



**Ninth Report of
KSV Kofman Inc.
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.**

November 16, 2017

Contents		Page
1.0	Introduction	1
1.1	Purposes of this Report.....	2
1.2	Currency.....	3
2.0	Background.....	3
2.1	555 Princess and 525 Princess.....	3
2.1.1	Trustee Corporations.....	4
2.1.2	MarshallZehr Group Inc.....	4
2.2	Investors Committee and Representative Counsel	5
3.0	Strategic Process	5
3.1	Overview	5
3.2	Strategic Process Results	6
3.3	Joint Venture Consideration	7
4.0	Transaction	7
4.1	Confidentiality.....	9
4.2	Recommendation	9
5.0	Distributions	10
5.1	Secured Creditors	10
5.1.1	Liens.....	10
5.1.2	Proposed Distributions	11
6.0	Conclusion and Recommendation	11

Appendices

Appendix	Tab
June 30 Order	A
555 Princess - Agreement of Purchase and Sale (redacted).....	B
525 Princess - Agreement of Purchase and Sale (redacted).....	C

Confidential Appendix

Offer Summary.....	1
555 Princess - Agreement of Purchase and Sale (unredacted).....	2
525 Princess - Agreement of Purchase and Sale (unredacted).....	3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

NINTH REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER

NOVEMBER 16, 2017

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager of the real property registered on title as being owned by Scollard Development Corporation ("Scollard"), Memory Care Investments (Kitchener) Ltd. ("Kitchener"), Memory Care Investments (Oakville) Ltd. ("Oakville"), 1703858 Ontario Inc. ("Burlington"), Legacy Lane Investments Ltd. ("Legacy Lane"), Textbook (555 Princess Street) Inc. ("555 Princess") and Textbook (525 Princess Street) Inc. ("525 Princess" and together with 555 Princess, the "Princess Developers") (collectively each of the foregoing are defined as the "Companies"), and of all of their assets, undertakings and properties acquired for or used in relation to their real property.
2. Pursuant to an order of the Ontario Superior Court of Justice ("Court") dated October 27, 2016, Grant Thornton Limited was appointed Trustee ("Trustee") of eleven entities¹ which raised monies from investors ("Investors") through syndicated mortgage investments (collectively, the "Trustee Corporations")². Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements between the Trustee Corporation and the Companies and four other related entities (collectively, the "Davies Developers").

¹ 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

² Individuals who hold their mortgage investment in a Registered Retirement Savings Plan have a mortgage with Olympia Trust instead of the applicable Trustee Corporation.

3. On January 21, 2017, the Trustee brought a motion for an order (“Receivership Order”) appointing KSV as receiver and manager (“Receiver”) of the real property owned by Scollard, as well as the assets, undertakings and properties of Scollard acquired for or used in relation to the real property. On February 2, 2017, the Court made the Receivership Order.
4. On April 18, 2017, the Trustee brought a motion, *inter alia*, seeking an order amending and restating the Receivership Order to include the real property registered on title as being owned by Kitchener, Oakville, Burlington, Legacy Lane, 555 Princess and 525 Princess, as well as all the assets, undertakings and properties of these entities acquired for or used in relation to their real property (the “Amended and Restated Receivership Order”). On April 28, 2017, the Court made the Amended and Restated Receivership Order. The Amended and Restated Receivership Order was further amended by Court order on May 2, 2017 to address clerical errors.
5. On June 30, 2017, the Court made an order (the “June 30th Order”) approving, *inter alia*, a process to solicit offers for the development and/or sale of certain of the Companies’ properties, including the real properties municipally known as 555 Princess Street, Kingston (the “555 Property”) and 525, 527 and 531 Princess Street and 349 and 351 Alfred Street, Kingston (the “525 Property”) (the 525 Property and the 555 Property are referred to herein as the “Properties”).
6. The Receiver is also investigating transactions involving the Davies Developers, including the use by the Davies Developers of the monies advanced to them by Investors through the Trustee Corporations. This investigation has been detailed in prior reports of the Receiver filed in these proceedings and can be found on the Receiver’s website at www.ksvadvisory.com.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information with respect to these proceedings;
 - b) summarize the results of the Strategic Process carried out by the Receiver for the Properties;
 - c) summarize the transactions for the sale of each of the Properties (jointly, the “Transactions”); and
 - d) recommend that the Court issue an order, *inter alia*:
 - i. approving the Transactions;
 - ii. vesting title in and to the purchased assets in the purchasers, or as they may direct, free and clear of all liens, claims and encumbrances, other than permitted encumbrances;
 - iii. following the completion of the Transactions, authorizing and directing the Receiver to make distributions to MarshallZehr Group Inc. (“MZG”) to repay advances it made to the Receiver under Receiver’s Certificates to fund the Princess Developers’ respective receivership proceeding;

- iv. following the completion of the Transactions, authorizing and directing the Receiver to make a distribution or distributions on behalf of each Princess Developer up to the amounts owing by the applicable Princess Developer to the relevant Trustee Corporation;
- v. following the completion of the Transactions, authorizing and directing the Receiver to make a distribution to JL Richards & Associates Limited (“JL Richards”), a lien claimant, provided the conditions in section 5.1.1(2) of this Report are met; and
- vi. sealing the confidential appendices to this Report pending completion of the Transactions.

1.2 Currency

1. All currency references in this Report are in Canadian dollars.

2.0 Background

1. The Davies Developers are developers of student residences, accommodations for people suffering from various forms of cognitive impairment, and low-rise condominiums. All but one of the Davies Developers’ projects are in the pre-construction³ phase (collectively the “Projects”).
2. The amounts borrowed by the Davies Developers total approximately \$119.940 million⁴, comprised of approximately \$93.675 million in secured debt owing to the Trustee Corporations (being monies raised by the Trustee Corporations from Investors) and \$23.675 million owing to other mortgage lenders (the “Other Lenders”). The Receiver understands that the obligations owing to Other Lenders rank in priority to the Trustee Corporations.
3. The funds advanced by the Trustee Corporations to the Davies Developers were to be used to purchase real property and to pay soft costs associated with the development of the Projects.

2.1 555 Princess and 525 Princess

1. The Princess Developers intended to develop student housing on the Properties.
2. 555 Princess purchased the 555 Property for \$2 million in October, 2015.
3. The 525 Property is comprised of five adjacent municipal addresses. These properties were acquired for a total of \$2.4 million in December, 2015. The 525 Property is located across the street from the 555 Property.
4. John Davies and Walter Thompson are the directors and officers of the Princess Developers.

³ Footings and foundations have been laid down at the Project owned by Burlington.

⁴ Represents the principal amounts owed, excluding interest and fees.

2.1.1 Trustee Corporations

1. Each of the Trustee Corporations raised monies from Investors through syndicated mortgage investments. The Trustee Corporations then entered into loan agreements with one of the Davies Developers, secured by a mortgage over its real property.
2. As it relates to the Princess Developers:
 - a) 555 Princess borrowed approximately \$7.9 million from Textbook Student Suites (555 Princess Street) Trustee Corporation (the “555 Princess Trustee”); and
 - b) 525 Princess borrowed approximately \$6.4 million from Textbook Student Suites (525 Princess Street) Trustee Corporation (the “525 Princess Trustee”).
3. The monies raised from the 555 Princess Trustee and the 525 Princess Trustee were substantially exhausted by the date the receivership proceedings commenced.
4. Notwithstanding that more than \$14 million was advanced by the Trustee Corporations to the Princess Developers, none of the development activities performed by the Davies Developers added value to the Properties. There have been no improvements to the Properties. Based on the results of the Strategic Process (discussed below), none of the costs incurred on the Properties increased their value.
5. The Princess Developers raised monies from Investors based on Projects that the Receiver believes were unlikely to be approved by the City of Kingston. For example, 525 Princess and 555 Princess intended to build 12 and 11 storey buildings, respectively, when the maximum zoning permitted by the City of Kingston is expected to be four and ten storeys, respectively. Additionally, there is an easement which runs through the center of the 525 Property, which complicates its development.

2.1.2 MarshallZehr Group Inc.

1. Pursuant to the June 30th Order, the Receiver borrowed \$400,000 from MZG in respect of each of the Properties (\$800,000 total). The loan facilities each have a term of nine months. A copy of the June 30th Order is attached as Appendix “A”.
2. MZG was granted separate first ranking Court-ordered charges against the assets of the applicable Princess Developer, subject only to the Receiver’s Charge and certain priority amounts set out in the *Bankruptcy and Insolvency Act (Canada)*. MZG also registered mortgages against the Properties. The loans are not cross collateralized.
3. The Receiver has used the monies advanced from MZG to fund the fees and costs of each receivership, including investigative matters and the Strategic Process. Pursuant to the terms of the loans, MZG deducted a nine-month interest reserve totalling approximately \$76,000 in respect of both Princess Developers. Approximately \$129,000 and \$147,000 remains in the receivership bank accounts of 525 Princess and 555 Princess, respectively. If the MZG loans are repaid prior to maturity, MZG will refund to the Receiver a pro-rated portion of the interest reserves.

2.2 Investors Committee and Representative Counsel

1. The Investors have formed a committee to represent their interests in each Project subject to the Receivership Order and the Amended and Restated Receivership Order. Each member of the committee represents a different Project. The representatives for each of 555 Princess and 525 Princess have been kept apprised of the Strategic Process at a high level during these proceedings. The representatives have been advised of the value of the Transactions.
2. On January 24, 2017, the Court made an order appointing Chaitons LLP as representative counsel to the Investors (“Representative Counsel”). Representative Counsel has been kept apprised of the Strategic Process for the Properties and the Transactions.

3.0 Strategic Process

3.1 Overview

1. The June 30th Order approved the retention of SVN Rock Advisors Inc. (“SVN”) as the listing agent for each of the Properties. SVN has a focus on student housing and multi-unit residential housing, such as apartments.
2. A summary of the Strategic Process conducted is as follows:

Pre-marketing Phase

- a) Immediately following the entry of the Strategic Process Order, the Receiver and SVN assembled information to be made available to interested parties in a virtual data room (“VDR”); and
- b) SVN and the Receiver worked together to prepare the following:
 - i. an investment summary detailing the acquisition opportunities for the Properties (the “Investment Summary”). The Investment Summary advised that interested parties could bid on the Properties together or separately;
 - ii. a confidentiality agreement (“CA”);
 - iii. a VDR for each property which contained, *inter alia*, various reports concerning the Properties, including environmental site assessments and development plans;
 - iv. a confidential information memorandum (“CIM”) for each property; and
 - v. a form of Agreement of Purchase and Sale (“APS”) for each property - the Receiver recommended that interested parties submit their offers using this form of agreement. A copy of the APS was made available in each VDR.

Marketing

- a) On July 18, 2017 and September 6, 2017, SVN sent an e-mail regarding the Properties to its database of approximately 13,000 parties, including industry contacts and the brokerage community;
- b) On August 2, 2017, the Investment Summary was sent by SVN to approximately 850 parties, including student housing developers across Ontario, developers in Ontario, and parties that had contacted the Receiver following the July 18 2017 email or prior to the commencement of the Strategic Process;
- c) The CA was attached to the Investment Summary. Interested parties were required to sign the CA to obtain a copy of the CIM and access to the VDR;
- d) On August 1 and 3, 2017, advertisements were placed in the national edition of *The Globe and Mail*;
- e) On August 2, 2017, an advertisement was published on SVN's website;
- f) Listings were posted on the Toronto Real Estate Board Multiple Listing Services ("MLS"); and
- g) Interested parties were encouraged by SVN to submit purchase and/or joint venture offers.

Bid Deadline

- a) The Strategic Process Order did not establish a deadline for submitting offers. As there are a limited number of purchasers for student development projects, the Receiver and SVN believed that it would be appropriate to canvass the market and gauge feedback from interested parties prior to setting a bid date;
- b) From the commencement of the marketing process, the Receiver communicated with SVN on a near-daily basis and received weekly e-mail updates from SVN regarding the level of interest. Based on this feedback, the Receiver and SVN set a bid date of October 5, 2017 (the "Bid Deadline"), being approximately eleven weeks from the commencement of the marketing process; and
- c) All parties contacted by SVN during the marketing process were advised of the Bid Deadline. In order to facilitate a comparison of the offers received, all parties were encouraged to submit offers in the form of the APS provided in the VDRs, and to blackline any changes made to that agreement.

3.2 Strategic Process Results

1. A summary of the results of the Strategic Process is as follows:
 - a) 25 parties executed CAs. The parties that executed CAs were provided with copies of the CIMs and given access to the VDRs; and
 - b) Three offers were received for the Properties, as summarized in Confidential Appendix "1" ("Offer Summary"). The Receiver's rationale for requesting that the Offer Summary be sealed is provided in Section 4.2 below.

2. No joint venture proposals were received for either of the Properties.
3. The Receiver reviewed the offers received and determined after consultation with the Trustee and Representative Counsel, that none of the offers were acceptable. Accordingly, the Receiver instructed SVN to continue to market the Properties.
4. On October 23, 2017, the Receiver received offers for each of the Properties from 9840478 Canada Inc. (the “Purchaser”).⁵ The offers were conditional on the Purchaser acquiring both Properties.
5. After consulting with the Trustee and Representative Counsel, the Receiver countered the offers from the Purchaser on October 31, 2017. The counter offers were accepted by the Purchaser on November 1, 2017.

3.3 Joint Venture Consideration

1. Because the results of the Strategic Process for the Princess Developers were disappointing, the Receiver revisited alternatives to create value. In this regard, the Receiver engaged Cushman & Wakefield (“Cushman”) to prepare a joint venture analysis for several of the Companies’ Projects, including the Princess Developers’, based on the current highest and best use of the applicable properties. In respect of the Princess Developers’ Properties, Cushman’s analysis reflects minimal upside. Moreover, since a joint venture would require the Receiver to retain an interest in the Projects, the upside would be subject to risk based on the financial performance of the Projects.

4.0 Transaction⁶

1. The terms of each of the Transactions are identical and are summarized below.
 - a) **Purchaser:** 9840478 Canada Inc.
 - b) **Purchased Assets:** all of the Receiver’s and the Debtor’s right, title and interest in the following:
 - i. the Real Property;
 - ii. prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
 - iii. the Plans;
 - iv. Permits issued in respect of the Real Property, to the extent transferable; and
 - v. all intellectual property, if any, owned by the Debtor with respect to the developments to be completed on the Lands.

⁵ A summary of these offers is also contained in the Offer Summary.

⁶ Terms not defined in this section have the meaning provided to them in the applicable APS between the Receiver and the Purchaser.

- c) **Purchase Price:** the Receiver recommends that the Purchase Price be sealed. The Purchase Price is to be adjusted on closing for property taxes and other adjustments standard for a real estate transaction.
- d) **Deposit:** The Purchaser has paid a deposit representing approximately 10% of the Purchase Price and is required to pay a further deposit representing approximately 5% of the Purchase Price within 30 days of the acceptance date.
- e) **Excluded Assets:** The Receiver's and the Debtor's right, title and interest in and to any asset of the Receiver and the Debtor other than the Purchased Assets, and includes:
 - i. books and records that do not exclusively or primarily relate to the Purchased Assets;
 - ii. certain tax refunds; and
 - iii. Contracts relating to the Business.
- f) **Representations and Warranties:** consistent with standard terms of an insolvency transaction, i.e. on an "as is, where is" basis, with limited representations and warranties.
- g) **Closing Date:** the first Business Day which is 90 days after receipt of the Approval and Vesting Order.
- h) **Material Conditions:** as follows:
 - i. there shall be no order issued by a Governmental Authority against either of the Parties or involving the Purchased Assets that enjoins, prevents or restrains completion of the Transaction;
 - ii. there shall be no new work orders or similar notices or orders, and no new Encumbrances registered on title to the Real Property or affecting title to the Real Property arising or registered after the date of the APS, which cannot be vested out pursuant to the Approval and Vesting Order;
 - iii. there shall be no new environmental issue that causes a material adverse effect on the Real Property and there shall not be any other material adverse change to the condition or operation of the Real Property; and
 - iv. the Court shall issue an Approval and Vesting Order in respect of both the Transactions, otherwise neither of the Transactions will be completed.
- i) **Termination:** each APS can be terminated:
 - i. upon mutual written agreement of the Receiver and the Purchaser;
 - ii. if any of the conditions in favour of the Purchaser or Receiver are not waived or satisfied; and
 - iii. if prior to closing: (a) the Purchased Assets are substantially damaged or destroyed. Substantial damage is deemed to have occurred if the loss or damage to the Purchased Assets exceeds 15% of the Purchase Price; or b) a Government Authority expropriates all or a material part of the Real Property.

2. Redacted versions of the 525 Princess APS and the 555 Princess APS are attached as Appendices “B” and “C”, respectively. Unredacted versions of the 525 Princess APS and the 555 Princess APS are provided in Confidential Appendices “2” and “3”, respectively.

4.1 Confidentiality

1. The Receiver respectfully requests that the Offer Summary and the unredacted versions of the APSs be filed with the Court on a confidential basis and be sealed as the documents contain confidential information (“Sealing Order”). If the terms of the APSs and the Offer Summary are not sealed, the information may negatively impact realizations on the Purchased Assets should the Transactions not close. The Receiver is not aware of any party that will be prejudiced if the information is sealed. Accordingly, the Receiver believes the proposed Sealing Order is appropriate in the circumstances.

4.2 Recommendation

1. The Receiver recommends that the Court issue an order approving the Transactions and vesting title in the Properties to the Purchaser or as it may direct for the following reasons:
 - a) the Strategic Process was conducted in accordance with the June 30th Order;
 - b) the market was widely canvassed using several marketing techniques, including direct solicitation of prospective purchasers by SVN, a newspaper advertisement in a national publication, and listing the Properties on MLS. SVN also introduced this opportunity to thousands of its contacts;
 - c) the Transactions represent the best and highest offers received;
 - d) SVN is familiar with the Ontario real estate and student housing markets and is of the view that the Transactions represent the best opportunity in these circumstances;
 - e) the Receiver engaged Cushman to prepare the joint venture analysis discussed in Section 3.3 above – it reflected that there is minimal upside and significant risk to completing such a transaction or transactions for the Properties. Additionally, SVN canvassed the market for joint venture opportunities. All offers received in the process were for an outright purchase of the Properties (i.e. no joint venture bids were submitted);
 - f) absent the Transactions, a protracted marketing period will be necessary. The ongoing professional fees and other costs will erode the proceeds available for distribution with no certainty that superior transactions could be completed;
 - g) the Trustee and Representative Counsel have consented to the Transactions; and
 - h) MZG has consented to the Transactions. The loans from MZG mature in approximately five months and a transaction must be completed before then or MZG has the right to exercise all rights and remedies available to it under its security, including the appointment of a receiver.

5.0 Distributions

5.1 Secured Creditors

1. The primary secured creditors of the Princess Developers are MZG and the Trustee Corporations.
2. The obligations owing to the Trustee Corporation are subordinate to the MZG facilities.
3. Bennett Jones LLP (“Bennett Jones”), the Receiver’s legal counsel, provided opinions on the validity and enforceability of the security of 525 Princess Trustee and 555 Princess Trustee. Bennett Jones is of the opinion, subject to standard qualifications and assumptions contained therein, that the 555 Princess Trustee’s mortgage and the 525 Princess Trustee’s mortgage with respect to the 525 Property and 555 Property, respectively, constitute valid and enforceable charges. Copies of the security opinions will be made available to the Court should it wish to review them.
4. The Trustee Corporations did not register security under the *Personal Property Security Act (Ontario)*. However, given the Receiver’s view that all or substantially all of the value of the Purchased Assets is in the real properties (over which the Trustee Corporations have valid and enforceable charges), the Receiver and Bennett Jones believe that the charge over Properties is sufficient for the relief sought in this motion.

5.1.1 Liens

1. According to the Land Titles Office (Toronto), a lien of \$66,747 has been registered by JL Richards, an engineering consultant, on title against each of the 525 Property⁷ and the 555 Property, pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended.
2. The Receiver’s counsel has reviewed the liens. Notwithstanding that JL Richards registered a lien in the amount of \$66,747 against each of the Properties, the Statement of Claim makes it clear, and counsel to JL Richards has confirmed, that JL Richards is actually asserting a lien in the amount of \$33,373.50 against each of the Properties. Bennett Jones is of the view that JL Richards has a priority claim in the amount of \$3,337 against each of the Properties (the “Priority Lien Amount”) and has notified JL Richard's counsel of that view. The Receiver proposes not to make any distribution to JL Richards until its counsel confirms its agreement with this determination or until further order of the Court. Until that time, the Receiver intends to hold back for the full amount of the lien.

⁷ Separate liens in the amount of \$66,747 have been registered on title of the five municipal properties owned by 525 Property.

5.1.2 Proposed Distributions

1. With the consent of the Trustee, the Receiver intends to maintain a reserve from the proceeds of sale of each of the Companies' properties, including from the Properties, to fund the ongoing costs of the Receiver's investigation into the Companies' pre-receivership affairs, and any litigation that results therefrom (the "Reserve"). The investigation is addressed in prior reports of the Receiver filed in these proceedings, copies of which are available on the Receiver's website. The Receiver has been, and will continue to, allocate its costs of the investigation and the related litigation on an entity-by-entity basis, including the fees and costs of Bennett Jones. As of the date of this Report, the amount of the Reserve has not been determined - it is subject to discussions with the Trustee.
2. The Receiver is seeking Court approval to make the following distributions in respect of each of the Princess Developers following the closing of the Transactions:
 - a) first, to repay the applicable MZG facility in full;
 - b) second, to pay JL Richards the applicable Priority Lien Amount upon its confirmation that it agrees with the Receiver's view on this matter. Alternatively, the Receiver intends to hold back for the full amount of the lien until an agreement is reached with JL Richards or the Court has determined this issue; and
 - c) third, to repay amounts owing to the applicable Trustee Corporation up until such obligations are repaid in full.
3. Other than the Receiver's Charge, the Receiver is not aware of any claim against either of the Princess Developers that ranks or may rank in priority to the MZG facilities, the Priority Lien Amount or the debts owing to the 525 Princess Trustee and the 555 Princess Trustee.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this 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.,
SOLELY 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.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

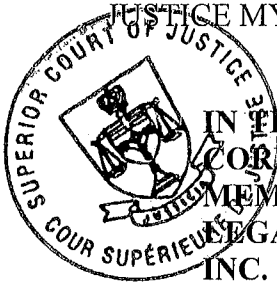
THE HONOURABLE MR.

)
)
)

FRIDAY, THE 30th

JUSTICE MYERS

DAY OF JUNE, 2017



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

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

ORDER

THIS MOTION, made by KSV Kofman Inc. (the “**Receiver**”), in its capacity as receiver and manager of certain property of Scollard Development Corporation (“**Scollard**”), Memory Care Investments (Kitchener) Ltd. (“**Kitchener**”), Memory Care Investments (Oakville) Ltd. (“**Oakville**”), 1703858 Ontario Inc. (“**Burlington**”), Legacy Lane Investments Ltd. (“**Legacy Lane**”), Textbook (525 Princess Street) Inc. (“**525 Princess**”) and Textbook (555 Princess Street) Inc. (“**555 Princess**” and, together with Scollard, Kitchener, Oakville, Burlington, Legacy Lane and 525 Princess, the “**Receivership Companies**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the Receiver’s Fifth Report dated June 26, 2017 (the “**Fifth Report**”), together with the appendices thereto,

AND UPON HEARING the submissions of counsel for the Receiver and those other counsel present,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time and manner of service of the Notice of Motion and Motion Record, including the Fifth Report, are hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

ENGAGEMENT OF LISTING AGENTS

2. **THIS COURT ORDERS** that the Receiver and Royal Lepage Lakes of Muskoka Realty Inc. ("**Royal Lepage**") are authorized to execute and to carry out and perform their respective obligations under the Listing Agreement dated June 23, 2017 between the Receiver and Royal Lepage, attached as Appendix "C" to the Fifth Report (the "**Royal Lepage Listing Agreement**").
3. **THIS COURT ORDERS** that the Receiver and Colliers Macaully Nicolls Inc. ("**Colliers**") are authorized to execute and to carry out and perform their respective obligations under the Listing Agreements dated June 26, 2017 between the Receiver and Colliers, attached as Appendices "D", "E" and "F" to the Fifth Report (the "**Colliers Listing Agreements**").
4. **THIS COURT ORDERS** that the Receiver and SVN Rock Advisors Inc. ("**SVN**") are authorized to execute and to carry out and perform their respective obligations under the Listing Agreements dated June 23, 2017 between the Receiver and SVN, attached as Appendices "G" and "H" to the Fifth Report (the "**SVN Listing Agreements**", and together with the Royal Page Listing Agreement and the Colliers Listing Agreements, the "**Listing Agreements**").

APPROVAL OF STRATEGIC PROCESS

5. **THIS COURT ORDERS AND DECLARES** that the strategic process (the "**Strategic Process**"), as described in Section 3 of the Fifth Report, be and is hereby approved.
6. **THIS COURT ORDERS** that the Receiver, Royal Lepage, Colliers and SVN be and are hereby authorized and directed to perform their obligations under and in accordance with

the Strategic Process, including under the terms of the Listing Agreements, and to take such further steps as they consider necessary or desirable in carrying out the Strategic Process.

7. **THIS COURT ORDERS** that the Receiver, and its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Strategic Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Receiver in performing its obligations under the Strategic Process (as determined by this Court).
8. **THIS COURT ORDERS** that in connection with the Strategic Process and pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Receiver, Royal LePage, Colliers and SVN are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or offerors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more transactions (each, a "**Transaction**"). Each prospective purchaser or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Receiver or the applicable listing agent; (ii) destroy all such information; or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. Notwithstanding the foregoing, the transacting party with respect to any property of the Receivership Companies shall be entitled to continue to use the personal information provided to it, and related to such property purchased, in a manner which is in all material respects identical to the prior use of such information by the Receivership Company.

FUNDING

9. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$300,000 (or such greater amount as this Court may by further

Order authorize) by way of the Legacy Lane Commitment Letter attached to the Fifth Report (the "**Legacy Lane Borrowings**"), which Legacy Lane Borrowings shall benefit from a fixed and specific charge on the property of Legacy Lane 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 (as defined in the Second Amended and Restated Order dated February 2, 2017), and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), and the Legacy Lane Commitment Letter and the terms and conditions thereof, be and are hereby approved by this Court.

10. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$400,000 (or such greater amount as this Court may by further Order authorize) by way of the 525 Princess Commitment Letter attached to the Fifth Report (the "**525 Princess Borrowings**"), which 525 Princess Borrowings shall benefit from a fixed and specific charge on the property of 525 Princess 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 (as defined in the Second Amended and Restated Order dated February 2, 2017), and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and the 525 Princess Commitment Letter and the terms and conditions thereof, be and are hereby approved by this Court.
11. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby empowered to borrow the sum of up to \$400,000 (or such greater amount as this Court may by further Order authorize) by way of the 555 Princess Commitment Letter attached to the Fifth Report) (the "**555 Princess Borrowings**"), which 555 Princess Borrowings shall benefit from a fixed and specific charge on the property of 555 Princess 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 (as defined in

the Second Amended and Restated Order dated February 2, 2017), and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and the 555 Princess Commitment Letter and the terms and conditions thereof, be and are hereby approved by this Court.

12. **THIS COURT ORDERS** that no security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
13. **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, including, without limitation, for the Legacy Lane Borrowings, the 525 Princess Borrowings, and the 555 Princess Borrowings.
14. **THIS COURT ORDERS** that any additional monies from time to time borrowed by the Receiver pursuant to any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis but immediately subordinate to the borrowings made pursuant to this Order, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SEALING ORDER

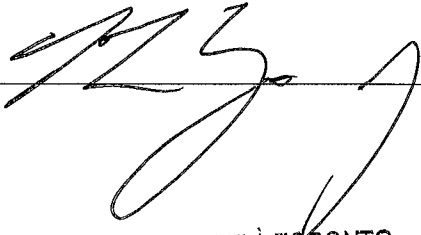
15. **THIS COURT ORDERS** that the confidential appendix to the Fifth Report be sealed, kept confidential and not form part of the public record pending further Order of this Court.

GENERAL

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or elsewhere 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, to

grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

17. **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.

A handwritten signature in black ink, appearing to be "M. J.", is written over a horizontal line.

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

JUN 30 2017

PER / PAR: 

SCHEDULE "A"
RECEIVER'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that KSV Kofman Inc., the receiver and manager (in such capacity, the "**Receiver**") of, among other property, certain real property registered on title as being owned by [applicable Debtor] (the "**Debtor**") and that is listed on Schedule "A" hereto (collectively, the "**Real Property**") and of all the assets, undertakings and properties of the Debtor acquired for or used in relation to the Real Property (together with the Real Property, the "**Property**"), appointed by the Second Amended and Restated Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 2, 2017 (the "**Order**") made in a motion assigned to Court file number CV-17-11689-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable [on demand by the Lender][by no later than the ____ day of _____] with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time plus reasonable and documented fees.

3. Such principal sum with interest and fees thereon is, by the terms of the Order, together with the principal sums and interest and fees thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property except for the Deposits (as defined in the Order), if applicable, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal, interest and fees under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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

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

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

DATED the _____ day of _____, 2017.

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

Per: _____

Name:

Title:

SCHEDULE "A" TO THE RECEIVER'S CERTIFICATE
LEGAL DESCRIPTION OF THE REAL PROPERTY

The real property legally described by the following PINs:

[•].

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean H. Zweig (LSUC #573071)

Tel: (416) 777-6254

Fax: (416) 863-1716

Lawyers for the Receiver,
KSV Kofman Inc.

Appendix “B”

AGREEMENT OF PURCHASE AND SALE

BETWEEN

KSV KOFMAN INC.

in its capacity as court-appointed receiver
of all the real property registered on title as being owned by Textbook (555 Princess Street) Inc.
and of all the assets, undertakings and properties of Textbook (555 Princess Street) Inc. acquired
for or used in relation to such real property,
and not in its personal capacity or in any other capacity

- and - 9840478 

[•] 9840508 *lands dre.*



Dated: [•], 2017

Oct 23, 2017



Table of Contents

	Page
ARTICLE 1 DEFINED TERMS	2
1.1 Definitions.....	2
ARTICLE 2 SCHEDULES.....	5
2.1 Schedules	5
ARTICLE 3 AGREEMENT TO PURCHASE.....	6
3.1 Purchase and Sale of Purchased Assets	6
3.2 Excluded Assets	7
3.3 Excluded Liabilities	7
ARTICLE 4 PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE.....	8
4.1 Purchase Price	8
4.2 Deposit	8
4.3 Satisfaction of Purchase Price.....	8
4.4 Allocation of Purchase Price.....	8
4.5 Adjustment of Purchase Price.....	8
ARTICLE 5 TAXES.....	9
5.1 Taxes.....	9
ARTICLE 6 ACCESS AND CONFIDENTIALITY.....	9
6.1 Confidentiality	9
6.2 Authorizations.....	9
ARTICLE 7 CLOSING ARRANGEMENTS	10
7.1 Closing	10
7.2 Tender	10
7.3 Receiver's Closing Deliverables	10
7.4 Purchaser's Closing Deliverables.....	11
7.5 Receiver's Certificate	12
ARTICLE 8 CONDITIONS PRECEDENT TO CLOSING	12
8.1 Conditions in Favour of the Receiver.....	12
8.2 Conditions in Favour of Receiver Not Fulfilled	12
8.3 Conditions in Favour of the Purchaser.....	12
8.4 Conditions in Favour of Purchaser Not Fulfilled.....	13
ARTICLE 9 REPRESENTATIONS & WARRANTIES OF THE RECEIVER.....	13
ARTICLE 10 REPRESENTATIONS & WARRANTIES OF THE PURCHASER.....	14
ARTICLE 11 COVENANTS	15
11.1 Mutual Covenants.....	15

Table of Contents
(continued)

	Page
11.2 Receiver Covenants	15
ARTICLE 12 POSSESSION AND ACCESS PRIOR TO CLOSING	15
12.1 Possession of Purchased Assets	15
12.2 Risk	15
ARTICLE 13 AS IS, WHERE IS	16
13.1 Condition of the Purchased Assets	16
ARTICLE 14 POST-CLOSING MATTERS	17
14.1 Books and Records	17
ARTICLE 15 TERMINATION	17
15.1 Termination of this Agreement	17
15.2 Remedies for Breach of Agreement	17
15.3 Termination If No Breach of Agreement	17
ARTICLE 16 GENERAL CONTRACT PROVISIONS	18
16.1 Further Assurances	18
16.2 Survival Following Completion	18
16.3 Notice	18
16.4 Waiver	19
16.5 Consent	19
16.6 Governing Law	20
16.7 Entire Agreement	20
16.8 Time of the Essence	20
16.9 Time Periods	20
16.10 Assignment	20
16.11 Expenses	21
16.12 Severability	21
16.13 No Strict Construction	21
16.14 Cumulative Remedies	21
16.15 Currency	21
16.16 Receiver's Capacity	21
16.17 Planning Act	21
16.18 No Third Party Beneficiaries	21
16.19 Number and Gender	22
16.20 Counterparts	22



AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 23 day of [●], 2017.

BETWEEN:

KSV KOFMAN INC. ("KSV"), in its capacity as court-appointed receiver of all the real property registered on title as being owned by Textbook (555 Princess Street) Inc. and of all the assets, undertakings and properties of Textbook (555 Princess Street) Inc. acquired for or used in relation to such real property, and not in its personal capacity or in any other capacity

(in such capacity, the "Receiver")

- and - 98404788

101 9840508

(the "Purchaser")

RECITALS

- A. **WHEREAS** pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") issued on May 2, 2017 (the "Receivership Order"), the Receiver was appointed as the court-appointed receiver of all of the lands and premises municipally described as 555 Princess Street, Kingston, Ontario (collectively, the "Lands") and all of the present and after-acquired assets, undertaking and properties of Textbook (555 Princess Street) Inc. (the "Debtor") acquired for or used in relation to the Lands (collectively, together with the Lands, the "Property");
- B. **AND WHEREAS** pursuant to the Receivership Order the Receiver was authorized to, among other things, market the Purchased Assets (as defined hereafter) and apply for an order of the Court approving the sale of the Purchased Assets and vesting in and to a purchaser all the Debtor's right, title and interest in and to the Purchased Assets;
- C. **AND WHEREAS** pursuant to an order of the Court issued on June 30, 2017, a strategic process was approved by the Court and implemented by the Receiver;
- D. **AND WHEREAS** the Purchaser wishes to purchase and the Receiver wishes to sell the Purchased Assets upon the terms and subject to the conditions set out herein;

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined hereafter), the Parties agree as follows:

ARTICLE 1
DEFINED TERMS

1.1 Definitions

In this Agreement:

"Acceptance Date" means the date that this Agreement is executed by and delivered to all Parties hereunder;

"Accounts Payable" means all amounts relating to the Business owing to any Person which are incurred in connection with the purchase of goods or services in the ordinary course of business;

"Agreement" means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to **"article"**, **"section"** or **"schedule"** mean the specified article, section of, or schedule to this Agreement and the expressions **"hereof"**, **"herein"**, **"hereto"**, **"hereunder"**, **"hereby"** and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

"Applicable Law" means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

"Approval and Vesting Order" means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement, and authorizing and directing the Receiver to complete the Transaction and conveying to the Purchaser all of each of the Receiver's and the Debtor's right, title and interest, if any, in and to the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as Schedule "A" hereto;

"Books and Records" means the files, documents, instruments, surveys, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise) pertaining to the Purchased Assets that have been or will be delivered by the Receiver to the Purchaser at or before Closing; provided, however, that "Books and Records" shall not include any bank or accounting records;

"Business" means the business carried on by the Debtor with respect to the Property;

"Business Day" means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

"Claims" means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing



any of the foregoing or any proceeding relating to any of the foregoing, related to the Debtor or the Real Property, and "Claim" means any one of them;

"Closing" means the successful completion of the Transaction;

"Closing Date" means the first Business Day which is ~~Two (2) Business Days~~ ^{ninety (90) days} after receipt of the Approval and Vesting Order;

"Closing Time" means 4:00 p.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

"Confidential Information" has the meaning given in Section 6.1 herein;

"Contracts" means all of the contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Debtor is a party and which relate to the Business, provided that the Unit Purchase Agreements shall not be included as Contracts;

"Court" has the meaning set out in the recitals hereof;

"Debtor" has the meaning set out in the recitals hereof;

"Deposit" has the meaning given in Section 4.2 herein;

"Encumbrances" means all liens, charges, security interests (whether contractual, statutory or otherwise), pledges, leases, offers to lease, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

"ETA" means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

"Execution Date" means the date of execution of this Agreement by all parties;

"Excluded Assets" means the Receiver's and the Debtor's right, title and interest in and to any asset of the Receiver and the Debtor other than the Purchased Assets, which Excluded Assets include the Receiver's and the Debtor's right, title and interest in and to the following:

- (a) 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 Purchased Assets;
- (b) the benefit of any refundable Taxes payable or paid by the Debtor in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Debtor to any refund, rebate, or credit of Taxes for the period prior to the Closing Date; and

(c) the Contracts;

"**Excluded Liabilities**" has the meaning given in Section 3.3 herein;

"**Governmental Authority**" means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and "**Governmental Authority**" means any one of them;

"**HST**" means harmonized sales tax imposed under Part IX of the ETA;

"**ITA**" means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

"**Lands**" has the meaning set out in the recitals hereof, the legal descriptions of which Lands are attached as Schedule "C" hereto, and includes all rights and benefits appurtenant thereto;

"**LRO**" means the Land Registry Office for the Land Titles Division of Kingston (No. 13);

"**Notice**" has the meaning given in Section 16.3 herein;

"**Parties**" means the Receiver and the Purchaser;

"**Permits**" means 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;

"**Permitted Encumbrances**" means all those Encumbrances described in Schedule "B" hereto;

"**Person**" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

"**Plans**" means all plans, designs and specification in connection with the Real Property which are in the possession or control of the Receiver (it being acknowledged that the Receiver is under no obligation to incur additional expense to obtain such plans, designs and specifications);

"**Property**" has the meaning set out in the recitals hereof;

"**Purchase Price**" has the meaning set out in Section 4.1 herein;

"**Purchased Assets**" means all of the Receiver's and the Debtor's right, title and interest in and to the following:

- (a) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
- (b) the Real Property;
- (c) the Plans;
- (d) the Permits, but only to the extent transferable to the Purchaser or the Purchaser's permitted assignees; and
- (e) all intellectual property, if any, owned by the Debtor with respect to the development to be completed on the Lands,

provided, however, that the Purchased Assets shall not include the Excluded Assets or the Excluded Liabilities;

"Purchaser" means [*];

9840478
9840508
Creditor
Ⓢ Ⓢ

"Purchaser Representatives" has the meaning given in Section 6.1 herein;

"Real Property" means the Lands, together with all buildings, improvements and structures thereon, as well as all plans, designs and specifications in connection therewith;

"Receiver" has the meaning set out in the recitals hereof;

"Receivership Order" has the meaning set out in the recitals hereof;

"Receiver's Solicitors" means Bennett Jones LLP;

"Rights" has the meaning given in Section 3.1(c) herein, but only has such meaning in such Section;

"Taxes" means all taxes, IIST, 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;

"Transaction" means the transaction of purchase and sale contemplated by this Agreement;

ARTICLE 2
SCHEDULES

2.1 Schedules

The following schedules are incorporated in and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
-----------------	--------------------

Schedule A	Approval and Vesting Order
Schedule B	Permitted Encumbrances
Schedule C	Legal Description of Lands

ARTICLE 3
AGREEMENT TO PURCHASE

3.1 Purchase and Sale of Purchased Assets

- (a) Relying on the representations and warranties herein, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, all right, title and interest of the Receiver and the Debtor in and to the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances.
- (b) Subject to the Closing, the Receiver hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all of its rights, claims and demands whatsoever in the Purchased Assets.
- (c) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies (in this Section 3.1(c), collectively, the "**Rights**") under any Permits that form part of the Purchased Assets and which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto (collectively, the "**Third Party**"). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:
 - (i) the Receiver will, at the request, direction and cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and using commercially reasonable efforts, in applying for and obtaining all consents or approvals required under the Permits in a form satisfactory to the Receiver and the Purchaser, acting reasonably;
 - (ii) the Receiver will only deal with or make use of such Rights in accordance with the directions of the Purchaser;
 - (iii) at the Purchaser's cost, the Receiver will use its commercially reasonable efforts to take such actions and do such things as may be reasonably and lawfully designed to provide the benefits of the Permits to the Purchaser, including holding those Permits in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment; and
 - (iv) in the event that the Receiver receives funds with respect to those Permits, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs directly related to the assignment in respect of such Permits.



The provisions of this Section 3.1 shall not merge but shall survive the completion of the Transaction. Notwithstanding the forgoing, nothing herein shall prohibit the Receiver, in its sole, absolute and unfettered discretion, from seeking to be discharged as receiver of the Debtor at any time after Closing. The parties hereto hereby acknowledge and agree that the covenants of the Receiver contained in this Section 3.1 shall terminate concurrently with the discharge of the Receiver as receiver of the Debtor.

3.2 Excluded Assets

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

3.3 Excluded Liabilities

The Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Debtor or the Receiver or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Debtor's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the "**Excluded Liabilities**"). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Debtor arising with respect to any period prior to the Closing Date and all Taxes payable relating to any matters or assets other than the Purchased Assets arising with respect to the period from and after the Closing Date;
- (b) any liability, obligation or commitment associated with: (i) the Accounts Payable and incurred prior to Closing; or (ii) any employees of the Debtor;
- (c) any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (d) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (e) any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

ARTICLE 4
PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price

The purchase price for the Purchased Assets shall be the aggregate of [•] (\$[•]) dollars (the "Purchase Price").

4.2 Deposit

Within two (2) Business Days after the Acceptance Date, the Purchaser shall pay to the Receiver's Solicitors, in trust, a deposit by wire or certified cheque of [•] (\$[•]) dollars (the "Deposit"). INTD: The Deposit must be at least 15% of the Purchase Price, which Deposit shall be held in accordance with the provisions of this Agreement pending completion or other termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.

4.3 Satisfaction of Purchase Price

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit shall be applied against the Purchase Price; and
- (b) the balance of the Purchase Price, subject to adjustments contained in this Agreement, shall be paid by wire or certified cheque on Closing by the Purchaser to the Receiver's Solicitors or as the Receiver's Solicitors may otherwise direct in writing.

4.4 Allocation of Purchase Price

The Parties, acting reasonably and in good faith, covenant to use best efforts to agree to allocate the Purchase Price among the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this Section 4.4 of the Agreement such that each Party shall be free to make its own reasonable allocation.

4.5 Adjustment of Purchase Price

- (a) The Purchase Price shall be adjusted as of the Closing Time for any realty taxes and local improvement rates and charges (including interest thereon), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Asscets in the context of a receivership sale. The Receiver shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval no later than five (5) Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be agreed upon by the Parties as of the

Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably, and such estimate shall serve as a final determination. Notwithstanding any other term in this Agreement, in no event shall the Purchaser be responsible for any charges, fees, Taxes, costs or other adjustments in any way relating to the period prior to the Closing Date or relating to the Excluded Liabilities or to any matters or assets other than the Purchased Assets for the period from and after the Closing Date.

- (b) Other than as provided for in this Section 4.5, there shall be no adjustments to the Purchase Price.

ARTICLE 5 **TAXES**

5.1 Taxes

The Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and other similar taxes and duties and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Receiver will not collect HST if the Purchaser provides to the Receiver a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least five (5) Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Receiver in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

ARTICLE 6 **ACCESS AND CONFIDENTIALITY**

6.1 Confidentiality

Prior to Closing, the Purchaser shall maintain in confidence and not disclose to any Person this Agreement or the terms thereof or any information or documentation obtained, prepared or summarized by the Purchaser or its representatives (collectively, the "**Confidential Information**"), except, on a need to know basis, to those individuals employed by the Purchaser, its professional consultants, including the Purchaser's legal counsel, and to those Persons who have agreed in writing in favour of the Receiver and Purchaser not to disclose any Confidential Information (collectively, the "**Purchaser Representatives**"). The Purchaser will ensure that each Purchaser Representative treats the Confidential Information as confidential and any failure of a Purchaser Representative to do so will be a breach of this Agreement by the Purchaser.

6.2 Authorizations

Upon request, the Receiver shall provide the Purchaser with authorizations executed by the Receiver and addressed to the appropriate municipal building department, zoning department and fire department and to any other Governmental Authority, authorizing the release of any and all

information on file in respect of the Purchased Assets, but such authorization shall not authorize any inspections by any Governmental Authority.

ARTICLE 7

CLOSING ARRANGEMENTS

7.1 Closing

Closing shall take place at the Closing Time at the offices of the Receiver's lawyers, Bennett Jones LLP, located in Toronto, Ontario, or at such other time or at such other place as the Parties may agree in writing.

7.2 Tender

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party. The Receiver and the Purchaser acknowledge and agree that insofar as the tender of any documents to be electronically registered is concerned, the tender of same will be deemed to be effective and proper when the solicitor for the party tendering has completed all steps required by Teraview in order to complete the Transaction that can be performed or undertaken by the tendering party's solicitor without the cooperation or participation of the other party's solicitor, and specifically when the tendering party's solicitor has electronically "signed" the transfer/deed and any other Closing document, if any, to be electronically registered for completeness and granted access to the other party's solicitor to same, but without the necessity of the tendering party's solicitor actually releasing such document(s) to the other party's solicitor for registration.

7.3 Receiver's Closing Deliverables

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (a) a copy of the issued and entered Approval and Vesting Order and the attached Receiver's Certificate;
- (b) a statement of adjustments prepared in accordance with Section 4.5 hereof, to be delivered not less than five (5) Business Days prior to Closing;
- (c) to the extent applicable, an assignment and assumption agreement with respect to all Permits and to the extent not assignable, an agreement that the Receiver will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);
- (d) a certificate signed by a senior officer of the Receiver confirming that the Receiver is not a non-resident of Canada within the meaning of section 116 of the ITA and that, to the best of the Receiver's knowledge, the Debtor is not a non-resident of Canada within the meaning of the said section 116;

- (e) a certificate from the Receiver, dated as of the Closing Date, certifying:
 - (i) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction; and
 - (ii) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (f) an acknowledgement, dated as of the Closing Date, that each of the conditions in Section 8.1 hereof have been fulfilled, performed or waived as of the Closing Time; and
- (g) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Purchaser, acting reasonably, or by Applicable Law or any Governmental Authority.

7.4 Purchaser's Closing Deliverables

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

- (a) the indefeasible payment and satisfaction in full of the Purchase Price according to Section 4.3 hereof;
- (b) an assignment and assumption agreement with respect to all Permits pertaining to the Real Property (to the extent assignable) and to the extent not assignable, an agreement that the Receiver will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);
- (c) a certificate from the Purchaser, dated as of the Closing Date, certifying that all representations, warranties and covenants of the Purchaser contained in Article 10 are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (d) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption certificates with respect to HST in accordance with Article 5 hereof;
- (e) if desired, a direction directing the Receiver to convey title to any of the Purchased Assets to an entity other than the Purchaser; and
- (f) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Receiver, acting reasonably, or by Applicable Law or any Governmental Authority.



7.5 Receiver's Certificate

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in Section 8.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all of the conditions contained in Section 8.1, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate comprising Schedule "A" of the Approval and Vesting Order, and shall file same with the Court.

ARTICLE 8 CONDITIONS PRECEDENT TO CLOSING

8.1 Conditions in Favour of the Receiver

The obligation of the Receiver to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (a) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Purchaser contained in Article 10 to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction; and
- (d) the Court shall have issued the Approval and Vesting Order.

8.2 Conditions in Favour of Receiver Not Fulfilled

If any of the conditions contained in Section 8.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion (other than as stipulated below), and without limiting any rights or remedies available to it at law or in equity:

- (a) terminate this Agreement by notice to the Purchaser, in which event the Receiver shall be released from its obligations under this Agreement to complete the Transaction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

8.3 Conditions in Favour of the Purchaser

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date, which conditions are inserted for the sole benefit of the Purchaser and may be waived in whole or in part at the Purchaser's sole option:



- (a) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction;
- (d) from the Acceptance Date to Closing, there shall have been no new work orders, deficiency notices, notices of violation or non-compliance or similar orders, and no new Encumbrances registered on title to the Lands or matters affecting the title to the Lands arising or registered after the Acceptance Date, in each case which are not otherwise vested-out pursuant to the Approval and Vesting Order;
- (e) from the Acceptance Date to Closing, there shall not have been any emission, release, discharge, disposal, or other deposit of a hazardous substance occurring on or which has migrated onto the Lands which has a material adverse effect on the Lands, and there shall not have been any material adverse change in the condition or operation of the Lands; and
the Court shall have issued the Approval and Vesting Order.

(S)
(g)

→ see below

(S) *(g)*

8.4 Conditions in Favour of Purchaser Not Fulfilled

If any of the conditions contained in Section 8.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

- (a) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their obligations under this Agreement to complete the Transaction and the Deposit and all interest accrued thereon shall be immediately returned to the Purchaser without deduction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

ARTICLE 9 REPRESENTATIONS & WARRANTIES OF THE RECEIVER

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (a) the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this

(S) This offer is conditional on the purchaser getting court approval in writing order for the TEXTBOOK property @ 525 PRINCESS ST. KINGSTON, ONTARIO

Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver, subject to the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms;

- (b) the Receiver has been duly appointed as the receiver of the Real Property by the Receivership Order and such Receivership Order is in full force and effect and has not been stayed, and the Receiver has the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey all right, title and interest of the Receiver and the Debtor in and to the Purchased Assets;
- (c) the Receiver is not a non-resident of Canada for the purposes of the ITA; and
- (d) subject to any charges created by the Receivership Order, the Receiver has done no act itself to encumber or dispose of the Purchased Assets and is not aware of any action or process pending or threatened against the Debtor that may affect its ability to convey any of the Purchased Assets as contemplated herein.

ARTICLE 10
REPRESENTATIONS & WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (a) the Purchaser is a ^{CORPORATION} [•] duly formed and ^{validly} subsisting under the laws of the Province of [•]; ^{ONTARIO}
- (b) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constituting documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;
- (c) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and
- (d) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has



not had any execution or distress become enforceable or levied against any of its property.

ARTICLE 11
COVENANTS

11.1 Mutual Covenants

Each of the Receiver and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 8 hereof.

11.2 Receiver Covenants

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall use commercially reasonable efforts to provide to the Purchaser all necessary information in respect of the Debtor and the Purchased Assets reasonably required to complete the applicable tax elections in accordance with Article 5 hereof and to execute all necessary forms related thereto.

ARTICLE 12
POSSESSION AND ACCESS PRIOR TO CLOSING

12.1 Possession of Purchased Assets

The Receiver shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in this Agreement and the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in Section 8.1 hereof.

12.2 Risk

- (a) The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing.
- (b) If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within fifteen (15) calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within fifteen (15) calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an

assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. For the purposes of this Section 12.2(b), substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds fifteen percent (15%) of the total Purchase Price (inclusive of the Deposit).

- (c) If, prior to the Closing Date, all or a material part of the Lands is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Lands is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three (3) Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either: (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Receiver or Debtor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis; or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit shall be returned to the Purchaser forthwith.

ARTICLE 13 **AS IS, WHERE IS**

13.1 Condition of the Purchased Assets

The Purchaser acknowledges that the Receiver is selling and the Purchaser is purchasing the Purchased Assets on an "*as is, where is*" and "*without recourse*" basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Debtor has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser will conduct such inspections of the condition and title to the Purchased Assets as it deems appropriate and will satisfy itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

ARTICLE 14
POST-CLOSING MATTERS

14.1 Books and Records

The Purchaser shall keep and maintain the Books and Records for a period of Two (2) years from the Closing Date, or for any longer period as may be required by Applicable Law or Governmental Authority or as requested by the Receiver. Upon reasonable advance notice, during such Two (2) year period after the Closing Date, the Purchaser will grant the Receiver and the Debtor and, in the event the Debtor is adjudged bankrupt, any trustee of the estate of the Debtor and their respective representatives, reasonable access during normal business hours to use and copy the Books and Records at the sole cost of the Receiver or bankruptcy trustee of the estate of the Debtor, as the case may be, and at no cost to the Purchaser.

ARTICLE 15
TERMINATION

15.1 Termination of this Agreement

This Agreement may be validly terminated:

- (a) upon the mutual written agreement of the Parties;
- (b) pursuant to Section 8.2 hereof by the Receiver;
- (c) pursuant to Section 8.4 hereof by the Purchaser; or
- (d) pursuant to Section 12.2 hereof.

15.2 Remedies for Breach of Agreement

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver, the Purchaser shall be entitled to the return of the Deposit without deduction, which shall be returned to the Purchaser forthwith, and this shall be the Purchaser's sole right and remedy pursuant to this Agreement or at law as a result of the Receiver's breach. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Purchaser, the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances, and this shall be the Receiver's sole right and remedy pursuant to this Agreement or at law as a result of the Purchaser's breach.

15.3 Termination If No Breach of Agreement

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then the parties hereto shall be released from all obligations and liabilities hereunder, other than their obligations under Article 6, and the Deposit shall be forthwith returned to the Purchaser without deduction.:

- (a) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (b) the Purchaser shall be entitled to the return of the Deposit without deduction, which shall be returned to the Purchaser forthwith; and
- (c) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein.

ARTICLE 16
GENERAL CONTRACT PROVISIONS

16.1 Further Assurances

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof, including, at the Purchaser's request and expense, the Receiver shall execute and deliver such additional conveyances, transfers and other assurances as may, in the opinion of the Parties or their counsel, acting reasonably, be reasonably required to effectually carry out the intent of this Agreement and transfer the Purchased Assets to the Purchaser.

16.2 Survival Following Completion

Notwithstanding any other provision of this Agreement, Article 9, Article 10, Section 15.2 and Section 15.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

16.3 Notice

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a "Notice") shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

- (a) to the Receiver:

KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9


Attention: Robert Kofman and Noah Goldstein
Tel: (416) 932-6228 / (416) 932-6207
Email: bkofman@ksvadvisory.com / ngoldstein@ksvadvisory.com



and a copy to the Receiver's counsel to:

Bennett Jones LLP
3400 One First Canadian Place
Toronto, ON M5X 1A5

Attention: Sean Zweig and John van Gent
Tel: (416) 777-6254 / (416) 777-6522
Email: zwieg@bennettjones.com / vangent@bennettjones.com

(b) to the Purchaser: 9840478
9840508 Canada Inc. 
[•] 18 Antonio Drive, Ottawa Ont. K2E 1A9

Attention: [•] DAVID CHOO
Tel: [•] 613-226-7266 x 201
Email: [•] dchoo@ashcrofthomes.ca

and a copy to the Purchaser's counsel to:

[•] MANN LAWYERS LLP 1600 SCOTT ST. Suite 710
OTTAWA

Attention: [•] STEPHEN GUEST
Tel: [•] 613-722-1500 x 259
Email: [•] STEPHEN@MANNLAWYERS.COM

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third (3rd) Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first (1st) Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth (4th) Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

16.4 Waiver

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

16.5 Consent

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is



not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

16.6 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario sitting in Toronto. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes among them, regardless of whether or not such disputes arose under this Agreement.

16.7 Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

16.8 Time of the Essence

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

16.9 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

16.10 Assignment

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Receiver's prior written approval, which approval shall be in the Receiver's sole, absolute and unfettered discretion. Notwithstanding the foregoing, up until closing, the Purchaser shall have the right to direct that title to the Lands be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) that is an affiliate of the Purchaser, provided that the Purchaser shall not be released from any and all obligations and liabilities hereunder until after the Closing of the transaction. The foregoing right may only be exercised once by the Purchaser. Any other requested direction of title shall require the Receiver's prior written approval, which approval shall be in the Receiver's sole, absolute and unfettered discretion.



16.11 Expenses

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

16.12 Severability

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

16.13 No Strict Construction

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

16.14 Cumulative Remedies

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

16.15 Currency

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

16.16 Receiver's Capacity

It is acknowledged by the Purchaser that the Receiver is entering into this Agreement solely in its capacity as Court-appointed receiver of the Property and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

16.17 Planning Act

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

16.18 No Third Party Beneficiaries

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. No other person or entity shall be regarded as a third party beneficiary of this Agreement.

16.19 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

16.20 Counterparts

This Agreement may be executed in counterparts and by facsimile or PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS.]



IN WITNESS WHEREOF the Receiver has duly executed this Agreement as of the date first above written.

KSV KOFMAN INC., in its capacity as court-appointed receiver of all the real property registered on title as being owned by Textbook (555 Princess Street) Inc. and of all the assets, undertakings and properties of Textbook (555 Princess Street) Inc. acquired for or used in relation to such real property, and not in its personal capacity or in any other capacity

Per:


Name: ~~Robert Kofman~~ *David Seradyk*

Title: ~~President and Managing Director~~

ACCEPTED by the Purchaser this *23* day of *October*, 2017

9840478
101 9840508 Canada Inc.

Per:


Name: *Mandy Bellamy, CFO*

Title: Authorized Signing Officer

**SCHEDULE A
APPROVAL AND VESTING ORDER**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
))
JUSTICE) OF <*>, 2017


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

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Kofman Inc., in its capacity as Court-appointed receiver (in such capacity, the "Receiver"), without security, of certain of the assets, undertaking and property of Textbook (555 Princess Street) Inc. (the "Debtor") for an order, *inter alia*, approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale between the Receiver, as vendor, and <*> (the "Purchaser"), as purchaser, dated <*>, 2017 (the "Sale Agreement"), a copy of which is attached as Confidential Appendix "<*>" to the <*> Report of the Receiver dated <*>, 2017 (the "<*> Report"), and vesting in the Purchaser, or as it

may direct in accordance with the Sale Agreement, all the Receiver's and the Debtor's right, title and interest in and to the property described as the "Purchased Assets" in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

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

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

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all the Receiver's and the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement, including without limitation the subject real property identified in **Schedule "B"** hereto (the "**Real Property**"), shall vest absolutely in the Purchaser, or as it may direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, leases, notices of lease, subleases, licences, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute

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

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

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

with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

6. **THIS COURT ORDERS** that, 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

any assignment in bankruptcy made in respect of the Debtor,

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

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

SCHEDULE "A"
FORM OF RECEIVER'S CERTIFICATE

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

RECEIVER'S CERTIFICATE

RECITALS

I. Pursuant to an Order of the Honourable Mr. Justice Myers of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated May 2, 2017, KSV Kofman Inc. was appointed as receiver (in such capacity, the "Receiver"), without security, of all the real property registered on title as being owned by Textbook (555 Princess Street) Inc. (the "Debtor") (collectively, the "Lands") and of all the assets, undertakings and properties of the Debtor acquired for or used in relation to the Lands (the "Property").

II. Pursuant to an Order of the Court dated <*>, 2017, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and <*> (the "Purchaser"), as purchaser, dated <*>, 2017 (the "Sale Agreement"), and provided for the vesting in the Purchaser, or as it

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

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

THE RECEIVER CERTIFIES the following:

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

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

KSV KOFMAN INC., in its capacity as court-appointed receiver of all the real property registered on title as being owned by Textbook (555 Princess Street) Inc. and of all the assets, undertakings and properties of Textbook (555 Princess Street) Inc. acquired for or used in relation to such real property, and not in its personal capacity or in any other capacity

Per:

Name:

Title:

SCHEDULE "B"
LEGAL DESCRIPTION OF THE REAL PROPERTY

555 Princess Street, Kingston, Ontario

PIN 36072-0135 (LT)

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

SCHEDULE "C"
INSTRUMENTS TO BE DELETED FROM PIN NO. 36071-0135 (LT)

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

SCHEDULE "D"
PERMITTED ENCUMBRANCES

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

**SCHEDULE B
PERMITTED ENCUMBRANCES**

PART I: GENERAL PERMITTED ENCUMBRANCES

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates to the extent adjusted for under this Agreement;
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes;
3. Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including without limitation, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements; provided same have been complied with or security has been posted to ensure compliance and completion as evidenced by a letter from the relevant Authority or regulated utility;
4. Any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Purchaser's intended use of the Property;
5. Any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the Property;
6. Such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Property or any part thereof, or materially impair the value thereof;
7. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute; and
8. The following exceptions and qualifications contained in Section 44(1) of the Land Titles Act: paragraphs 7, 8, 9, 10, 12 and 14.

PART II: SPECIFIC PERMITTED ENCUMBRANCES

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

**SCHEDULE C
LEGAL DESCRIPTION OF LANDS**

555 Princess Street, Kingston, Ontario

PIN 36072-0135 (L1)

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

Appendix “C”

AGREEMENT OF PURCHASE AND SALE

BETWEEN

KSV KOFMAN INC.

in its capacity as court-appointed receiver
of all the real property registered on title as being owned by Textbook (525 Princess Street) Inc.
and of all the assets, undertakings and properties of Textbook (525 Princess Street) Inc. acquired
for or used in relation to such real property,
and not in its personal capacity or in any other capacity

- and -

[•]

~~9840508~~ Canada Inc.

9840478



Dated: [•], 2017

Oct 23, 2017



Table of Contents

	Page
ARTICLE 1 DEFINED TERMS	2
1.1 Definitions.....	2
ARTICLE 2 SCHEDULES.....	5
2.1 Schedules	5
ARTICLE 3 AGREEMENT TO PURCHASE.....	6
3.1 Purchase and Sale of Purchased Assets	6
3.2 Excluded Assets	7
3.3 Excluded Liabilities	7
ARTICLE 4 PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE.....	8
4.1 Purchase Price.....	8
4.2 Deposit	8
4.3 Satisfaction of Purchase Price.....	8
4.4 Allocation of Purchase Price.....	8
4.5 Adjustment of Purchase Price.....	8
ARTICLE 5 TAXES.....	9
5.1 Taxes.....	9
ARTICLE 6 ACCESS AND CONFIDENTIALITY.....	9
6.1 Confidentiality	9
6.2 Authorizations.....	9
ARTICLE 7 CLOSING ARRANGEMENTS	10
7.1 Closing	10
7.2 Tender	10
7.3 Receiver's Closing Deliverables	10
7.4 Purchaser's Closing Deliverables.....	11
7.5 Receiver's Certificate	12
ARTICLE 8 CONDITIONS PRECEDENT TO CLOSING	12
8.1 Conditions in Favour of the Receiver	12
8.2 Conditions in Favour of Receiver Not Fulfilled	12
8.3 Conditions in Favour of the Purchaser.....	12
8.4 Conditions in Favour of Purchaser Not Fulfilled	13
ARTICLE 9 REPRESENTATIONS & WARRANTIES OF THE RECEIVER.....	13
ARTICLE 10 REPRESENTATIONS & WARRANTIES OF THE PURCHASER.....	14
ARTICLE 11 COVENANTS	15
11.1 Mutual Covenants.....	15

Table of Contents
(continued)

Page

11.2 Receiver Covenants	15
ARTICLE 12 POSSESSION AND ACCESS PRIOR TO CLOSING.....	15
12.1 Possession of Purchased Assets.....	15
12.2 Risk.....	15
ARTICLE 13 AS IS, WHERE IS	16
13.1 Condition of the Purchased Assets	16
ARTICLE 14 POST-CLOSING MATTERS.....	17
14.1 Books and Records	17
ARTICLE 15 TERMINATION.....	17
15.1 Termination of this Agreement.....	17
15.2 Remedies for Breach of Agreement.....	17
15.3 Termination If No Breach of Agreement.....	17
ARTICLE 16 GENERAL CONTRACT PROVISIONS.....	18
16.1 Further Assurances.....	18
16.2 Survival Following Completion.....	18
16.3 Notice.....	18
16.4 Waiver.....	19
16.5 Consent	19
16.6 Governing Law	20
16.7 Entire Agreement.....	20
16.8 Time of the Essence.....	20
16.9 Time Periods.....	20
16.10 Assignment	20
16.11 Expenses	21
16.12 Severability	21
16.13 No Strict Construction	21
16.14 Cumulative Remedies.....	21
16.15 Currency.....	21
16.16 Receiver's Capacity.....	21
16.17 Planning Act.....	21
16.18 No Third Party Beneficiaries	21
16.19 Number and Gender.....	22
16.20 Counterparts.....	22

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 23 day of October, 2017.

BETWEEN:

KSV KOFMAN INC. ("KSV"), in its capacity as court-appointed receiver of all the real property registered on title as being owned by Textbook (525 Princess Street) Inc. and of all the assets, undertakings and properties of Textbook (525 Princess Street) Inc. acquired for or used in relation to such real property, and not in its personal capacity or in any other capacity

(in such capacity, the "Receiver")

- and -

|•|

(the "Purchaser")

RECITALS

- A. **WHEREAS** pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") issued on May 2, 2017 (the "Receivership Order"), the Receiver was appointed as the court-appointed receiver of all of the lands and premises municipally described as 525 Princess Street, Kingston, Ontario (collectively, the "Lands") and all of the present and after-acquired assets, undertaking and properties of Textbook (525 Princess Street) Inc. (the "Debtor") acquired for or used in relation to the Lands (collectively, together with the Lands, the "Property");
- B. **AND WHEREAS** pursuant to the Receivership Order the Receiver was authorized to, among other things, market the Purchased Assets (as defined hereafter) and apply for an order of the Court approving the sale of the Purchased Assets and vesting in and to a purchaser all the Debtor's right, title and interest in and to the Purchased Assets;
- C. **AND WHEREAS** pursuant to an order of the Court issued on June 30, 2017, a strategic process was approved by the Court and implemented by the Receiver;
- D. **AND WHEREAS** the Purchaser wishes to purchase and the Receiver wishes to sell the Purchased Assets upon the terms and subject to the conditions set out herein;

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined hereafter), the Parties agree as follows:

ARTICLE 1
DEFINED TERMS

1.1 Definitions

In this Agreement:

"Acceptance Date" means the date that this Agreement is executed by and delivered to all Parties hereunder;

"Accounts Payable" means all amounts relating to the Business owing to any Person which are incurred in connection with the purchase of goods or services in the ordinary course of business;

"Agreement" means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to **"article"**, **"section"** or **"schedule"** mean the specified article, section of, or schedule to this Agreement and the expressions **"hereof"**, **"herein"**, **"hereto"**, **"hereunder"**, **"hereby"** and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

"Applicable Law" means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

"Approval and Vesting Order" means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement, and authorizing and directing the Receiver to complete the Transaction and conveying to the Purchaser all of each of the Receiver's and the Debtor's right, title and interest, if any, in and to the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as Schedule "A" hereto;

"Books and Records" means the files, documents, instruments, surveys, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise) pertaining to the Purchased Assets that have been or will be delivered by the Receiver to the Purchaser at or before Closing; provided, however, that "Books and Records" shall not include any bank or accounting records;

"Business" means the business carried on by the Debtor with respect to the Property;

"Business Day" means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

"Claims" means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing

any of the foregoing or any proceeding relating to any of the foregoing, related to the Debtor or the Real Property, and "Claim" means any one of them;

"Closing" means the successful completion of the Transaction;

"Closing Date" means the first Business Day which is ~~two (2) Business Days~~ after receipt of the Approval and Vesting Order;

"Closing Time" means 4:00 p.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

"Confidential Information" has the meaning given in Section 6.1 herein;

"Contracts" means all of the contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Debtor is a party and which relate to the Business, provided that the Unit Purchase Agreements shall not be included as Contracts;

"Court" has the meaning set out in the recitals hereof;

"Debtor" has the meaning set out in the recitals hereof;

"Deposit" has the meaning given in Section 4.2 herein;

"Encumbrances" means all liens, charges, security interests (whether contractual, statutory or otherwise), pledges, leases, offers to lease, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

"ETA" means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

"Execution Date" means the date of execution of this Agreement by all parties;

"Excluded Assets" means the Receiver's and the Debtor's right, title and interest in and to any asset of the Receiver and the Debtor other than the Purchased Assets, which Excluded Assets include the Receiver's and the Debtor's right, title and interest in and to the following:

- (a) 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 Purchased Assets;
- (b) the benefit of any refundable Taxes payable or paid by the Debtor in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Debtor to any refund, rebate, or credit of Taxes for the period prior to the Closing Date; and

(c) the Contracts;

"Excluded Liabilities" has the meaning given in Section 3.3 herein;

"Governmental Authority" means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **"Governmental Authority"** means any one of them;

"HST" means harmonized sales tax imposed under Part IX of the ETA;

"ITA" means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

"Lands" has the meaning set out in the recitals hereof, the legal descriptions of which Lands are attached as Schedule "C" hereto, and includes all rights and benefits appurtenant thereto;

"LRO" means the Land Registry Office for the Land Titles Division of Kingston (No. 13);

"Notice" has the meaning given in Section 16.3 herein;

"Parties" means the Receiver and the Purchaser;

"Permits" means 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;

"Permitted Encumbrances" means all those Encumbrances described in Schedule "B" hereto;

"Person" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

"Plans" means all plans, designs and specification in connection with the Real Property which are in the possession or control of the Receiver (it being acknowledged that the Receiver is under no obligation to incur additional expense to obtain such plans, designs and specifications);

"Property" has the meaning set out in the recitals hercof;




"Purchase Price" has the meaning set out in Section 4.1 herein;

"Purchased Assets" means all of the Receiver's and the Debtor's right, title and interest in and to the following:

- (a) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
- (b) the Real Property;
- (c) the Plans;
- (d) the Permits, but only to the extent transferable to the Purchaser or the Purchaser's permitted assignees; and
- (e) all intellectual property, if any, owned by the Debtor with respect to the development to be completed on the Lands,

provided, however, that the Purchased Assets shall not include the Excluded Assets or the Excluded Liabilities;

"Purchaser" means [•]:

9840478 
 9840508 *Canada Inc*  

"Purchaser Representatives" has the meaning given in Section 6.1 herein;

"Real Property" means the Lands, together with all buildings, improvements and structures thereon, as well as all plans, designs and specifications in connection therewith;

"Receiver" has the meaning set out in the recitals hereof;

"Receivership Order" has the meaning set out in the recitals hereof;

"Receiver's Solicitors" means Bennett Jones LLP;

"Rights" has the meaning given in Section 3.1(c) herein, but only has such meaning in such Section;

"Taxes" means all taxes, GST, 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;

"Transaction" means the transaction of purchase and sale contemplated by this Agreement;

ARTICLE 2
SCHEDULES

2.1 Schedules

The following schedules are incorporated in and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
-----------------	--------------------



Schedule A	Approval and Vesting Order
Schedule B	Permitted Encumbrances
Schedule C	Legal Description of Lands

ARTICLE 3
AGREEMENT TO PURCHASE

3.1 Purchase and Sale of Purchased Assets

- (a) Relying on the representations and warranties herein, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, all right, title and interest of the Receiver and the Debtor in and to the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances.
- (b) Subject to the Closing, the Receiver hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all of its rights, claims and demands whatsoever in the Purchased Assets.
- (c) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies (in this Section 3.1(c), collectively, the "**Rights**") under any Permits that form part of the Purchased Assets and which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto (collectively, the "**Third Party**"). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:
 - (i) the Receiver will, at the request, direction and cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and using commercially reasonable efforts, in applying for and obtaining all consents or approvals required under the Permits in a form satisfactory to the Receiver and the Purchaser, acting reasonably;
 - (ii) the Receiver will only deal with or make use of such Rights in accordance with the directions of the Purchaser;
 - (iii) at the Purchaser's cost, the Receiver will use its commercially reasonable efforts to take such actions and do such things as may be reasonably and lawfully designed to provide the benefits of the Permits to the Purchaser, including holding those Permits in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment; and
 - (iv) in the event that the Receiver receives funds with respect to those Permits, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs directly related to the assignment in respect of such Permits.



The provisions of this Section 3.1 shall not merge but shall survive the completion of the Transaction. Notwithstanding the forgoing, nothing herein shall prohibit the Receiver, in its sole, absolute and unfettered discretion, from seeking to be discharged as receiver of the Debtor at any time after Closing. The parties hereto hereby acknowledge and agree that the covenants of the Receiver contained in this Section 3.1 shall terminate concurrently with the discharge of the Receiver as receiver of the Debtor.

3.2 Excluded Assets

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

3.3 Excluded Liabilities

The Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Debtor or the Receiver or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Debtor's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the "Excluded Liabilities"). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Debtor arising with respect to any period prior to the Closing Date and all Taxes payable relating to any matters or assets other than the Purchased Assets arising with respect to the period from and after the Closing Date;
- (b) any liability, obligation or commitment associated with: (i) the Accounts Payable and incurred prior to Closing; or (ii) any employees of the Debtor;
- (c) any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (d) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (e) any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.



ARTICLE 4
PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price

The purchase price for the Purchased Assets shall be the aggregate of [•] (\$[•]) dollars (the "Purchase Price").

4.2 Deposit

Within two (2) Business Days after the Acceptance Date, the Purchaser shall pay to the Receiver's Solicitors, in trust, a deposit by wire or certified cheque of [•] (\$[•]) dollars (the "Deposit") *(INTD: The Deposit must be at least 15% of the Purchase Price)*, which Deposit shall be held in accordance with the provisions of this Agreement pending completion or other termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.

4.3 Satisfaction of Purchase Price

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit shall be applied against the Purchase Price; and
- (b) the balance of the Purchase Price, subject to adjustments contained in this Agreement, shall be paid by wire or certified cheque on Closing by the Purchaser to the Receiver's Solicitors or as the Receiver's Solicitors may otherwise direct in writing.

4.4 Allocation of Purchase Price

The Parties, acting reasonably and in good faith, covenant to use best efforts to agree to allocate the Purchase Price among the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this Section 4.4 of the Agreement such that each Party shall be free to make its own reasonable allocation.

4.5 Adjustment of Purchase Price

- (a) The Purchase Price shall be adjusted as of the Closing Time for any realty taxes and local improvement rates and charges (including interest thereon), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a receivership sale. The Receiver shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval no later than five (5) Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be agreed upon by the Parties as of the

Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably, and such estimate shall serve as a final determination. Notwithstanding any other term in this Agreement, in no event shall the Purchaser be responsible for any charges, fees, Taxes, costs or other adjustments in any way relating to the period prior to the Closing Date or relating to the Excluded Liabilities or to any matters or assets other than the Purchased Assets for the period from and after the Closing Date.

- (b) Other than as provided for in this Section 4.5, there shall be no adjustments to the Purchase Price.

ARTICLE 5 **TAXES**

5.1 Taxes

The Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and other similar taxes and duties and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Receiver will not collect HST if the Purchaser provides to the Receiver a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least five (5) Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Receiver in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction.

ARTICLE 6 **ACCESS AND CONFIDENTIALITY**

6.1 Confidentiality

Prior to Closing, the Purchaser shall maintain in confidence and not disclose to any Person this Agreement or the terms thereof or any information or documentation obtained, prepared or summarized by the Purchaser or its representatives (collectively, the "**Confidential Information**"), except, on a need to know basis, to those individuals employed by the Purchaser, its professional consultants, including the Purchaser's legal counsel, and to those Persons who have agreed in writing in favour of the Receiver and Purchaser not to disclose any Confidential Information (collectively, the "**Purchaser Representatives**"). The Purchaser will ensure that each Purchaser Representative treats the Confidential Information as confidential and any failure of a Purchaser Representative to do so will be a breach of this Agreement by the Purchaser.

6.2 Authorizations

Upon request, the Receiver shall provide the Purchaser with authorizations executed by the Receiver and addressed to the appropriate municipal building department, zoning department and fire department and to any other Governmental Authority, authorizing the release of any and all



information on file in respect of the Purchased Assets, but such authorization shall not authorize any inspections by any Governmental Authority.

ARTICLE 7

CLOSING ARRANGEMENTS

7.1 Closing

Closing shall take place at the Closing Time at the offices of the Receiver's lawyers, Bennett Jones LLP, located in Toronto, Ontario, or at such other time or at such other place as the Parties may agree in writing.

7.2 Tender

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party. The Receiver and the Purchaser acknowledge and agree that insofar as the tender of any documents to be electronically registered is concerned, the tender of same will be deemed to be effective and proper when the solicitor for the party tendering has completed all steps required by Teraview in order to complete the Transaction that can be performed or undertaken by the tendering party's solicitor without the cooperation or participation of the other party's solicitor, and specifically when the tendering party's solicitor has electronically "signed" the transfer/deed and any other Closing document, if any, to be electronically registered for completeness and granted access to the other party's solicitor to same, but without the necessity of the tendering party's solicitor actually releasing such document(s) to the other party's solicitor for registration.

7.3 Receiver's Closing Deliverables

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (a) a copy of the issued and entered Approval and Vesting Order and the attached Receiver's Certificate;
- (b) a statement of adjustments prepared in accordance with Section 4.5 hereof, to be delivered not less than five (5) Business Days prior to Closing;
- (c) to the extent applicable, an assignment and assumption agreement with respect to all Permits and to the extent not assignable, an agreement that the Receiver will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);
- (d) a certificate signed by a senior officer of the Receiver confirming that the Receiver is not a non-resident of Canada within the meaning of section 116 of the ITA and that, to the best of the Receiver's knowledge, the Debtor is not a non-resident of Canada within the meaning of the said section 116;

- (e) a certificate from the Receiver, dated as of the Closing Date, certifying:
 - (i) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction; and
 - (ii) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (f) an acknowledgement, dated as of the Closing Date, that each of the conditions in Section 8.1 hereof have been fulfilled, performed or waived as of the Closing Time; and
- (g) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Purchaser, acting reasonably, or by Applicable Law or any Governmental Authority.

7.4 Purchaser's Closing Deliverables

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

- (a) the indefeasible payment and satisfaction in full of the Purchase Price according to Section 4.3 hereof;
- (b) an assignment and assumption agreement with respect to all Permits pertaining to the Real Property (to the extent assignable) and to the extent not assignable, an agreement that the Receiver will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);
- (c) a certificate from the Purchaser, dated as of the Closing Date, certifying that all representations, warranties and covenants of the Purchaser contained in Article 10 are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (d) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption certificates with respect to HST in accordance with Article 5 hereof;
- (e) if desired, a direction directing the Receiver to convey title to any of the Purchased Assets to an entity other than the Purchaser; and
- (f) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Receiver, acting reasonably, or by Applicable Law or any Governmental Authority.

7.5 Receiver's Certificate

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in Section 8.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all of the conditions contained in Section 8.1, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate comprising Schedule "A" of the Approval and Vesting Order, and shall file same with the Court.

ARTICLE 8 CONDITIONS PRECEDENT TO CLOSING

8.1 Conditions in Favour of the Receiver

The obligation of the Receiver to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (a) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Purchaser contained in Article 10 to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction; and
- (d) the Court shall have issued the Approval and Vesting Order.

8.2 Conditions in Favour of Receiver Not Fulfilled

If any of the conditions contained in Section 8.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion (other than as stipulated below), and without limiting any rights or remedies available to it at law or in equity:

- (a) terminate this Agreement by notice to the Purchaser, in which event the Receiver shall be released from its obligations under this Agreement to complete the Transaction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

8.3 Conditions in Favour of the Purchaser

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date, which conditions are inserted for the sole benefit of the Purchaser and may be waived in whole or in part at the Purchaser's sole option:

- (a) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction;
- (d) from the Acceptance Date to Closing, there shall have been no new work orders, deficiency notices, notices of violation or non-compliance or similar orders, and no new Encumbrances registered on title to the Lands or matters affecting the title to the Lands arising or registered after the Acceptance Date, in each case which are not otherwise vested-out pursuant to the Approval and Vesting Order;
- (e) from the Acceptance Date to Closing, there shall not have been any emission, release, discharge, disposal, or other deposit of a hazardous substance occurring on or which has migrated onto the Lands which has a material adverse effect on the Lands, and there shall not have been any material adverse change in the condition or operation of the Lands; and
the Court shall have issued the Approval and Vesting Order.

8.4 Conditions in Favour of Purchaser Not Fulfilled

If any of the conditions contained in Section 8.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

- (a) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their obligations under this Agreement to complete the Transaction and the Deposit and all interest accrued thereon shall be immediately returned to the Purchaser without deduction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

**ARTICLE 9
REPRESENTATIONS & WARRANTIES OF THE RECEIVER**

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (a) the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this

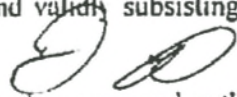
(f) This offer is conditional on the purchaser getting court approval i vesting order for the TEXT BOOK priority @ 555 PRINCESS ST. KINGSTON ON TELL (A)

Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver, subject to the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms;

- (b) the Receiver has been duly appointed as the receiver of the Real Property by the Receivership Order and such Receivership Order is in full force and effect and has not been stayed, and the Receiver has the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey all right, title and interest of the Receiver and the Debtor in and to the Purchased Assets;
- (c) the Receiver is not a non-resident of Canada for the purposes of the ITA; and
- (d) subject to any charges created by the Receivership Order, the Receiver has done no act itself to encumber or dispose of the Purchased Assets and is not aware of any action or process pending or threatened against the Debtor that may affect its ability to convey any of the Purchased Assets as contemplated herein.

ARTICLE 10
REPRESENTATIONS & WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (a) the Purchaser is a [•] duly formed and validly subsisting under the laws of the Province of [•]; *Ontario Corporation* 
- (b) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;
- (c) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and
- (d) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has



not had any execution or distress become enforceable or levied against any of its property.

ARTICLE 11
COVENANTS

11.1 Mutual Covenants

Each of the Receiver and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 8 hereof.

11.2 Receiver Covenants

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall use commercially reasonable efforts to provide to the Purchaser all necessary information in respect of the Debtor and the Purchased Assets reasonably required to complete the applicable tax elections in accordance with Article 5 hereof and to execute all necessary forms related thereto.

ARTICLE 12
POSSESSION AND ACCESS PRIOR TO CLOSING

12.1 Possession of Purchased Assets

The Receiver shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in this Agreement and the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in Section 8.1 hereof.

12.2 Risk

- (a) The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing.
- (b) If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within fifteen (15) calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within fifteen (15) calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an

assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. For the purposes of this Section 12.2(b), substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds fifteen percent (15%) of the total Purchase Price (inclusive of the Deposit).

- (c) If, prior to the Closing Date, all or a material part of the Lands is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Lands is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three (3) Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either: (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Receiver or Debtor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis; or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit shall be returned to the Purchaser forthwith.

ARTICLE 13
AS IS, WHERE IS

13.1 Condition of the Purchased Assets

The Purchaser acknowledges that the Receiver is selling and the Purchaser is purchasing the Purchased Assets on an "as is, where is" and "without recourse" basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Debtor has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser will conduct such inspections of the condition and title to the Purchased Assets as it deems appropriate and will satisfy itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

ARTICLE 14
POST-CLOSING MATTERS

14.1 Books and Records

The Purchaser shall keep and maintain the Books and Records for a period of Two (2) years from the Closing Date, or for any longer period as may be required by Applicable Law or Governmental Authority or as requested by the Receiver. Upon reasonable advance notice, during such Two (2) year period after the Closing Date, the Purchaser will grant the Receiver and the Debtor and, in the event the Debtor is adjudged bankrupt, any trustee of the estate of the Debtor and their respective representatives, reasonable access during normal business hours to use and copy the Books and Records at the sole cost of the Receiver or bankruptcy trustee of the estate of the Debtor, as the case may be, and at no cost to the Purchaser.

ARTICLE 15
TERMINATION

15.1 Termination of this Agreement

This Agreement may be validly terminated:

- (a) upon the mutual written agreement of the Parties;
- (b) pursuant to Section 8.2 hereof by the Receiver;
- (c) pursuant to Section 8.4 hereof by the Purchaser; or
- (d) pursuant to Section 12.2 hereof.

15.2 Remedies for Breach of Agreement

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver, the Purchaser shall be entitled to the return of the Deposit without deduction, which shall be returned to the Purchaser forthwith, and this shall be the Purchaser's sole right and remedy pursuant to this Agreement or at law as a result of the Receiver's breach. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Purchaser, the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances, and this shall be the Receiver's sole right and remedy pursuant to this Agreement or at law as a result of the Purchaser's breach.

15.3 Termination If No Breach of Agreement

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then the parties hereto shall be released from all obligations and liabilities hereunder, other than their obligations under Article 6, and the Deposit shall be forthwith returned to the Purchaser without deduction.:

- (a) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (b) the Purchaser shall be entitled to the return of the Deposit without deduction, which shall be returned to the Purchaser forthwith; and
- (c) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein.

ARTICLE 16
GENERAL CONTRACT PROVISIONS

16.1 Further Assurances

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof, including, at the Purchaser's request and expense, the Receiver shall execute and deliver such additional conveyances, transfers and other assurances as may, in the opinion of the Parties or their counsel, acting reasonably, be reasonably required to effectually carry out the intent of this Agreement and transfer the Purchased Assets to the Purchaser.

16.2 Survival Following Completion

Notwithstanding any other provision of this Agreement, Article 9, Article 10, Section 15.2 and Section 15.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

16.3 Notice

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a "Notice") shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

- (a) to the Receiver:

KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

Attention: Robert Kofman and Noah Goldstein
Tel: (416) 932-6228 / (416) 932-6207
Email: bkofman@ksvadvisory.com / ngoldstein@ksvadvisory.com



and a copy to the Receiver's counsel to:

Bennett Jones LLP
3400 One First Canadian Place
Toronto, ON M5X 1A5

Attention: Sean Zweig and John van Gent
Tel: (416) 777-6254 / (416) 777-6522
Email: zweigs@bennettjones.com / vangent@bennettjones.com

(b) to the Purchaser:

9840478
9840508 Canada Inc.
18 Adelaide Drive, Ottawa ont. K2E 1A9

Attention: [•] DAVID CHOO
Tel: [•] 613-226-7266 X 201
Email: [•] DCHOO@ASHCROFTHOMES.COM

and a copy to the Purchaser's counsel to:

[•] MANN LAWYERS LLP 1600 SCOTT ST. Suite 710
OTTAWA

Attention: [•] STEPHEN GUEST
Tel: [•] 613-722-1500 X 259
Email: [•] STEPHEN@MANNLAWYERS.COM

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third (3rd) Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first (1st) Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth (4th) Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

16.4 Waiver

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

16.5 Consent

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is

not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

16.6 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario sitting in Toronto. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes among them, regardless of whether or not such disputes arose under this Agreement.

16.7 Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

16.8 Time of the Essence

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

16.9 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

16.10 Assignment

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Receiver's prior written approval, which approval shall be in the Receiver's sole, absolute and unfettered discretion. Notwithstanding the foregoing, up until closing, the Purchaser shall have the right to direct that title to the Lands be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) that is an affiliate of the Purchaser, provided that the Purchaser shall not be released from any and all obligations and liabilities hereunder until after the Closing of the transaction. The foregoing right may only be exercised once by the Purchaser. Any other requested direction of title shall require the Receiver's prior written approval, which approval shall be in the Receiver's sole, absolute and unfettered discretion.

16.11 Expenses

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

16.12 Severability

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

16.13 No Strict Construction

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

16.14 Cumulative Remedies

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

16.15 Currency

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

16.16 Receiver's Capacity

It is acknowledged by the Purchaser that the Receiver is entering into this Agreement solely in its capacity as Court-appointed receiver of the Property and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

16.17 Planning Act

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

16.18 No Third Party Beneficiaries

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. No other person or entity shall be regarded as a third party beneficiary of this Agreement.

16.19 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

16.20 Counterparts

This Agreement may be executed in counterparts and by facsimile or PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.


[SIGNATURE PAGE FOLLOWS.]

A handwritten signature or set of initials, possibly "P" followed by a circular flourish, located in the bottom right corner of the page.

IN WITNESS WHEREOF the Receiver has duly executed this Agreement as of the date first above written.

KSV KOFMAN INC., in its capacity as court-appointed receiver of all the real property registered on title as being owned by Textbook (525 Princess Street) Inc. and of all the assets, undertakings and properties of Textbook (525 Princess Street) Inc. acquired for or used in relation to such real property, and not in its personal capacity or in any other capacity

Per:


Name: ~~Robert Kofman~~ David Storažky
Title: ~~President and Managing Director~~

ACCEPTED by the Purchaser this 23 day of [•], 2017

October
[•] ~~9840508~~ Canada (Reg)
9840978

Per:


Name: MAURICE B. HARRIS
Title: Authorized Signing Officer

**SCHEDULE A
APPROVAL AND VESTING ORDER**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) <*>, THE <*> DAY
)
JUSTICE) OF <*>, 2017

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

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Kofman Inc., in its capacity as Court-appointed receiver (in such capacity, the "Receiver"), without security, of certain of the assets, undertaking and property of Textbook (525 Princess Street) Inc. (the "Debtor") for an order, *inter alia*, approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale between the Receiver, as vendor, and <*> (the "Purchaser"), as purchaser, dated <*>, 2017 (the "Sale Agreement"), a copy of which is attached as Confidential Appendix "<*>" to the <*> Report of the Receiver dated <*>, 2017 (the "<*> Report"), and vesting in the Purchaser, or as it

may direct in accordance with the Sale Agreement, all the Receiver's and the Debtor's right, title and interest in and to the property described as the "Purchased Assets" in the Sale Agreement (the "**Purchased Assets**"). was heard this day at 330 University Avenue, Toronto, Ontario.

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

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

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all the Receiver's and the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement, including without limitation the subject real property identified in **Schedule "B"** hereto (the "**Real Property**"), shall vest absolutely in the Purchaser, or as it may direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, leases, notices of lease, subleases, licences, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute

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

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

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

with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

6. **THIS COURT ORDERS** that, 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

any assignment in bankruptcy made in respect of the Debtor,

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

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

**SCHEDULE "A"
FORM OF RECEIVER'S CERTIFICATE**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

RECEIVER'S CERTIFICATE

RECITALS

I. Pursuant to an Order of the Honourable Mr. Justice Myers of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated May 2, 2017, KSV Kofman Inc. was appointed as receiver (in such capacity, the "**Receiver**"), without security, of all the real property registered on title as being owned by Textbook (525 Princess Street) Inc. (the "**Debtor**") (collectively, the "**Lands**") and of all the assets, undertakings and properties of the Debtor acquired for or used in relation to the Lands (the "**Property**").

II. Pursuant to an Order of the Court dated <*>, 2017, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and <*> (the "**Purchaser**"), as purchaser, dated <*>, 2017 (the "**Sale Agreement**"), and provided for the vesting in the Purchaser, or as it

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

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

THE RECEIVER CERTIFIES the following:

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

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

KSV KOFMAN INC., in its capacity as court-appointed receiver of all the real property registered on title as being owned by Textbook (525 Princess Street) Inc. and of all the assets, undertakings and properties of Textbook (525 Princess Street) Inc. for or used in relation to such real property, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

SCHEDULE "B"
LEGAL DESCRIPTION OF THE REAL PROPERTY

525 Princess Street, Kingston, Ontario

FIRSTLY: PIN 36071-0115 (LT)

PT LT 636 PL A12 KINGSTON CITY AS IN FR183198; EXCEPT PT 1 13R21051;
KINGSTON.

SECONDLY: PIN 36071-0116 (LT)

PT LT 636 PL A12 KINGSTON AS IN FR151313; KINGSTON; THE COUNTY OF
FRONTENAC.

THIRDLY: PIN 36071-0117 (LT)

PT LT 637-638 PL A12 AS IN FR218760 & FR142138 EXCEPT THE EASEMENT THEREIN
SECONDLY AND THIRDLY DESCRIBED IN FR142138 AND EXCEPT THE EASEMENT
THEREIN FIRSTLY DESCRIBED IN FR218760 & FR142138; KINGSTON; THE COUNTY
OF FRONTENAC.

FOURTHLY: PIN 36071-0118 (LT)

PT LT 637-638 PL A12 KINGSTON CITY PT 1 13R6390; T/W FR412426; KINGSTON; THE
COUNTY OF FRONTENAC

SCHEDULE "C"
INSTRUMENTS TO BE DELETED FROM PIN NOS. 36071-0115 (LT), 36071-0116 (LT),
36071-0117 (LT) AND 36071-0118 (LT)

<u>Reg No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From</u>	<u>Parties To</u>
FC212202	2015/12/16	Charge	\$6,400,000.00	Textbook (525 Princess Street) Inc.	Textbook Student Suites (525 Princess Street) Trustee Corporation
FC212203	2015/12/16	Transfer of Charge	N/A	Textbook Student Suites (525 Princess Street) Trustee Corporation	Textbook Student Suites (525 Princess Street) Trustee Corporation Olympia Trust Company
FC213823	2016/01/25	Transfer of Charge	N/A	Textbook Student Suites (525 Princess Street) Trustee Corporation Olympia Trust Company	Textbook Student Suites (525 Princess Street) Trustee Corporation Olympia Trust Company
FC225967	2016/08/24	Construction Lien	\$66,747.00	J.L. Richards & Associates Limited	N/A
FC228793	2016/10/07	Certificate	N/A	J.L. Richards & Associates Limited	N/A
FC230376	2016/11/03	APL Court Order	N/A	Ontario Superior Court of Justice	Grant Thorton Limited

SCHEDULE "D"
PERMITTED ENCUMBRANCES

NIL

**SCHEDULE B
PERMITTED ENCUMBRANCES**

PART I: GENERAL PERMITTED ENCUMBRANCES

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates to the extent adjusted for under this Agreement;
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes;
3. Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including without limitation, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements; provided same have been complied with or security has been posted to ensure compliance and completion as evidenced by a letter from the relevant Authority or regulated utility;
4. Any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Purchaser's intended use of the Property;
5. Any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the Property;
6. Such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Property or any part thereof, or materially impair the value thereof;
7. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute; and
8. The following exceptions and qualifications contained in Section 44(1) of the Land Titles Act: paragraphs 7, 8, 9, 10, 12 and 14.

PART II: SPECIFIC PERMITTED ENCUMBRANCES

NIL

**SCHEDULE C
LEGAL DESCRIPTION OF LANDS**

525 Princess Street, Kingston, Ontario

FIRSTLY: PIN 36071-0115 (LT)

PT LT 636 PL A12 KINGSTON CITY AS IN FR183198; EXCEPT PT 1 I3R21051;
KINGSTON.

SECONDLY: PIN 36071-0116 (LT)

PT LT 636 PL A12 KINGSTON AS IN FR151313; KINGSTON; THE COUNTY OF
FRONTENAC.

THIRDLY: PIN 36071-0117 (LT)

PT LT 637-638 PL A12 AS IN FR218760 & FR142138 EXCEPT THE EASEMENT THEREIN
SECONDLY AND THIRDLY DESCRIBED IN FR142138 AND EXCEPT THE EASEMENT
THEREIN FIRSTLY DESCRIBED IN FR218760 & FR142138; KINGSTON; THE COUNTY
OF FRONTENAC.

FOURTHLY: PIN 36071-0118 (LT)

PT LT 637-638 PL A12 KINGSTON CITY PT 1 I3R6390; T/W FR412426; KINGSTON; THE
COUNTY OF FRONTENAC.