

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

B E T W E E N:

**PEOPLES TRUST COMPANY**

Applicant

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**

Respondent

**APPLICATION UNDER section 243 of the Bankruptcy and Insolvency Act,  
R.S.C. 1985, c. B-3, as amended and under Section 101 of the  
Courts of Justice Act, R.S.O. 1990, c. C.43.**

**RECEIVER'S MOTION RECORD  
VOLUME I of IV  
(Returnable March 6, 2015)**

March 3, 2015

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in its capacity as court appointed receiver  
and manager of Rose of Sharon (Ontario)  
Retirement Community

**TO:** Receivership Service List

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Court File No. No.CV- 11-9399-00CL

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**ONTARIO  
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**NOTICE OF MOTION**

**DELOITTE RESTRUCTURING INC.** (“**Deloitte**”), in its capacity as court appointed receiver and manager (the “**Receiver**”) of Rose of Sharon (Ontario) Retirement Community (“**Rose**”), will make a motion to a judge presiding over the Commercial List at 10:00 a.m. on March 6, 2015 at 330 University Avenue, Toronto, Ontario.

**THE PROPOSED METHOD OF HEARING:** The motion will be heard orally.



**THE MOTION IS FOR** an Order substantially in the form of the draft attached as Schedule “A” hereto:

1. if necessary, abridging the time for service of the Notice of Motion and Motion Record herein, validating service of the Notice of Motion and Motion Record, and dispensing with further service thereof;
2. approving the Sixth Report to the Court of the Receiver dated May 16, 2014 (the “**Sixth Report**”) and the Receiver’s actions and activities as set out in the Sixth Report;
3. approving the Seventh Report to the Court of the Receiver dated March 3, 2015 (the “**Seventh Report**”) and the Receiver’s actions and activities as set out in the Seventh Report;
4. approving the settlement between Trisura Guarantee Assurance Company (“**Trisura**”), Peoples Trust Company (“**Peoples**”) and the Receiver, of the lien action of Mikal-Calladan Construction Inc. (the “**Lien Action**”) which it assigned to Trisura;
5. sealing from the public record the Minutes of Settlement between Peoples and Trisura, as defined below;
6. directing Unimac Group Inc. (“**Unimac**”), John and Moon Yoon (collectively, the “**Yoons**”), and Leon Hui to each provide the Receiver by March 31, 2015, with a written accounting of all amounts each has received in respect of rent for the 10 units (the “**Occupied Units**”) referred to in paragraph 40 of the Seventh Report;

7. directing Unimac, the Yoons and Leon Hui to each provide the Receiver by March 31, 2015, copies of any and all leases for the Occupied Units from July 29, 2014 onward, or to the extent no written leases were entered into, details of oral leases including start date, term, amount payable and name of tenant(s);
8. ordering Unimac, the Yoons and Leon Hui to each pay to the Receiver by March 31, 2015, for the benefit of the estate and subject to Peoples' first ranking security, all amounts received from tenants of the Occupied Units from July 29, 2014 onward;
9. directing all tenants of the Occupied Units to produce to the Receiver on or before March 31, 2015, the information required in the Notices to Tenants, Demands for Particulars of Tenancy Agreement and Notices of Rental Attornment (the "**Notices**") set out in paragraphs 40 and 41 and Appendix "G" of the Seventh Report;
10. directing all tenants of the Occupied Units to pay the rent for their Unit(s) to the Receiver from the date of the Order onward, for the benefit of the estate and subject to Peoples' first ranking security, based on the terms of their lease, and to the extent there is no lease, at market rates as determined by the Receiver;
11. approving and accepting the Receiver's Interim Statement of Receipt and Disbursements for the period from September 28, 2011 to November 30, 2014, as set out in Appendix "K" to the Seventh Report;
12. approving the fees and disbursements of the Receiver for the period from November 1, 2013 to November 30, 2014, the fees and disbursements of Gowling Lafleur Henderson LLP ("**Gowlings**") for the period from December 31, 2013 to December 31, 2014, the fees and disbursements of Blaney McMurtry LLP ("**Blaneys**") for the period from

November 1, 2013 to September 30, 2014, and the fees and disbursements of Kronis, Rotsztain, Margles, Cappel LLP (“**KRMC**”) for the period from November 26, 2013 to March 6, 2015;

13. increasing to \$6,500,000.00 the amount the Receiver is authorized to borrow pursuant to paragraph 20 of the Appointment Order (defined below); and
14. such further and other relief as counsel may request and this Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. pursuant to an Order (the “**Appointment Order**”) of Justice Campbell of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 27, 2011 (the “**Appointment Date**”), as amended, Deloitte was appointed as Receiver of all of the current and future assets, undertakings and properties of Rose;
2. the Property is a twelve (12) storey building located at 15-17 Maplewood Avenue, Toronto, Ontario (the “**Property**”) consisting of a 60 bed long term care component on floors 4 to 6 (the Nursing Home), and a residential life lease component consisting of 90 apartments (the “**Life-Lease Units**”) and related amenities (the “**Life-Lease Residence**”) on the remaining floors (floors 2, 3 and 7 through 12);
3. the 90 Life-Lease Units have been described by the Receiver in its previous Reports as follows:
  - (a) 28 Arm’s Length Units, made up of 27 tenanted units and 1 abandoned unit, all of which were purchased and held by arm’s length purchasers (the “**ALUs**”);

- (b) 16 Director Units, purchased by former members of Rose's board of directors and/or their spouses. Three of these units were purchased by the Yoons (the "**Yoon Units**");
- (c) 2 units purchased by Mugungwha Homes ("**Mugungwha**") a "non-profit registered charity with particular emphasis on helping senior citizens of the Korean-Canadian community" (the "**Mugungwha Units**"). The president of Mugungwha is Moon Yoon, who is the wife of John Yoon (who was the C.E.O. of Rose);
- (d) 18 units purchased by non-arm's length purchasers (i.e. investors) representing purchasers who appear to have purchased units for investment or for purposes other than personal occupation ("**Non-Arm's Length Units**"). One of these 18 Non-Arm's Length Units was purchased by Leon Hui (the "**Leon Hui Unit**");
- (e) 16 units that have been released back to Rose (the "**Released and Vacant Units**");
- (f) 6 units occupied by Unimac Group Ltd. (the "**Unimac Units**");
- (g) 3 units held by Turfpro Investments Inc./William Campbell ("**Turfpro**") that were obtained in exchange for various loans (the "**Turfpro RTOA Units**");
- (h) 4 units for which options to purchase were provided to Turfpro in exchange for various loans (the "**Turfpro Option Units**"); and
- (i) 1 unsold and vacant unit (the "**Unsold Unit**");

4. there are four different Life-Lease Units which may be subject to the interests of more than one party so that the total number of units set out above is 94 instead of 90;
5. since its appointment, the Receiver has managed and administered the Property for the benefit of stakeholders, and among other things:
  - (a) caused the Nursing Home to be operated in accordance with applicable law and regulation, through the professional management of Assured Care Consulting Inc. (“**ACC**”), a manager approved by the Ministry of Health and Long-Term Care;
  - (b) caused the Property, apart from the operations of the Nursing Home, to be professionally managed by Sterling Silver Development Corporation through its division, Sterling Karamar Property Management (“**Sterling**”), as approved by this Court;
  - (c) caused a review of the condition of the building to be prepared by an independent expert;
  - (d) retained a contractor to remediate the conditions identified by the independent expert;
  - (e) investigated the nature and extent of the payments made by, and interests of, various parties in the Life-Lease Units, and various realization strategies for the Property;
  - (f) made appropriate inquiries and pursued the registration of the Property under the *Condominium Act*; and
  - (g) generally managed and administered the Property in a commercially reasonable fashion in accordance with applicable law;

6. on April 8, 2013, Peoples served its motion materials (the “**Priority Motion**”) seeking priority over all of the mortgages registered against the Property and over the Life Lease Claimants (as defined in the Priority Motion, and essentially being all persons having an interest in the Property except for those having construction lien claims found to be valid and in priority to Peoples), including Unimac;
7. on April 11, 2013, Justice Mesbur issued an Order approving the appointment of KRMC as representative counsel (“**Representative Counsel**”) of the ALUs, composed mostly of persons of Korean Heritage, many of whom are elderly and/or have a limited grasp of English (the “**Representative Counsel Order**”);
8. on September 10, 2013, the date scheduled for the hearing of the Priority Motion, Gowlings advised the Court that Peoples and the Receiver had reached a settlement with the ALUs in respect of the Priority Motion, representing the 28 Arm’s Length Units in the Life-Lease Residence (the “**ALU Settlement**”), and sought the Court’s approval of the ALU Settlement. Justice Mesbur approved the ALU Settlement and issued an Order (the “**ALUs Settlement Approval Order**”) to that effect. There was no opposition to the ALU Settlement at that time. The remaining issues concerning the Priority Motion were adjourned to November 14 and 15, 2013;
9. as summarized in the Receiver’s Fifth Report to the Court dated December 10, 2013 (the “**Fifth Report**”), the continuation of the Priority Motion resulted in the following Orders:
  - (a) on November 14, 2013 Justice Mesbur ordered and declared that Peoples was entitled to priority over the claims of all persons claiming an interest in 25 non-ALU Units in the Property, except for any construction lien claims found to be valid and prior by a judge presiding over the Superior Court of Justice



(Commercial List) (the “**November 14 Priority Claims Order**”). These 25 non-ALU Units consisted of sixteen (16) Released and Vacant Units, the three (3) Turfpro RTOA Units, the two (2) Turfpro Option Units, the one (1) Unsold Unit, and three (3) Units in which John Yoon or Moon Yoon claimed an interest (that is, the three Yoon Units defined above); and

- (b) on November 22, 2013, Justice Mesbur made an order (the “**ILA Order**”) that KRMC be discharged as Representative Counsel and that it perform a new mandate to provide independent legal advice (“**KRMC ILA Retainer**”) to certain individual unrepresented non-ALUs (ultimately encompassing Unit-holders of 6 Units purchased by non-ALUs separate and apart from the 25 Units set out in subparagraph (a) above) who had entered, or would be entering, into settlements with Peoples regarding their Units (“**ILA Unit-holders**”);

**Procedural History Since December 10, 2013**

- 10. on December 13, 2013, Justice Mesbur issued an Order (the “**December 13 Order**”) that, among other things:
  - (a) approved additional settlements between Peoples, the Receiver and Unit-holders claiming an interest in 14 non-ALU Units (comprised of 11 units with former Rose directors or those related to Rose directors, six of whom received ILA pursuant to the KRMC ILA Retainer, two units with the nursing home manager and one unit with Mugungwha Homes, a charity related to Rose) (the “**December 13 Settlements**”);

- (b) declared that Peoples is entitled to priority over the claims of all persons claiming an interest in 17 additional Units (comprised of the Vase Units, as defined in the Third Report, and those unit holders who elected not to accept Peoples' settlement offer), except for any construction lien claims found to be valid and prior; and
  - (c) declared that Peoples is entitled to priority over the claims of IWOK and Turfpro, including any assignees, claiming under four subordinate mortgages;
- 11. on February 4, 2014, 2383431 Ontario Inc. ("**238**"), an assignee of the second mortgage against the Property, appealed the December 13 Settlements, alleging, among other things, that 238 never received any notice of the receivership proceedings, including the motion for approval of the December 13 Settlements (the "**238 Appeal**");
- 12. on February 6, 2014, that portion of the Priority Motion dealing with Unimac and Leon Hui was heard by Justice Brown who granted an Order declaring that Peoples' security is entitled to priority over Unimac's claim to the Unimac Units and over Leon Hui's claim to the Leon Hui Unit (the "**February 6 Order**"). On February 18, 2014, Unimac appealed the February 6 Order (the "**Unimac Appeal**");
- 13. the Receiver's Sixth Report to the Court (the "**Sixth Report**") dated May 16, 2014 provided the Court with an update on the disposition of matters involved in the Priority Motion since December 10, 2013, including providing the Court with information with respect to 238;
- 14. on July 4, 2014, the Court of Appeal (Justices Feldman, MacPherson and Cronk) heard the 238 Appeal and the Unimac Appeal. Both appeals were dismissed;



**Disposition of the Priority Motion**

15. the net result of the Priority Motion is that the ALU Settlement (28 Units) and the December 13 Settlements (14 Units) (collectively, the “**Settlements**”), as approved by the ALUs Settlement Approval Order and the December 13 Order, respectively, and the proposed settlement with Mugungwha Homes for Unit #207 as discussed below, allowed for holders of Right to Occupy Agreements (“**RTOAs**”) representing 43 Units (the “**Settlement Units**”) to continue to occupy their Unit pending the conversion of the building to condominiums, at which point those settling Unit-holders can elect to close the purchase of their Unit(s) by the payment of amounts as stipulated in the settlements or abandon their interest in their Units. Further, the November 14 Priority Claims Order (24 Units), the December 13 Order (17 Units) and the February 6 Order (7 Units) declared that Peoples is entitled to priority over the claims of all persons claiming an interest in 48 Units. After consideration of the proposed settlement with Mugungwha Homes for Unit #207, as discussed below, the total number of units that Peoples is declaring priority over, except for any valid construction lien claims found to be in priority, is 47 Units (the “**Peoples Priority Units**”);
16. both Unimac and Mugungwha Homes claimed an interest in Unit #207. Prior to the December 13 Hearing, Mugungwha Homes entered into a conditional settlement agreement with Peoples and the Receiver (the “**Unit #207 Settlement**”) which agreement applied the same terms, including payment methodology, as was employed in the ALU Settlements. Justice Mesbur declined to approve the Unit #207 Settlement prior to the disposition of Unimac’s claim to Unit #207. Given Justice Brown’s February 6 Order declaring that Peoples is entitled to priority over the claims of all other parties in the

Unimac Units, and given that the Unimac Appeal was dismissed by the Court of Appeal, Peoples has advised the Receiver that it will be seeking court approval for the Unit #207 Settlement with Mugungwha Homes;

**Status of Conversion to Condominiums**

17. the conversion is essentially in abeyance until all building deficiencies at the Property have been rectified;

**Status of Remediation of Building Deficiencies**

18. as discussed in its Third Report, upon its appointment the Receiver engaged Norman Lee & Associates (“**NLA**”) to conduct an audit of the Property. Norman Lee undertook a thorough review of the building and in March 2012 delivered a Building Audit Report (“**BAR**”). As detailed in the BAR, NLA identified a number of deficiencies in the building, the most significant of which involved the windows, glass sliding doors, balcony guardrails, roof and garage waterproofing, mechanical issues and exterior walls and caulking;
19. the Receiver authorized certain immediate repairs to the mechanical systems to ensure the HVAC system was functioning appropriately, and to certain rooftop mechanical pumps to repair leaks and bring systems into proper functioning capacity. Up to November 30, 2014, the Receiver has approved and paid for approximately \$375,000 of repairs to the premises that addressed mechanical and building envelope deficiencies identified in the BAR, including certain repairs to the laundry room, the mechanical penthouse, the underground garage and a portion of the first draw on the Remediation Contract (as defined below). In addition, since the commencement of the receivership, the Receiver

has expended approximately \$542,000 for general repairs and maintenance to the property (including janitorial and custodial costs, elevator, HVAC and fire system maintenance, snow removal, etc.) and items not identified in the BAR;

20. as a result of the disposition of the Priority Motion, Peoples advised the Receiver that it was in a position to move forward with funding the balance of the building remediation in order to meet the requirements for application to the City of Toronto (the "**City**") of the plan of condominium. At the Receiver's direction, NLA prepared tender packages for the building envelope repairs that were required to be made to obtain the certification;
21. three companies responded to the tender and KC Structural Ltd. ("**KC**") was the lowest and successful bidder. The Receiver entered into a Standard Construction Document CCDC2-2008 with KC dated July 25, 2014 (the "**Remediation Contract**"). The base amount of the Remediation Contract is \$2,375,400 plus HST. In addition, the Receiver, at Peoples' request, obtained a \$1,342,101 Performance Bond and an equivalent Labour & Material Payment Bond from Travelers Insurance Company of Canada to secure the Remediation Contract. Bonding resulted in an \$118,700 plus HST increase in the amount of the Remediation Contract to \$2,494,100 plus HST. Further, NLA is to be paid a fee equal to 10% of the contract price in respect of design, tendering and project management services resulting in a further \$249,410 plus HST that will be payable. As a result, the total cost of the Remediation Contract, including bonding costs and project management fees, is \$3,100,166 including HST;
22. the Remediation Contract is to be performed in four stages based on the elevations of the Property. Stage 1 commenced in October 2014 with the removal and replacement of the windows on the east elevation. As of the date of the Seventh Report, Stage 1 is complete.

Stage 2, consisting of work on the south elevation, commenced during the week of January 26, 2015 and is to be completed by mid-March 2015. Stages 3 and 4, which involve work on the west and north elevations, respectively, is scheduled to take place in the spring through fall with a target completion date for the entire project of mid-November 2015. Completion of the work is subject to any weather related issues and coordination with the Life-Lease Residence and Nursing Home, as residents need to be temporarily moved from their rooms in order for the windows on their floors to be replaced;

23. as of November 30, 2014, the Receiver had paid a portion of the first progress draw on the Remediation Contract totalling \$172,055, leaving approximately \$2,928,150 still to be paid as work moves toward completion;
24. in addition to the building envelope deficiencies that are being addressed through the Remediation Contract, there are mechanical and electrical deficiencies in the building that were identified in the BAR that still require rectification in order for NLA to provide the appropriate approvals. The estimated cost to correct the mechanical and electrical deficiencies is, respectively, \$275,000 and \$80,000 including HST. NLA advises that these matters will be addressed during the spring and summer of 2015;
25. given the approximately \$3.3 million of remediation work remaining to completed at the Property, as set out further below, the Receiver is seeking approval to increase the maximum amount it is permitted to borrow under the Appointment Order in order to fund the completion of the work;

## **The Statement of Claim and Construction Lien Litigation**

### Action Commenced by Rose

26. given the extent of deficiencies identified in the BAR, on September 14, 2012, Rose, by its Receiver, issued and served a Statement of Claim for breach of contract and/or negligence in connection with the construction of the Property (the “**Statement of Claim**”) against i) Trisura, the surety of a \$7,420,000 Performance Bond issued in respect of the Construction Contract (as defined in the Third Report), as a result of the breaches by Unimac pursuant to the Performance Bond; ii) Unimac Group Ltd. operating as Mikal-Calladan Construction Inc., Unimac Group Ltd., Mikal Calladan Construction Inc. (the general contractor), iii) Victor J. Heinrichs Architect Inc., Victor J. Heinrichs Inc., (the architect), iv) York Health Care Developments Inc. (the project manager), v) Jain & Associates Limited (engineering consultant who prepared mechanical, plumbing and electrical specifications for the project and electrical consultant to the architect), and vi) M.V. Shore Associates (1993) Limited (mechanical engineers on the project and consultant to the architect) for breach of contract and/or negligence in connection with the construction of the Property;
27. examinations for discovery have been completed, with the exception of examinations of the defendants Unimac and Mikal-Calladan Construction Inc. (“**Mikal-Calladan**”). Despite numerous requests, and contrary to a court-ordered Discovery Plan, witnesses for examinations for discovery for Unimac and Mikal-Calladan have not been produced. The Receiver is moving to strike the statements of defence of those two parties and that motion is scheduled to be heard on April 1, 2015. The Receiver is also in



the process of answering its undertakings. After these two steps are complete, it is expected that this proceeding can be set down for trial, possibly in June or July 2015;

Mikal-Calladan Lien Action

28. on November 19, 2010, Mikal-Calladan registered a lien for \$4,166,659 against the Property (the “**Construction Lien**”). On January 30, 2012, the Construction Lien was subsequently assigned to Trisura. On December 27, 2012, the Court issued an order lifting the stay of proceedings so that Trisura could set the Lien Action down for trial;
29. affidavits of documents and productions have been exchanged and examinations for discovery were scheduled to be completed by the end of February 2015. The Receiver had brought a motion to discharge the lien which has been scheduled for June 3, 2015. In addition, the parties entered into without prejudice discussions of a possible settlement of the Lien Action;
30. on January 21, 2015, Peoples made an Offer to Settle to Trisura regarding the Construction Lien, the Lien Action and the Statement of Claim. The Offer to Settle was accepted by Trisura on January 29, 2015 (the “**Offer to Settle**”) and the parties executed Minutes of Settlement made as of February 2, 2015 (the “**Lien Settlement**”);
31. the Receiver is of the view that the Lien Settlement is in the best interests of Rose. Accordingly, the Receiver and Peoples are seeking approval of the Lien Settlement. It is an essential term of the Lien Settlement that the Court approve it and confirm that Trisura’s release of lien releases all possible claims that can be made by any party under the *Construction Lien Act* against the Property, Peoples and the Receiver. This relief is required because Unimac has asserted that it is entitled to claim

the lien relied upon by Trisura, despite the said lien having been assigned by Unimac to Trisura;

Sealing Order

32. Trisura is requesting that the unredacted version of the Minutes of Settlement be sealed from the public record until the settlement thereunder is completed;
33. the salutary effects of sealing the Minutes of Settlement outweigh the deleterious effects of doing so;

**Notices to Tenants of Occupied Units**

34. of the 42 Units in respect of which Peoples obtained orders declaring that Peoples is entitled to priority over those Units, 10 Units (the six Unimac Units, the one Leon Hui Unit, and the three Yoon Units) are occupied by either a relative or third-party tenant of the former Unit-holder (the “**Occupied Units**”). Accordingly, on July 29, 2014, the Receiver delivered Notices to Tenants, Demands for Particulars of Tenancy Agreement and Notices of Rental Attornment (the “**Notices**”) to each of the occupants of the Occupied Units with a copy provided to Unimac the Yoons and Leon Hui, as applicable;
35. none of the occupants of the Occupied Units has complied with the Notices. No lease payments have been made to the Receiver, and it has not been provided with details of the leases for the Occupied Units;

**Receiver’s Borrowings**

36. since the commencement of the receivership, the Receiver has borrowed \$2,500,000.00 from Peoples by way of Receiver’s Certificates in order to fund the receivership, substantially to fund the cost of rectification efforts to date and to fund Receiver and legal

and other professional fees in connection with the Priority Issue, the Construction Lien action and the Statement of Claim. In addition, the life-lease premises operates at a recurring cash deficit of between \$20,000 to \$30,000 per month. The Receiver's borrowings are the maximum allowed under the Amended and Restated Appointment Order;

37. as at November 30, 2014, the balance of funds in the Receiver's possession is \$299,009.00. As set out above, the Receiver anticipates that it will incur a further \$3.3 million in costs to complete the remediation of the deficiencies at the Property in order to be in a position to convert the building to condominiums and close the transactions for the Settlement Units as well as realize on the Peoples Priority Units and the Nursing Home. In addition, further funds are required to administer the Life Lease Residence and for Receiver and legal fees. Accordingly, the Receiver is seeking an Order increasing the Receiver's borrowing limit to \$6,500,000.00. These borrowings will be received from Peoples;
38. the interim statement of receipts and disbursements of the Receiver attached as Appendix "K" to the Seventh Report is a fair and accurate representation of the funds received and disbursed directly by the Receiver since the appointment of the Receiver up to November 30, 2014;
39. the fees and disbursements of the Receiver and its counsel are fair and reasonable in the circumstances;
40. the *BIA*;
41. the *CJA*;
42. Rule 3.02 of the Rules of Civil Procedure; and



43. such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

1. The Sixth Report to the Court of the Receiver, dated May 16, 2014;
2. The Seventh Report to the Court of the Receiver, dated March 3, 2015;
3. the Affidavit of Hartley Bricks sworn March 2, 2015;
4. the Affidavit of Chad Kopach sworn March 3, 2015;
5. the Affidavit of Christopher Stanek sworn February 26, 2015;
6. the Affidavit of Mervyn Abramowitz sworn February 26, 2015; and,
7. such further and other evidence as counsel may advise and this Court permit.

March 3, 2015

**BLANEY MCMURTRY LLP**  
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Lawyers for Deloitte Restructuring Inc., in its capacity as court appointed receiver and manager of Rose of Sharon (Ontario) Retirement Community

**TO:** Receivership Service List (see Schedule "B")

**PEOPLES TRUST COMPANY**

and

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**

Applicant

Respondent

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

Proceeding Commenced at **TORONTO**

**NOTICE OF MOTION**

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**TAB A**

**SCHEDULE "A"**

Court File No. CV-11-9399-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

THE HONOURABLE ) FRIDAY, THE 6<sup>th</sup> DAY  
JUSTICE ) OF MARCH, 2015

**B E T W E E N:**

**PEOPLES TRUST COMPANY**

Applicant

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**

Respondent

**O R D E R**

**THIS MOTION** made by **Deloitte Restructuring Inc.**, in its capacity as Receiver and Manager over all of the current and future assets, undertakings and properties of the Respondent (in that capacity, the "**Receiver**") for an Order (i) abridging the time for service of the notice of motion and motion record herein, (ii) approving the Sixth Report of the Receiver dated May 16, 2014 (the "**Sixth Report**") and the activities described therein, (iii) approving the Seventh Report of the Receiver dated March 3, 2015 (the "**Seventh Report**") and the activities described therein, (iv) approving the settlement of the construction lien of Mikal-Calladan Construction

Inc. (the "**Construction Lien**") registered against the Rose of Sharon ("**Rose**") nursing home and life-lease residence located at 15-17 Maplewood Avenue, Toronto (the "**Property**") on November 19, 2010, and assigned to Trisura Guarantee Insurance Company ("**Trisura**") by way of agreement dated January 30, 2012, as well as the related Construction Lien action, and approving the settlement with only Trisura of that portion of Rose's Statement of Claim issued by its Receiver in connection with the construction of the Property, as set out in Minutes of Settlement made as of February 2, 2015 (the "**Minutes of Settlement**"), (v) sealing the unredacted Minutes of Settlement from the public record until the settlement been completed, or until further Order of the Court, (vi) directing Unimac Group Inc. ("**Unimac**"), John Yoon and Moon Yoon (collectively, the "**Yoons**"), and Leon Hui to each provide an accounting of all amounts each has received in respect of rent for the 10 units (the "**Occupied Units**") referred to in paragraph 40 of the Seventh Report, provide details of the leases for those Occupied Units and ordering that each pay to the Receiver any and all amounts received from tenants of the Occupied Units from July 29, 2014 onward, (vii) directing all tenants of the Occupied Units to produce to the Receiver on or before March 31, 2015, the information required in the Notices to Tenants, Demands for Particulars of Tenancy Agreement and Notices of Rental Attornment (the "**Notices**") set out in paragraph 40 and Appendix "G" of the Seventh Report, and to commence payment of rent to the Receiver from the date of the Order onward based on the terms of their lease, and to the extent there is no lease, at market rates as determined by the Receiver, (viii) approving and accepting the Receiver's Interim Statements of Receipts and Disbursements for the period from September 28, 2011 to November 30, 2014, (ix) increasing to \$6,500,000.00 the amount the Receiver is authorized to borrow pursuant to paragraph 20 of the Appointment Order (as defined in the Notice of Motion), and (x) approving the fees and disbursements for services

rendered by the Receiver for the period from November 1, 2013 to November 30, 2014, the fees and disbursements of Blaney McMurtry LLP (“**Blaneys**”) for the period from November 1, 2013 to September 30, 2014, the fees and disbursements of Gowling Lafleur Henderson LLP (“**Gowlings**”) for the period from December 31, 2013 to December 31, 2014, and the fees and disbursements of Kronis, Rotsztain, Margles, Cappel LLP (“**KRMC**”) for the period from November 26, 2013 to March 6, 2015, was heard this day at Toronto.

**ON READING** the Receiver’s Motion Record dated March 3, 2015, the Sixth Report, the Seventh Report, the affidavit of Hartley Bricks sworn March 2, 2015, the affidavit of Chad Kopach sworn March 3, 2015, the affidavit of Christopher Stanek sworn February 26, 2015, and the affidavit of Mervyn Abramowitz sworn February 26, 2015, and upon hearing the submissions of counsel for the Receiver, counsel for the Applicant, and counsel for Trisura, no one else appearing,

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion returnable March 6, 2015 (the “**NOM**”), and related motion material filed in support of that NOM (the “**Motion Material**”) be and is hereby abridged, that service of the NOM and Motion Material is hereby validated, and that further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS** that the Sixth Report dated May 16, 2014, and the actions of the Receiver and its counsel described therein be and are hereby approved.
3. **THIS COURT ORDERS** that the Seventh Report dated March 3, 2015, and the actions of the Receiver and its counsel described therein be and are hereby approved.

4. **THIS COURT ORDERS** that (i) the settlement of the Construction Lien of Mikal-Calladan registered against the Property on November 19, 2010, and assigned to Trisura by way of agreement dated January 30, 2012, and the related Constriction Lien action, and (ii) the settlement with only Trisura of that portion of Rose's Statement of Claim issued by its Receiver in connection with the construction of the Property, as set out in the Minutes of Settlement made as of February 2, 2015, be and is hereby approved.

5. **THIS COURT ORDERS** that the unredacted version of the Minutes of Settlement as defined in paragraph 53 of the Seventh Report and attached to that Report in redacted form as Redacted Appendix "I" shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order.

6. **THIS COURT ORDERS** that the unredacted version of the Minutes of Settlement shall remain under seal until the Minutes of Settlement have been completed, or until further Order of the Court.

7. **THIS COURT ORDERS** that Unimac, John Yoon, Moon Yoon and Leon Hui each provide the Receiver by March 31, 2015 an accounting of any all funds each has received since July 31, 2014, in respect of rent or otherwise from any of the Occupied Units referred to in paragraph 40 of the Seventh Report (the "**Attornment Rent Monies**").



8. **THIS COURT ORDERS** that Unimac, John Yoon, Moon Yoon and Leon Hui each pay to the Receiver by March 31, 2015, any and all Attornment Rent Monies they have received since July 31, 2014.

9. **THIS COURT ORDERS** that Unimac, John Yoon, Moon Yoon and Leon Hui each provide the Receiver by March 31, 2015, copies of any and all leases from July 29, 2014 onward in their possession for any of the Occupied Units they ever claimed any form of interest in, and to the extent no written leases were entered into or can be produced, details of any oral leases for those Occupied Units including start date, term, amount payable and name of tenant(s).

10. **THIS COURT ORDERS** that all tenants of the Occupied Units produce to the Receiver on or before March 31, 2015 the information required in the Notices set out in paragraph 40 and Appendix "G" of the Seventh Report.

11. **THIS COURT ORDERS** all tenants of the Occupied Units commence payment of rent for their respective Occupied Unit to the Receiver from the date of this Order onward based on the terms of their lease, and to the extent there is no lease, at market rates as determined by the Receiver.

12. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period from September 28, 2011 to November 30, 2014 as set out at Appendix "K" of the Receiver's Seventh Report, be and is hereby accepted and approved.

13. **THIS COURT ORDERS** that the amount the Receiver is authorized to borrow pursuant to paragraph 20 of the Appointment Order issued by Justice Campbell on September 27, 2011, be and is hereby increased to \$6,500,000.00.



14. **THIS COURT ORDERS** that the fees and disbursements of the Receiver from November 1, 2013 to November 30, 2014, the fees and disbursements of Blaneys from November 1, 2013 to September 30, 2014, the fees and disbursements of Gowlings from December 31, 2013 to December 31, 2014, and the fees and disbursements of KRMC from November 26, 2013 to March 6, 2015, be and are hereby approved.

---

**TAB B**

**SCHEDULE "B"**

**RECEIVERSHIP SERVICE LIST**

**AND TO: GOWLING LAFLEUR HENDERSON LLP**

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1 First Canadian Place  
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**Clifton Prophet**

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Lawyers for Peoples Trust Company, and Deloitte & Touche Inc. in its capacity as court-appointed receiver of Rose of Sharon (Ontario) Retirement Community

**AND TO: ATTORNEY GENERAL LEGAL SERVICES DIVISION**

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**Attention: Eunice Machado**

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Lawyers for Ministry of Health and Long-Term Care

**AND TO: BELSITO, BAICHOO & RUSO/BPR LITIGATION LAWYERS**

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**Attention: Justin P. Baichoo**

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Lawyers for Mikal-Calladan Construction Inc., Leon Hui, Unimac Group Ltd., IWOK Corporation and 2383431 Ontario Inc.

**AND TO: ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**  
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**Attention Mr. John Yoon**  
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**AND TO: DEPARTMENT OF JUSTICE**  
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Toronto, Ontario M5X 1K6

**Attention: Diane Winters**  
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**AND TO: MINISTRY OF FINANCE (ONTARIO)**  
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33 King Street West, 6<sup>th</sup> Floor  
Oshawa, Ontario L1H 8H5

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Lawyer for the former Directors/Directors Group

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**AND TO: LEON HUI**

27 Landmark Court  
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**AND TO: IWOK CORPORATION**  
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**AND TO: UNIMAC GROUP LTD.**  
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**AND TO: UNIMAC GROUP LTD.**  
c/o Paul Chan & Associates  
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Markham, ON L3R 2N2

**AND TO: RESIDENTS-OCCUPIED UNITS**

**PEOPLES TRUST COMPANY**

and

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**

Applicant

Respondent

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

Proceeding Commenced at **TORONTO**

**RECEIVER'S MOTION RECORD  
VOLUME I OF IV  
(RETURNABLE MARCH 6, 2015)**

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