

**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**

**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 May 31, 2017, 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 Eighth Report to the Court of the Receiver dated May 12, 2017 (the “**Eighth Report**”), and the actions and activities of the Receiver described therein;
3. declaring that Imseop Kim and Grace Kim (collectively, the “**Kims**”) do not have any right, title or interest in unit PH8 (“**Unit PH8**”) of the Rose of Sharon Life-Lease Residence (the “**Life-Lease Residence**”);
4. declaring that the purported lease agreement for Unit PH8 between the Kims as “tenants” and Unimac Group Ltd. as “landlord”, dated June 28, 2014, for a nine-year term commencing July 1, 2014, in return for an alleged lump-sum payment of \$33,000.00 (the “**Purported Unit PH8 Lease**”), is void *ab initio*;
5. if necessary, authorizing the Receiver to disclaim the Purported Unit PH8 Lease;
6. if the Kims take the position that they are tenants, granting judgment against Grace Kim for \$31,200.00, being the minimum market rent that should have been payable by the Kims to the Receiver as tenants of Unit PH8 since April 1, 2015 (\$1,300.00 per month);
7. regardless of whether the Kims are tenants or occupants, providing the Receiver with vacant possession of Unit PH8;

8. authorizing the Receiver to enter into a Marketing and Sales Agreement with Milborne Real Estate Inc. for the marketing and sale of the available residential condominium units of the Life-Lease Residence, and approval of this Marketing and Sales Agreement;
9. authorizing the Receiver to enter into an Exclusive Listing Agreement with John A. Jensen Realty Inc., to market and sell the Rose of Sharon nursing home (the “**Nursing Home**”), and approval of this Exclusive Listing Agreement;
10. sealing Confidential Appendix “A” to the Eighth Report until all of the residential units of the Life-Lease Residence are sold and those sales have all closed, and sealing Confidential Appendix “B” to the Eighth Report until the Nursing Home is sold and that sale has closed;
11. approving and accepting the Receiver’s Interim Statement of Receipt and Disbursements for the period from September 28 1, 2011 to March 31, 2017, as set out in Appendix “K” to the Eighth Report;
12. declaring that Kronis, Rotsztain, Margles, Cappel LLP (“**KRMC**”) has fulfilled its mandate as counsel providing independent legal advice (“**ILA Counsel**”) to certain Unit-holders in the Rose of Sharon Life-Lease Residence (the “**ILA Unit-Holders**”), regarding settlements that those Unit-holders entered into with the Applicant Peoples Trust Company (“**Peoples**”);
13. discharging KRMC as ILA Counsel to the ILA Unit-Holders;
14. approving the fees and disbursements of the Receiver for the period from December 1, 2014 to December 31, 2016, the fees and disbursements of Blaney McMurtry LLP

(“**Blaneys**”) for the period from October 1, 2014 to December 31, 2016, and the fees and disbursements of KRMC for the period from March 22, 2014 to March 20, 2015;

15. costs as against Grace Kim, Leon Hui and Unimac Group Ltd. on a substantial indemnity basis, in respect of the issues relating to Unit PH8;
16. such further and other relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

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. Rose’s principal asset is a 12-storey building (the “**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 originally consisting of 90 apartments (the “**Life-Lease Units**”, or “**Units**”) and related amenities (the Life-Lease Residence) on the remaining floors (floors 2, 3 and 7 through 12);
3. recently, the Receiver discovered that Unit PH6 had been divided into two separate units, being Unit PH4 and PH6, resulting in 91 Life-Lease Units (the owners of Unit PH6 - Jong Rye Lee and Chang Hun Shin - both now claim a life-lease ownership interest in the

two separate Units). However, for the purposes of the summary of the categorization of the Units of this motion, the Receiver will proceed on the basis that Units PH4 and PH6 constitute one unit;

4. the original 90 Life-Lease Units (now 91 with Unit PH6 becoming Units PH4 and PH6), and those claiming an interest in them, have been categorized by the Receiver in its previous Reports, and have been dealt with as set out below (the Units below total 94 because 4 of the Units had more than one claimant seeking an interest in those 4 Units):
  - (a) 28 Arm's Length Units, including Unit PH6 (now Units PH4 and PH6), all of which were purchased and held by arm's length purchasers (the "**ALUs**") composed mostly of persons of Korean Heritage, many of who are elderly, and/or have a limited grasp of English. Peoples has entered into a Court-approved settlement with the ALUs for these 28 Units, as set out in more detail below;
  - (b) 16 Director Units, purchased by former members of Rose's board of directors and/or their spouses. John Yoon, the former C.E.O. of Rose, and his wife Moon Yoon (collectively, the "**Yoons**") were named purchasers of three of these units (the "**Yoon Units**"). Peoples has obtained Court-ordered priority over the 3 Yoon Units, and 2 of the other Director Units. Peoples has entered into Court-approved settlements with the owners of the remaining 11 Director Units, as set out in more detail below;
  - (c) 2 Mugungwha Units, purchased by Mugungwha Homes a "non-profit registered charity with particular emphasis on helping senior citizens of the Korean-Canadian community". The president of Mugungwha Homes is Moon Yoon. Peoples has entered into a Court-approved settlement with Mugungwha Homes

for Unit 205, and a conditional settlement for Unit 207, as set out in more detail below (Unit 207 was being claimed by both the general contractor Unimac Group Ltd. (“**Unimac**”) and Mugungwha Homes);

- (d) 18 Non Arm’s Length 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. Two of these Units were purchased by Assured Care Consulting Inc. (the manager of the Nursing Home) and its president Robert Berg. Peoples entered into Court-approved settlements with Robert Berg and Assured Care Consulting Inc. for their two units, and obtained Court-ordered priority over the remaining 16 Non-Arm’s Length Units, comprising one Unit that the principal of Unimac, Leon Hui, was claiming an interest in (Unit 1105, the “**Leon Hui Unit**”) and the 15 other Non-Arm’s Length Units which were purchased by investors who had obtained financing from Vace Investments Inc. (the “**Vace Units**”), as set out in more detail below;
- (e) 16 Released and Vacant Units that have been released back to Rose, and over which Peoples obtained Court-Ordered priority as set out in more detail below (Turfpro Investments Inc. was also claiming an interest in one of these Units, being Unit 310);
- (f) 3 Units held by Turfpro Investments Inc./William Campbell (“**Turfpro**”) that were obtained in exchange for various loans made to Rose (the “**Turfpro RTOA Units**”). Peoples has obtained Court-Ordered priority over these 3 Turfpro RTOA Units as set out in more detail below;

- (g) 6 Units occupied by Unimac (the “**Unimac Units**”), being Units PH1, PH8, 207, 301, 303 and 309, and over which Peoples obtained Court-Ordered Priority as set out in more detail below (Unimac and Turfpro both claimed an interest in Unit PH8). Unit PH8 is a subject matter of the motion herein;
- (h) 4 Units (Units PH8, 310, 802 and PH3) for which options to purchase were provided to Turfpro in exchange for various loans made to Rose (the “**Turfpro Option Units**”). Unimac and Turfpro both claimed priority over Unit PH8, Unit 310 was a Released and Vacant Unit over which Turfpro claimed an interest, and Jan Kim (an ALU) and Turfpro both claimed priority to Unit 802. Peoples obtained Court-Ordered priority over three of these Turfpro Option Units (Units 310, PH3 and PH8), and entered into a settlement with the ALU Unit-Holder claiming an interest in Unit 802, as set out in more detail below; and
- (i) 1 unsold and vacant Unit (the “**Unsold Unit**”), over which Peoples obtained Court-Ordered Priority, as set out in more detail below;

### **Receiver’s Steps**

- 5. since its appointment, the Receiver has managed and administered the Property for the benefit of stakeholders, including having:
  - (a) caused the Nursing Home to be operated in accordance with applicable laws and regulations, through the professional management of Assured Care Consulting Inc., 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 independent experts;
- (d) retained contractors to remediate the conditions identified by the independent experts;
- (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 inquires and pursued the registration of the Life-Lease Residence portion of the Property under the *Condominium Act*; and,
- (g) generally managed and administered the Property in a commercially reasonable fashion in accordance with applicable laws;

**Procedural History Regarding the Units until December 10, 2013**

- 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);
- 7. on April 11, 2013, Justice Mesbur issued an Order approving the appointment of KRMC as representative counsel (“**Representative Counsel**”) for the ALUs (the “**Representative Counsel Order**”);



8. on September 10, 2013, Gowlings sought and obtained Court approval (the “**ALUs Settlement Approval Order**”) for a settlement that Peoples and the Receiver had reached with the ALUs in respect of the Priority Motion, representing the 28 Arm’s Length Units in the Life-Lease Residence (the “**ALU Settlement**”);
9. the ALUs Settlement Approval Order included an ALU Settlement for with Jong Rye Lee and Chang Hun Shin for Unit PH6;
10. 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 16 Released and Vacant Units, the 3 Turfpro RTOA Units, the 2 Turfpro Option Units over which no other party was claiming an interest (Units 310 and PH3), the 1 Unsold Unit, and the three 3 Yoon Units; 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 Director Units separate and apart from the 25 Units set out in subparagraph 10(a) above who had entered, or would be entering, into settlements with Peoples regarding their Units (the ILA Unit-holders)).

**Procedural History between December 11, 2013 and July, 2014**

11. 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 Director units with former Rose directors or those related to Rose directors, six of whom received ILA pursuant to the KRMC ILA Retainer, two Units purchased by Assured Care Consulting Inc./Robert Berg, and one of the two Units (Unit 205) that Mugungwha Homes was claiming an interest in (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 15 Vace Units forming part of the 18 Non-Arm’s Length Units), and two other remaining Unit-holders from the Director Units who elected not to accept Peoples’ settlement offer, being Units 703 and 902); and,
  - (c) declared that Peoples is entitled to priority over the claims of IWOK Corporation (a mortgagee of Rose ranking behind Peoples) and Turfpro, including any assignees, claiming under four subordinate mortgages;
  
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 6 Unimac Units (including Unit PH8) and over Leon Hui’s claim to the one Leon Hui Unit (the “**February 6 Unimac/Hui Priority**”);

**Order**”). On February 18, 2014, Unimac appealed the February 6 Order (the “**Unimac Appeal**”);

13. on July 4, 2014, the Court of Appeal (Justices Feldman, MacPherson and Cronk) heard and dismissed the Unimac Appeal;
14. on or about July 29, 2014, a copy of the February 6 Unimac/Hui Priority Order, and the Order dismissing Unimac’s appeal, was delivered to occupants of the Unimac Units, including those in Unit PH8;
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 Life-Lease Residence 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. After taking into account that Unit PH6 was divided into Units PH4 and PH6, this number increases to 44 Units;
16. 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 taking into account the proposed settlement with Mugungwha Homes for Unit 207, as discussed below, the total number of units over which the Court has declared Peoples has first ranking priority decreases to 47 Units (the “**Peoples Priority Units**”);

**Mugungwha Homes and Unit 207**

17. both Unimac and Mugungwha Homes claimed an interest in Unit 207. Prior to the hearing on December 13 before Justice Mesbur, Mugungwha Homes entered into a conditional settlement agreement with Peoples and the Receiver (the “**Unit 207 Settlement**”) on the same terms, including payment methodology, as 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, court approval can now be sought for the Unit 207 Settlement with Mugungwha Homes;
18. the Settlement for Unit 207 is on the same terms as the Settlement entered into for Unit 205 between Peoples and Mugungwha Homes, which received prior approval from the Court on December 13, 2013, as part of the December 13 Settlements by way of the December 13 Order;

**Motion before Justice Wilton-Siegel March 6, 2015 (the “Wilton-Siegel Order”)**

19. of the 48 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) were occupied by either a relative or a third-party tenant of the former Unit-holder (the “**Occupied Units**”). 4 of these Units continue to be occupied, including Unit PH8 by the Kims;

20. 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 including the occupants of Unit PH8 (the Kims) requiring, among other things, that going forward the occupants pay rent for their respective Units to the Receiver. A copy was also provided to Unimac, the Yoons and Leon Hui, and their counsel, as applicable;
21. none of the occupants of the Occupied Units complied with the Notices. No lease payments were made to the Receiver, and the Receiver was not provided with details of the leases for the Occupied Units;
22. on March 6, 2015, Justice Wilton-Siegel granted the Receiver’s motion for, among other things, an Order directing Unimac, the Yoons and Hui to each provide to the Receiver by March 31, 2015, a written accounting of all amounts each has received in respect of rent for the Occupied Units, 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(s) of tenant(s), and 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 occupants of the Occupied Units from July 29, 2014, onward;
23. the Wilton-Siegel Order also directed all occupants of the Occupied Units to produce to the Receiver on or before March 31, 2015, the information required in the Notices served on them on or about July 29, 2014, and directing all occupants 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;

24. the motion material in support of Wilton-Siegel Order, and the related Order itself, were sent to Unimac, Yoon, Hui, the lawyer for Unimac and Hui, and to the occupants of the Occupied Units (including the Kims in Unit PH8);
25. however, neither Unimac, Hui nor the Yoons have complied with the terms Wilton-Siegel Order as it related to them;
26. the only occupants in the Occupied Units who have either not complied with the Wilton-Siegel Order, and/or continue to occupy a Unit without remitting any rent payment to the Receiver, are the occupants of Unit PH8 (the Kims);
27. only three of the Occupied Units are still occupied (Units 1105, PH1 and PH8);
28. the tenants in Units 1105 and PH1 continue to pay monthly rent for their Units at the same amount as in April 2015 (\$1,300.00). Unit 1105 is a 2 bedroom, 2 bathroom unit totaling 825 square feet, and Unit PH1 is a 1 bedroom + den, 2 bathroom unit measuring 857 square feet. By way of comparison, Unit PH8 is a 2 bedroom, 2 bathroom unit measuring 1,181 square feet. The market rental rate for Unit PH8 is therefore at least \$1,300.00 per month;

#### **Unit PH8 and the Purported Unit PH8 Lease**

29. the occupants of PH8 are Grace Kim and her mother Imseop Kim, who was formerly a resident in the Nursing Home;
30. the Kims did not comply with the Notices served on July 29, 2014. Instead, by way of email to the Receiver dated April 28, 2015, Grace Kim alleged that on or about June 28,

2014, or one month before the Notices were delivered to Unit PH8 (among other Units), she and Imseop Kim entered into a lease with Unimac as “landlord” for Unit PH8 with a term of nine years and two months commencing July 1, 2014, in return for a prepaid lump-sum payment of \$33,000.00.

31. this Purported Unit PH8 Lease was signed and initialed by Leon Hui on behalf of Unimac, and the cheque for \$33,000.00 dated June 28, 2014, allegedly representing the lump-sum payment was from “Mr. In Soo Pak and Mrs. Young Sook Pak” and made payable to “Unimac Group Ltd”. The Receiver is unaware if the cheque was cashed. The Receiver believes Mrs. Pak to be the sister of Grace Kim;
32. the Purported Unit PH8 Lease states as follows in its terms of use:

“Retirement Residential – This Rental Agreement superseded previous Rental Agreement, as a settlement from the physical abuse and wrongful discharge of IMSEOP KIM by Rose O [*sic*] Sharon LTC as claimed by the Tenant, see pictures attached. Tenant tried to appeal in Court before Judge Brown twice”;
33. the Purported Unit PH8 Lease was allegedly entered into almost five months after the February 6 (2014) Unimac/Hui Priority Order of Justice D.M. Brown giving Peoples priority over the six Unimac Units (including Unit PH8 ), and only a few days before the Unimac/Hui appeal of that Order was dismissed by the Court of Appeal on July 4, 2014;
34. as of the date the Purported Unit PH8 Lease was allegedly entered into, Unimac no longer had an interest in that Unit, and neither Unimac, nor anyone else, was authorized to enter into the Purported Unit PH8 Lease, either on their own behalf, or on behalf of the Receiver or Peoples, or deal with Unit PH8 in any way, shape or form. The Purported

Unit PH8 Lease was entered into without the knowledge or consent of Peoples and the Receiver;

35. the rental term for the Purported Unit PH8 Lease equates to monthly rent of \$300 for a two-bedroom, 1,181 square foot suite, which is also the largest Unit in the Life-Lease Residence;
36. since the rent being paid to the Receiver by the tenants for Units 1105 and PH1 over the last two years is \$1,300.00, and given the size difference between those two units and Unit PH8, the minimum monthly rent payable by the Kims to the Receiver since the Wilton-Siegel Order is at least \$1,300.00;
37. on or about March 8, 2017, the Receiver delivered to the Kims a Notice to End Tenancy for non-payment of rent totalling \$31,200.00;

#### **Status of Remediation of Building Deficiencies and its Conversion to Condominiums**

38. almost all of the Building deficiencies have been remedied, and the Receiver and its counsel are hoping to be in a position to apply for final approval by Spring, 2017;

#### **Marketing and Sales**

39. the Receiver proposes to enter into a Residential Condominium Marketing and Sales Agreement with Milborne Real Estate Inc., for the marketing and sale of the condominium portion of the Life Lease Residence, and specifically those Units that are either not part of the Settlement Agreements, and those Units that are part of the Settlement Agreements but whose owners elect not to purchase their Units. The Receiver is seeking Court Approval to enter into the Residential Condominium Marketing and Sales Agreement with Milborne Real Estate Inc.;



40. similarly, the Receiver proposes to enter into an Exclusive Listing Agreement with John Jensen Realty Inc. for the marketing and sale of the Nursing Home, and the Receiver is seeking Court approval to do so;

**Receipts and Disbursements, and Fees**

41. the interim statement of receipts and disbursements of the Receiver attached as Appendix “K” to the Eighth 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 December 31, 2016;
42. the fees and disbursements of the Receiver and its counsel Blaneys, as well the fees and disbursements of KRMC, are fair and reasonable in the circumstances;
43. the fees and disbursements of KRMC for the period from November 26, 2013 to March 6, 2015, had been approved by way of the Wilton-Siegel Order. However, those fees included an estimate of KRMC’s fees to conclude the KRMC ILA Retainer, and the final invoice for the period from March 14, 2014 to March 20, 2015, ended up being \$3,318.56 instead of the \$2,666.80 estimated on the motion, or \$651.76 more than estimated. However, the total fees billed by KRMC for the KRMC ILA Retainer are still below the maximum amount provided for in the ILA Appointment Order (\$15,000.00, plus HST and disbursements);
44. the *BIA*;
45. the *CJA*;
46. Rule 3.02 of the Rules of Civil Procedure; and,
47. 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:**

48. the Eighth Report to the Court of the Receiver dated May 12, 2017;
49. the Affidavit of Hartley Bricks sworn May 2, 2017;
50. the Affidavit of Chad Kopach sworn May 11, 2017;
51. the Affidavit of Phillip Cho sworn May 11, 2017; and,
52. such further and other evidence as counsel may advise and this Honourable Court permit.

May 12, 2017

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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”)

**SCHEDULE "A"**

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

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

THE HONOURABLE ) WEDNESDAY, THE 31<sup>ST</sup> DAY  
 )  
JUSTICE ) OF MAY, 2017

**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, validating service of the Notice of Motion and Motion Record, and dispensing with further service thereof, (ii) approving the Eighth Report to the Court of the Receiver dated May 12, 2017 (the "**Eighth Report**"), and the actions and activities of the Receiver as set out therein, (iii) declaring that Imseop Kim and Grace Kim (collectively, the "**Kims**") do not have any right, title or interest in unit PH8 ("**Unit PH8**") of the Rose of Sharon Life-Lease Residence (the "**Life Lease Residence**"), (iv) declaring that the purported lease

agreement for Unit PH8 between the Kims and Unimac Group Ltd. dated June 28, 2014 (the “**Purported Lease Agreement**”) is void *ab initio*, (v) if necessary, disclaiming the Purported Lease Agreement, (vi) granting judgment against Grace Kim for \$31,200.00 if the Kims take the position that they are tenants of Unit PH8, (vii) providing the Receiver with vacant possession of Unit PH8, (viii) authorizing the Receiver to enter into a Marketing and Sales Agreement with Milborne Real Estate Inc. for the marketing and sale of the available residential condominium units of the Lease-Residence, and approval of this Marketing and Sales Agreement, (ix) authorizing the Receiver to enter into an Exclusive Listing Agreement with John A. Jensen Realty Inc. to market and sell the Rose of Sharon nursing home (the “**Nursing Home**”) and approval of this Exclusive Listing Agreement, (x) sealing Confidential Appendix “A” to the Eighth Report until all of the residential units of the Life-Lease Residence are sold and those sales have all closed, and sealing Confidential Appendix “B” to the Eighth Report until the Nursing Home is sold and that sale has closed, (xi) approving and accepting the Receiver’s Interim Statement of Receipt and Disbursements for the period from September 28, 2011 to March 31, 2017, (x) declaring that Kronis, Rotsztain, Margles, Cappel LLP (“**KRMC**”) has fulfilled its mandate as counsel providing independent legal advice (“**ILA Counsel**”) to certain Unit-holders in the Rose of Sharon Life-Lease Residence (the “**ILA Unit-Holders**”) regarding settlements that those Unit-holders entered into with the Applicant Peoples Trust Company (“**Peoples**”), and discharging KRMC as ILA counsel to the ILA Unit-Holders, and (xii) approving the fees and disbursements of the Receiver for the period from December 1, 2014 to December 31, 2016, the fees and disbursements of Blaney McMurtry LLP (“**Blaneys**”) for the period from October 1, 2014, to December 31, 2016, and the fees and disbursements of KRMC for the period from March 22, 2014 to March 20, 2015, was heard this day at Toronto.

**ON READING** the Receiver's Motion Record dated May 12, 2017, the Eighth Report, the affidavit of Hartley Bricks sworn May 2, 2017, the affidavit of Chad Kopach sworn May 11, 2017, and the affidavit of Phillip Cho sworn May 11, 2017, and upon hearing the submissions of counsel for the Receiver and counsel for Peoples, no one else appearing,

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion returnable May 31, 2017 (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 Eighth Report dated May 12, 2017, and the actions of the Receiver described therein, be and are hereby approved.

3. **THIS COURT DECLARES** that Imseop Kim and Grace Kim do not have any right, title or interest in Unit PH8 of the Life-Lease Residence.

4. **THIS COURT DECLARES** that the purported lease agreement for Unit PH8 of the Life-Lease Residence between Grace Kim, Imseop Kim and Unimac Group Ltd. dated June 28, 2014, is void *ab initio*.

5. **THIS COURT ORDERS AND ADJUDGES** that Grace Kim pay the Receiver \$31,200.00, being the minimum market rent that should have been payable by the Kims to the Receiver as tenants of Unit PH8 of the Life-Lease Residence from April 1, 2015 to the date of this Order.

6. **THIS COURT ORDERS** that the Kims deliver to the Receiver vacant possession of Unit PH8 of the Life-Lease Residence, municipally known as Unit PH8, 15-17 Maplewood Avenue, Toronto, Ontario, and legally described in Schedule “A” attached hereto.
7. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to enter into a Marketing and Sales Agreement with Milborne Real Estate Inc. for the marketing and sale of the available residential condominium units of the Life-Lease Residence, and approval of this Marketing and Sales Agreement.
8. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to enter into an Exclusive Listing Agreement with John A. Jensen Realty Inc., to market and sell the Nursing Home, and approval of this Exclusive Listing Agreement.
9. **THIS COURT ORDERS** that Confidential Appendix “A” to the Eighth Report be and is hereby sealed until all of the residential units of the Life-Lease Residence are sold and those sales have all closed, and that Confidential Appendix “B” to the Eighth Report be and is hereby sealed until the Nursing Home is sold and that sale has closed.
10. **THIS COURT ORDERS** that the Receiver’s Interim Statement of Receipts and Disbursements for the period from September 28, 2011 to March 31, 2017 as set out at Appendix “K” of the Receiver’s Eighth Report, be and is hereby accepted and approved.
11. **THIS COURT DECLARES** that KRMC has fulfilled its mandate as ILA Counsel to the ILA Unit-Holders.

12. **THIS COURT ORDERS** that KRMC be and is hereby discharged as ILA counsel to the ILA Unit-Holders.

13. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period from December 1, 2014 to December 31, 2016, the fees and disbursements of Blaneys for the period from October 1, 2014 to December 31, 2016, and the fees and disbursements of KRMC for the period from March 22, 2014 to March 20, 2015, be and are hereby approved.

14. **THIS COURT ORDERS** that Unimac Group Ltd. and Leon Hui pay to the Receiver on a joint and several basis its costs of the motion on a substantial indemnity basis in respect of the matters relating to Unit PH8, hereby fixed in the amount of \_\_\_\_\_, inclusive of disbursements and HST.

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**SCHEDULE "B"**

**RECEIVERSHIP SERVICE LIST**

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**PEOPLES TRUST COMPANY**

and

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

Applicant

Respondent

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

Proceeding Commenced at **TORONTO**

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**NOTICE OF MOTION  
(RETURNABLE MAY 31, 2017)**

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