, the *Act* and the *Plan Act*;
 - (c) "Person" shall be broadly interpreted and includes an individual, body corporate, partnership, joint venture, trust, association, unincorporated organization, the Crown, any governmental agency or any other entity recognized by law;
 - (d) "Plan Act" means the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, chapter 0.31, any amendments thereto and the regulations thereunder;
 - (e) "Purchaser Deposit" means all monies, including, without limitation, deposit monies and monies on account of extras and upgrades, that were received by or on behalf of the Vendor from or on behalf of the Purchaser in connection with the Purchased Unit;
 - (f) "Release" means this Agreement;
 - (g) "Released Party" means any party being released under the terms of this Release;
 - (h) "Releasees" means, collectively, the Surety, Tarion and the Escrow Agent and their respective agents, directors, officers, partners, representatives, servants, employees, successors and assigns;
 - (i) "Releasing Party" means any party giving a release under the terms of this Release; and
 - (j) "Releasers" means, collectively, the Vendor, and the Purchaser and their respective heirs, executors, administrators, legal personal representatives (including receivers and trustees), successors and assigns.

SCHEDULE "D"

2. The Purchaser represents and warrants that the recitals set out above are true in substance and in fact.
3. The Purchaser covenants, acknowledges, represents and warrants to the Releasees and the Vendor that the total of the Purchaser Deposit paid to the Vendor or to the Escrow Agent on behalf of the Vendor in connection with the Purchased Unit is \$~~500,000~~, and that is the total amount of the Purchaser Deposit payable to the Purchaser;
4. The Vendor does not object to the payment to the Purchaser of the amount in paragraph 4. The Purchaser acknowledges and confirms to the Releasees and the Vendor that upon payment of the amounts set out in paragraph 4 to the Purchaser, the Purchaser will have received payment of:
 - (a) The Purchaser Deposit; and
 - (b) Any amount that the Purchaser is entitled to receive pursuant to the *Plan Act*.
5. The Releasors hereby absolutely and unconditionally remise, release, acquit and forever discharge each other and the Releasees from and against any and all Claims.
6. Without restricting the generality of paragraph 5, it is expressly understood and agreed that none of the Releasors shall make or pursue any Claim against any other Person who *might claim contribution or indemnity (or any claim similar or akin thereto)* from any one or more of the Releasors and Releasees in connection with the Purchase Agreement and that the Purchaser shall not file a claim in any insolvency proceedings relating to the Vendor in respect of the Purchaser Deposit.

Each Releasing Party hereby represents and warrants to each Released Party that all Claims being released hereunder have been satisfied and discharged in full by this Release and that he, she or it (the case may be) has not sold, transferred, assigned any of the Claims being released hereunder or with respect to which the Releasing Party agrees not to make any Claim or take any proceedings. Each of the Releasing Parties acknowledges and agrees that he, she or it (as the case may be) is executing this Release freely without compulsion, coercion, duress, inducement or pressure and has obtained independent legal advice with respect thereto.
7. This Release shall be governed by, and construed and enforced in accordance with, the laws in force in the Province of Ontario. Each Releasor irrevocably submits to the exclusive jurisdiction of the Courts of Ontario with respect to any matter arising hereunder or related hereto.
8. This Release shall enure to the benefit of and shall be binding upon the Releasors and the Releasees.
9. This Release shall be read and construed with all changes of gender and/or number as may be required by the context, and if more than one individual comprises the Purchaser, then all of the foregoing covenants and agreements of the Purchaser shall be deemed and construed to be joint and several covenants and agreements thereof.

SCHEDULE "D"

10. This Release may be signed in counterparts and transmitted by facsimile or e-mail transmission. Each counterpart when so executed and transmitted shall be deemed to be an original and all such separate counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned parties have hereunto affixed their hands and seal, or corporate seals, as the case may be, this 22 day of 08, 2018.

SIGNED, SEALED AND DELIVERED

Purchaser if an individual

In the presence of:

(Witness)
Name
Address

(Purchaser)
Name;
Address:

(Witness)
Name
Address

(Purchaser)
Name:
Address:

Textbook Ross Park Inc.

Per: _____
Name: Walter Thompson
Title: Co-President
I have authority to bind the corporation

SCHEDULE "D"

Affidavit of Subscribing Witness if Purchaser is an Individual

I, _____ [Insert Name] of the City of _____ [Insert City], in
the _____ [Insert Province/State] of _____ [Insert Country],
MAKE OATH AND SAY:

1. That I was personally present and did see the Release Agreement
and a duplicate thereof duly executed by _____.
2. That the said Instrument was executed by the said party/parties at the City of
_____.
3. That I know the said party/parties.
4. That I am a subscribing witness to the said Release and Termination Agreement.

SWORN before me at the City)
of _____, in the)
_____ of _____, this)
_____ day of -) [Insert Name of Witness]
_____, 2018.) [Insert Address and Phone number of Witness]

SCHEDULE "E"

STATUTORY DECLARATION

CANADA) IN THE MATTER OF the proposed development of
PROVINCE OF ONTARIO) a condominium project (the "Project") by Textbook
TO WIT:) Ross Park Inc. (the "Vendor") situated in the City of
) London on those lands and premises owned by the
) Vendor, set out in PINs 08079-0004 (LT), 08079-
) 0016 (LT), 08079-0017 (LT), 08079-0018 (LT),
) 08079-0019 (LT) and 08079-0020 (LT) and located
) at 1234, 1236, 1238, 1240, 1244 and 1246 Richmond
) Street, London, Ontario (the "Property")

I, <*>, of the City of <*>, DO SOLEMNLY DECLARE THAT:

1. Chaitons LLP is the escrow agent (the "Escrow Agent") of the Vendor.
2. I am a partner at the law firm of Chaitons LLP and as such have knowledge of the matters hereinafter declared.
3. Refund cheques made out to the respective purchasers of Project condominium units numbered <*>, <*> and <*> for all deposits paid under agreements of purchase and sale in respect of such units have been provided to MNP Ltd., in its capacity as the receiver of the Property.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME in)
City of Toronto, in the Province of)
Ontario, this <*> day of)
<*>, 2018.)
)
)
_____)
A COMMISSIONER, ETC.)

Name:
Title:

SCHEDULE "F"

STATUTORY DECLARATION

CANADA	)	IN THE MATTER OF the proposed development of a
	)	condominium project (the "Project") by Textbook Ross
PROVINCE OF ONTARIO	)	Park Inc. (the "Vendor") situated in the City of London
	)	on those lands and premises owned by the Vendor, set
	)	out in PINs 08079-0004 (LT), 08079-0016 (LT), 08079-
	)	0017 (LT), 08079-0018 (LT), 08079-0019 (LT) and
	)	08079-0020 (LT) and located at 1234, 1236, 1238,
	)	1240, 1244 and 1246 Richmond Street, London, Ontario
TO WIT:	)	(the "Property")

I, Rob Smith, of the City of ~~XXXX~~, DO SOLEMNLY DECLARE THAT:

1. I am a Senior Vice-President of MNP Ltd., which has been appointed as the receiver of the Property pursuant to the *Bankruptcy and Insolvency Act* and the *Courts of Justice Act* (in such capacity, the "Receiver").
2. All deposits paid under agreements of purchase and sale in respect of Project condominium units numbered ~~XXXX~~, ~~XXXX~~ and ~~XXXX~~ have been refunded to the respective purchasers of such units by the Receiver.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME in)
City of Toronto, in the Province of)
Ontario, this ~~XX~~ day of)
~~XX~~, 2018.)

A COMMISSIONER, ETC.)

Name: Rob Smith
Title: Senior Vice-President

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

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

Applicant

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ANCILLARY AND DISCHARGE ORDER

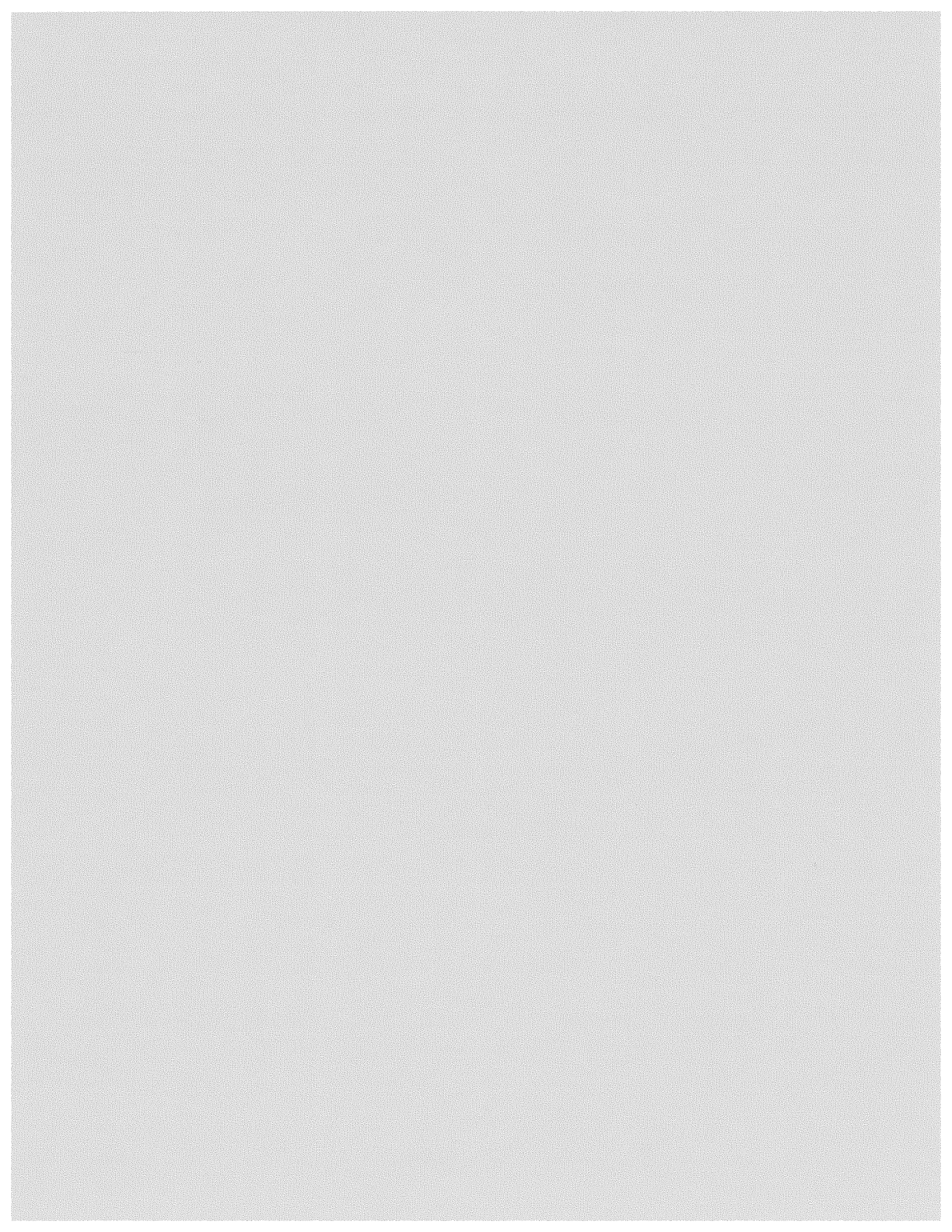
AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)
Tel: (416) 865-7726
Fax: (416) 863-1515
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Email: iaversa@airdberlis.com

Jeremy Nemers (LSUC # 66410Q)
Tel: (416) 865-7724
Fax: (416) 863-1515
Email: jnemers@airdberlis.com

*Lawyers for Grant Thornton Limited, in its capacity as the court-
appointed trustee of each of the Respondents*



Applicant

Respondents

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

MAR 17 10

1 March 18

Three orders to go as per drafts filed & signed or per handwritten endorsement attached. McEwen

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

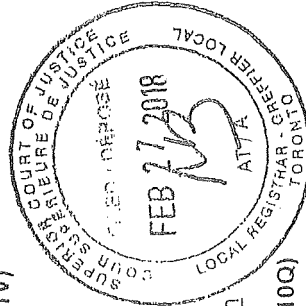
MOTION RECORD
(returnable March 1, 2018)
Volume 1 of 3

Steven L. Graff (LSUC # 31871V)
Tel: (416) 865-7726
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Jeremy Nemers (LSUC # 66410Q)
Tel: 416.865.7724
Fax: 416.863.1515
Email: jnemers@airdberlils.com

Lawyers for Grant Thornton Limited, in its capacity as the court-appointed trustee of the Tier 1 Trustee Corporations



Court File Number: CU-16-0001167-001

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Superintendent of Financial Services
Plaintiff(s)

AND

Textbook et al
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
<u>(See attached)</u>		

- Order Direction for Registrar (No formal order need be taken out)
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
 Adjourned to: _____
 Time Table approved (as follows):

These sbs affect today's sales certain orders including the sales transaction and sufficient contemplated in the materials. Mr. Sherkin's clients seek an adjournment generally questioning the reasonableness of the transaction. I am not prepared to grant the adj. It is very late in the process to grant the adj.

1 March 18
Date

McGest
Judge's Signature

Additional Pages _____

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

There is only one potential purchaser and if the transaction does not proceed the deal will be lost. There is also a perceptible SMB hearing tomorrow and a date to be set which is of significance.

There is no question in my mind that the TEE has acted reasonably in the process. I am comfortable that the TEE proposal is in the best interests of the investors based on the material filed.

Mr. Shekin does not otherwise oppose the motion sought. The remaining parties have agreed on the wording of the Receivables order, Approval & vesting order and Ancillary and Discharge order.

The Schedules shall be as per

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The drafts filed & served with respect to the Amended & Discharge order, Schedule C with respect to the deposit return protocol shall be amended, by inserting the attached language which provides for a concurrent hearing. Amended as Schedule A & initialled if necessary.

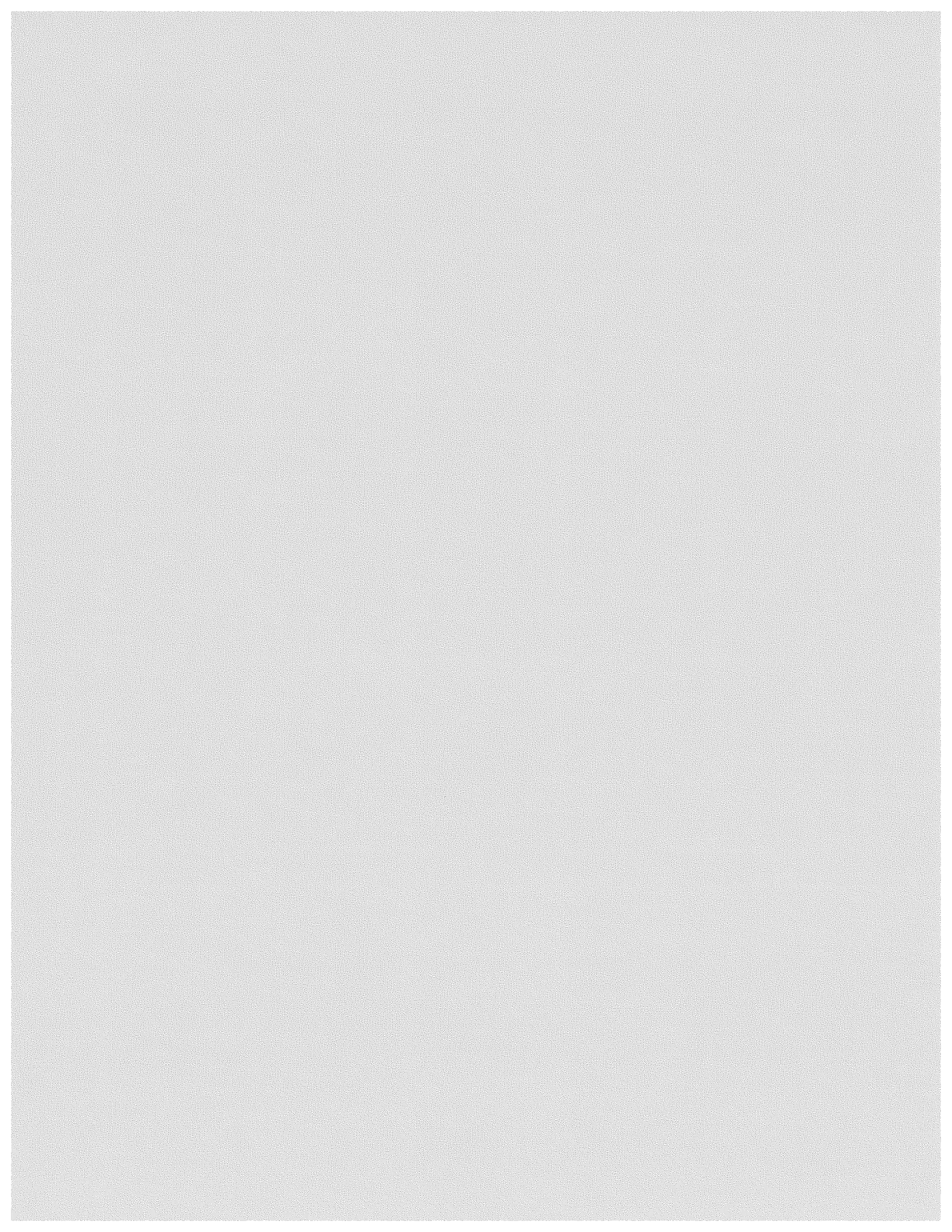


M Schedule A

A comeback hearing has been scheduled for Tuesday, March 13, 2018.

This hearing will proceed only in the event that you notify the Receiver, in writing by no later than Thursday, March 8, 2018 of your intention to attend, in which case you must also file court materials setting out your concerns by Friday, March 9, 2018, which court materials shall be provided to the Receiver and the Trustee by such date (Friday, March 9, 2018)

M



9:30 A.M.
COUNSEL SLIP

H

COURT FILE NO CV-16-11567-00CL

DATE MAR 13, 2018

NO ON LIST 1

THE SUPERINTENDENT OF FINANCIAL SERVICES

TITLE OF PROCEEDING v TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORP.
etal.

COUNSEL FOR:

PHONE & FAX NOS

PLAINTIFF(S)

Jeremy Nimmers,
for the Court-appointed Trustee

T 416-863-1500

APPLICANT(S)

F 416-863-1515

PETITIONER(S)

COUNSEL FOR:

PHONE & FAX NOS

DEFENDANT(S)

RESPONDENT(S)

March 13, 2018

No one has appeared today
as of 10:20 AM for the
comeback hearing scheduled
by McEwen J on March 13, 2018.

Hainley J.

TAB J

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

BETWEEN:

**GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED
TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE
CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE
CORPORATION AND 7743718 CANADA INC.**

Applicant

- and -

**TEXTBOOK (774 BRONSON AVENUE) INC., TEXTBOOK ROSS PARK INC.
and MCMURRAY STREET INVESTMENTS INC.**

Respondents

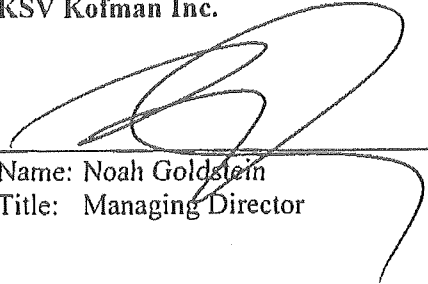
**IN THE MATTER OF A MOTION PURSUANT TO SECTION 243 OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c B-3, AS AMENDED AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c C 43, AS AMENDED**

CONSENT

The undersigned, KSV Kofman Inc. ("KSV"), hereby consents to the appointment of KSV as receiver, without security, of all the assets, undertakings and properties that are not listed on **Schedule "A"** hereto of Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc., pursuant to the provisions of 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, and the terms of an order substantially in the form filed in the above proceeding (the "**Proposed Order**").

DATED at Toronto, this 2nd day of May, 2018.

KSV Kofman Inc.



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

Name: Noah Goldstein
Title: Managing Director

SCHEDULE "A"

EXCLUSIONS FROM THE PROPOSED ORDER

- (a) All the assets, undertakings and properties over which MNP Ltd. was appointed as receiver pursuant to the MNP Ross Park Appointment Order (as defined in the Proposed Order);
- (b) the Deposits (as defined in the MNP Ross Park Appointment Order);
- (c) the Deposits (as defined in the McMurray Holdback Order (as defined in the Proposed Order));
- (d) the Proceeds (as defined in the McMurray Holdback Order);
- (e) the McMurray Transaction Deposit (as defined in the Trustee's Sixth Report (as defined in the Proposed Order));
- (f) any and all real property, if any, including, without limitation, any and all fixtures, if any;
- (g) any and all goods (as defined in the *Personal Property Security Act* (Ontario) (the "PPSA"), if any; and
- (h) any and all documents of title (as defined in the PPSA), if any.

GRANT THORNTON LIMITED IN ITS CAPACITY AS THE
COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT
SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION,
TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE
CORPORATION AND 7743718 CANADA INC.

- and -
TEXTBOOK (774 BRONSON AVENUE) INC.,
TEXTBOOK ROSS PARK INC. and MCMURRAY
STREET INVESTMENTS INC.

Applicant

Respondents

Court File No. CV-18-_____ -00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

CONSENT

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Lawyers for the Proposed Receiver

THE SUPERINTENDENT OF FINANCIAL SERVICES

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

Applicant

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceedings commenced at Toronto

MOTION RECORD
(returnable May 30, 2018)

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appointed trustee of the Tier 1 Trustee Corporations