

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**PEOPLES TRUST COMPANY**

Applicant

- and -

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

Respondent

**APPLICATION UNDER** sections 243 of the *Bankruptcy & Insolvency Act*, R.S.C. 1985, c. B-3  
as amended and section 101 of the *Courts of Justice Act*, as amended

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**MOTION RECORD  
(Returnable 10 June 2021)**

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Date: 2 June 2021

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*Lawyers for Arirang Age-Friendly Community Centre*

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**TAB 1**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**PEOPLES TRUST COMPANY**

Applicant

- and -

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

Respondent

**APPLICATION UNDER** sections 243 of the *Bankruptcy & Insolvency Act*, R.S.C. 1985, c. B-3  
as amended and section 101 of the *Courts of Justice Act*, as amended

**NOTICE OF MOTION**

**DELOITTE RESTRUCTURING INC.** in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Rose of Sharon (Ontario) Retirement Community will make a Motion to the Court on Thursday, 10 June 2021, at 10:00 a.m., or as soon after that time as the Motion can be heard.

**PROPOSED METHOD OF HEARING:** The Motion is to be via Zoom video conference.

**THE MOTION IS FOR:**

1. An Order substantially in the form attached as **Schedule “A”**:
  - (a) approving the Receiver’s Ninth Report dated 25 February 2019, the Tenth Report dated 10 December 2019 and the Eleventh Report, and the actions and activities of the Receiver set out in those Reports;
  - (b) amending the Approval and Vesting Order dated 17 December 2019 to reflect Arirang Age-Friendly Community Centre as the Purchaser;

- (c) providing for the registration and priority of documents necessary for the creation and sale of the condominiums as described in the Eleventh Report;
  - (d) amending the Order dated 1 April 2019 to substitute Jordan Sleeth for Paul Casey as the first directors of the Corporation;
  - (e) dismissing Action CV-13-10269-00CL without costs; and
  - (f) increasing the maximum amount that the Receiver is authorized to borrow pursuant to paragraph 20 of the Amended and Restated Appointment Order dated 27 September 2011 to \$7,000,000.
2. Such further and other relief as this Honourable Court may deem just and equitable.

**THE GROUNDS FOR THE MOTION ARE:**

1. The grounds set forth in the Eleventh Report.
2. Such further and other grounds as counsel may advise and this Honourable Court may accept.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

1. The Eleventh Report; and
2. Such further and other evidence as this Honourable Court may permit.

Date: 2 June 2021

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Solicitors for the Moving Party

# **SCHEDULE "A"**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY, THE 10<sup>TH</sup>  
JUSTICE ) DAY OF JUNE, 2021  
)

B E T W E E N:

**PEOPLES TRUST COMPANY**

Applicant

- and -

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

Respondent

**APPLICATION UNDER** sections 243 of the *Bankruptcy & Insolvency Act*, R.S.C. 1985, c. B-3 as amended and section 101 of the *Courts of Justice Act*, as amended

**ORDER**

**THIS MOTION** made by Deloitte Restructuring Inc. (the “**Receiver**”) in its capacity as Court-appointed receiver of Rose of Sharon (Ontario) Retirement Community was heard this day via video conference.

**ON READING** the Motion Record, including the Eleventh Report of the Receiver dated 1 June 2021 (the “**Eleventh Report**”) and on hearing submissions of counsel to the Receiver and counsel to Arirang Age-Friendly Community Centre (“**Arirang**”), no one else appearing

## APPROVAL OF ACTIONS

1. **THIS COURT ORDERS** that the action of the Receiver described in the Ninth Report dated 25 February 2019, the Tenth Report dated 10 December 2019 and the Eleventh Report, including consenting to the assignment of the rights and obligations under the Agreement of Purchase and Sale dated 10 May 2019 between the Receiver and Rykka Care Centres LP to Arirang be and are hereby approved.

## AMENDED AND RESTATEMENT APPROVAL AND VESTING ORDER

2. **THIS COURT ORDERS** that the Approval and Vesting Order be and is hereby amended to reflect Arirang as the Purchaser and an Amended and Restated Approval and Vesting Order in the Form attached as **Schedule A** shall be issued.

## REGISTRATION OF CONDO DECLARATION

### A. 2383431 Ontario Inc.

3. **THIS COURT ORDERS** that the Land Registrar shall register the Declaration substantially in the form attached as **Schedule B** (the “**Declaration**”) against the land described therein (the “**Land**”) notwithstanding that 2383431 Ontario Inc. (also referred to as 2383431 Ontario Inc) (“**2383 ON**”) has not consented to the Declaration in accordance with paragraph 7(2)(b) of the *Condominium Act, 1998*, SO 1998, c 19 (the “**Act**”) and the applicable Regulations made under the Act.

4. **THIS COURT ORDERS** that the charge/mortgage of land registered against the Land in favour of 2383 ON in the Land Registry Office for the Land Titles Division of Toronto (No. 66) as Instrument Number AT1949790, as transferred by Instruments Number AT2908311 and AT3416400, and the interests under it are hereby and shall be postponed to: (a) the Declaration and the easements described in Schedule “A” to the Declaration; and (b) all other agreements entered into as a condition of approval of the Condominium Application by the City of Toronto as described in the Eleventh Report including, without limitation, any shared facilities agreement (collectively, the “**Registered Condo Agreements**”).

**B. Turfpro Investments Inc.**

5. **THIS COURT ORDERS** that the Land Registrar shall register the Declaration against the Land notwithstanding that Turfpro Investments Inc. (“**Turfpro**”) has not consented to the Declaration in accordance with subsection 7(2)(b) of the Act and the applicable Regulations made under the Act.

6. **THIS COURT ORDERS** that the charges/mortgages of land registered against the Land in favour of Turfpro in the Land Registry Office for the Land Titles Division of Toronto (No. 66) as: (a) Instrument Number CA600752, as transferred by Instrument Number AT1040360; and (b) Instrument Number E579089; and the interests under them, are hereby and shall be postponed to: (a) the Declaration and the easements described in Schedule “A” to the Declaration; and (b) the Registered Condo Agreements.

**C. 2381682 Ontario Inc.**

7. **THIS COURT ORDERS** that the Land Registrar shall register the Declaration against the Land notwithstanding that 2381682 Ontario Inc. (“**2381 ON**”) has not consented to the Declaration in accordance with subsection 7(2)(b) of the Act and the applicable Regulations made under the Act.

8. **THIS COURT ORDERS** that the charge/mortgage of land registered against the Land in favour of 2381 ON as Instrument Number AT1040424, as transferred by Instruments Numbers AT1450745, AT2318865 and AT3461665, and the interests under it are hereby and shall be postponed to: (a) the Declaration and the easements described in Schedule “A” to the Declaration; (b) the Registered Condo Agreements.

**AMENDMENT OF FIRST BOARD ORDER**

9. **THIS COURT ORDERS** that paragraph 1 of the Order of the Honourable Justice Conway dated 1 April 2019 and attached as Appendix B to the Eleventh Report be and is hereby amended to substitute Jordan Sleeth for Paul Casey such that the first board of directors of the Corporation shall be Hartley Brick, Catherine Hristow and Jordan Sleeth.

**DISMISSAL OF YOON ACTION**

10. **THIS COURT ORDERS** that Action CV-13-10269-00CL commenced by the Debtor against John Yoon and SDM Design Consulting Inc. be and is hereby dismissed without costs.

**INCREASING RECEIVER'S BORROWING**

11. **THIS COURT ORDERS** that the borrowing limit for the Receiver's Borrowings Charge as set out in paragraph 20 of the Amended and Restated Appointment Order dated 27 September 2011 shall be and is increased to \$7,000,000.

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DRAFT

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY, THE 10<sup>TH</sup>  
JUSTICE )  
 ) DAY OF JUNE, 2021

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 section 101 of the *Courts of Justice Act*, as amended

**AMENDED AND RESTATED APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Rose of Sharon (Ontario) Retirement Community (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Arirang Age-Friendly Community Centre (the “**Purchaser**”) dated 13 May 2019 (as amended and restated on 1 April 2021) and appended to the Tenth Report of the Receiver dated 10 December 2019 (the “**Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list:

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 amendments as the Receiver may deem necessary.

2. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to: (i) subject to obtaining the approval of the Purchaser, complete the Schedules to the certificate in the form attached as Schedule A (the “**Receiver’s Certificate**”); and (ii) 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.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Receiver’s Certificate all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Sale Agreement, including the property identified on **Schedule 1** to the Receiver’s Certificate shall vest absolutely in the Purchaser, as beneficial owner, and as the Purchaser may direct on closing, as registered owner, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order dated 27 September 2011; (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 2** to the Receiver’s Certificate (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 3** to the Receiver’s Certificate) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for Land Titles Division of Metropolitan Toronto (64 and 66) (CRO#80) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registrations Reform Act*, the Land Registrar is hereby directed to enter such person as the Purchaser may direct on closing as the owner of the real property identified on Schedule 1 to the Receiver's Certificate (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 3 to the Receiver's Certificate.

5. **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.

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

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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

9. **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.

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**Schedule A – Form of Receiver’s Certificate**

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

**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 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c B-3,  
as amended, and section 101 of the *Courts of Justice Act*, as amended**

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Ontario Superior Court of Justice dated 27 September 2011, Deloitte Restructuring Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of Rose of Sharon (Ontario) Retirement Community (the “**Debtor**”).

B. Pursuant to an Order of the Court dated 17 December 2019, the Court approved an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Arirang Age-Friendly Community Centre (the “**Purchaser**”) dated 13 May 2019 (as amended and restated on April 1, 2021) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, including the real property identified on Schedule 1 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 section

[Number] of 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.

C. 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 Purchaser has consented to the attached Schedules;
3. The conditions to Closing as set out in section [Number] of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
4. The Transaction has been completed to the satisfaction of the Receiver.
5. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**DELOITTE RESTRUCTURING INC., in its capacity as Receiver of the undertaking, property and assets of Rose of Sharon (Ontario) Retirement Community, and not in its personal capacity**

Per: \_\_\_\_\_  
 Name:  
 Title:

**Schedule 1**

**Real Property**

**Schedule 2**

**Claims to be deleted and expunged from title to Real Property**

**Schedule 3****Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property****(Unaffected by the Vesting Order)**

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

**PEOPLES TRUST COMPANY**  
Applicant

v.

**ROSE OF SHARON (ONTARIO) RETIREMENT COMPANY**  
Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
  
**(PROCEEDING COMMENCED AT TORONTO)**

**AMENDED AND RESTATED APPROVAL AND VESTING ORDER**

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## **SCHEDULE “B”**

**“To Be Provided”**

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

**PEOPLES TRUST COMPANY**  
Applicant

v.

**ROSE OF SHARON (ONTARIO) RETIREMENT COMPANY**  
Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(COMMERCIAL LIST)  
  
(PROCEEDING COMMENCED AT TORONTO)

**ORDER**

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Solicitors for the Moving Party

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

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

**PEOPLES TRUST COMPANY**  
Applicant

v.

**ROSE OF SHARON (ONTARIO) RETIREMENT COMPANY**  
Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
  
**(PROCEEDING COMMENCED AT TORONTO)**

**NOTICE OF MOTION**

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**TAB 2**

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

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

**BETWEEN:**

**PEOPLES TRUST COMPANY**

**Applicant**

- and -

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

**Respondent**

**ELEVENTH REPORT TO THE COURT OF THE RECEIVER**  
**(dated June 1, 2021)**

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## INTRODUCTION

1. Pursuant to an Order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 27, 2011 (the “**Appointment Date**”), Deloitte & Touche Inc., now known as Deloitte Restructuring Inc. (“**Deloitte**”), was appointed as receiver and manager (the “**Receiver**”) of all of the current and future assets, undertakings and properties of Rose of Sharon (Ontario) Retirement Community (“**Rose**”). A copy of the Amended and Restated Appointment Order is attached hereto as **Appendix “A”**.
2. Rose’s principal asset is a 12-storey building (the “**Building**”) located at 15-17 Maplewood Avenue, Toronto, Ontario (the “**Property**”), which is comprised of a 60 bed long-term care facility located on floors 4 through 6 (the “**Nursing Home**”) with a municipal address of 17 Maplewood Ave., and 91 life-lease units (“**Units**”, and individually “**Unit**”) located on floors 2, 3 and 7 through 12 (the “**Residential Component**”) with a municipal address of 15 Maplewood Ave.
3. On June 6, 2017, the Receiver brought a motion to, amongst other things, seek the Court’s approval to enter into an Exclusive Listing Agreement with John A. Jensen Realty Inc. (“**Jensen**”) to market and sell the Nursing Home. In support of that motion, the Receiver filed with the Court its Eighth Report to the Court dated May 12, 2017 (the “**Eighth Report**”). Based on the Eighth Report and the submissions made by counsel for the Applicant and the Receiver, the Court granted an order (the “**June 6 Order**”) approving the relief sought.
4. On April 1, 2019, the Receiver brought a motion to, among other things, seek the Court’s approval to appoint three officers of Deloitte to the first Board of Directors (the “**First Board**”) of the condominium corporation (the “**Condo Corporation**”). In support of that motion, the Receiver filed with the Court its Ninth Report to the Court dated February 25, 2019 (the “**Ninth Report**”). Based on the Ninth Report and the submissions made by counsel for the Receiver and the Applicant, the Court granted an order (the “**First Board Order**”) approving the relief sought. Copies of the Ninth Report and the First Board Order are attached hereto as **Appendices “B”** and “**C**”, respectively.

5. On December 17, 2019, the Receiver brought a motion to, amongst other things, request the Court issue an order approving an Agreement of Purchase and Sale (the “**LTC Transaction**”) dated May 10, 2019 as amended (the “**APS**”), as between the Receiver and Rykka Care Centres LP (“**Rykka**” or the “**Purchaser**”) and, to the extent the conditions of the APS are satisfied, vesting in the Purchaser all the right, title and interest in the Assets (as defined in the APS) free and clear of all liens, security interests and other encumbrances, save and except for the permitted encumbrances referred to in the APS. In support of that motion, the Receiver filed with the Court its Tenth Report to the Court dated December 10, 2019 (the “**Tenth Report**”). Based on the Tenth Report and the submissions made by counsel for the Applicant and the Receiver, the Court granted an Approval and Vesting Order (the “**AVO**”) approving the relief sought. A copy of the Tenth Report without exhibits is attached hereto as **Appendix “D**” and a copy of the AVO is attached hereto as **Appendix “E**”.
  
6. The purpose of this Eleventh Report to the Court (the “**Eleventh Report**”) is to:
  - a) update the Court on the status of the Transaction and, as discussed further below, seek an amended AVO that reflects the assignment of the APS;
  
  - b) update the Court on the status of the Receiver’s plan of condominium application in respect of the Residential Component (the “**Condominium Application**”) and seek an order foregoing the requirement for certain lender consents as typically required under the Condominium Act;
  
  - c) update the Court on other receivership matters, including its appeal (the “**Appeal**”) of the decision of the Ontario Labour Relations Board (“**OLRB**”) concerning its decision dated April 12, 2018 regarding the application by the United Food and Commercial Workers International Union, Local 175 (the “**Union**”) to have the Receiver recognized as a successor employer (the “**OLRB Decision**”);

- d) seek the Court's approval to amend the First Board Order with respect to the Receiver Appointees (as defined below) to be appointed as directors and officers of the First Board;
- e) seek the Court's approval of the Receiver's Interim Statement of Receipts and Disbursements for the period September 27, 2011 to April 30, 2021;
- f) seeks the Court's approval to increase the maximum amount that the Receiver is authorized to borrow pursuant to paragraph 20 of the Appointment Order from \$6,500,000 to \$7,000,000; and
- g) seek the Court's approval of the Ninth Report, Tenth Report and this Eleventh Report and the actions and activities of the Receiver from April 1, 2017 to the date of this Eleventh Report.

#### **TERMS OF REFERENCE**

7. In preparing this Eleventh Report, the Receiver has reviewed unaudited financial information and other records related to Rose and the Nursing Home provided by Assured Care Consulting Inc. ("ACC"), the manager of the nursing home, and information provided by third-party sources, and has held discussions with individuals involved in administering the Nursing Home (collectively, the "**Information**"). Except as described in this report:
- (a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information;
  - (b) some of the information referred to in this Eleventh Report consists of forecasts and projections which were prepared based on estimates and assumptions. Such

estimates and assumptions are, by their nature, not ascertainable and as a consequence, no assurance can be provided regarding the forecasted or projected results. Accordingly, the reader is cautioned that the actual results will likely vary from the forecasts or projections, even if the assumptions materialize, and the variations could be significant; and

- (c) the Receiver has prepared this Eleventh Report in its capacity as a Court-appointed officer to support the Court's approval of its course of action with respect to a sale of the Property, and the other relief being sought. Parties using this report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes.
8. Capitalized terms not defined in this report are as defined in the Appointment Order, or the Receiver's First through Tenth Reports. All references to dollars are in Canadian currency unless otherwise noted.
9. The Receiver has sought the advice of Gowlings, counsel to the Applicant, for general legal matters that have arisen in respect of the Rose receivership. Where the Receiver has required independent legal advice, the Receiver has sought the counsel of Blaneys.

#### **STATUS OF THE LTC TRANSACTION**

10. Following the issuance of the Approval and Vesting Order, on April 16, 2020 the Receiver wrote to the Ontario Ministry of Long-Term Care (the "**Ministry**") to seek the Ministry's approval for the proposed transfer of the Nursing Home Licence to the Purchaser. The delay in writing to the Ministry was the result in a delay in obtaining the AVO from the Court who had apparently misplaced the original resulting in a new copy having to be signed by Justice Conway.
11. By way of email dated July 20, 2020, attached hereto as **Appendix "F"**, the Ministry asked the Receiver to address the following two issues concerning the proposed transfer of the licence:

- a) The Receiver should provide the Ministry with a letter explaining and documenting how the exception of s. 271 of the Ontario Regulation 79/10 (the “**Regulations**”) applies to the circumstances of the proposed transfer; and
  - b) The Receiver clarify how pre-closing amounts due to the Ministry in respect of an overfunding received by Rose are to be treated under the APS.
12. By letter dated August 10, 2020, attached hereto as **Appendix “G”**, the Receiver responded to the Ministry’s July 20 email explaining how the proposed licence transfer was in compliance with s. 271 of the Regulations as well as directing the Ministry to the section of the APS that indicates that the Purchaser will be assuming any pre-closing obligations owing to the Ministry.
  13. On November 30, 2020, the Ministry convened a public consultation meeting, a standard requirement under the licence transfer process, to provide residents and their families as well as members of the public with the opportunity to understand more details about the proposed licence transfer, and ask questions of the Ministry and the Purchaser and state their position on the proposed licence transfer. The Ministry considers the comments made at these meetings when making their decision on the transfer application. At that meeting, considerable opposition was raised by the Korean community and others concerning Rykka’s proposed purchase. The opposition centred around concerns about maintaining the Korean cultural aspects of the Nursing Home under Rykka’s management and Covid-19 related issues that Rykka has experienced at certain other homes that are managed by its captive management company.
  14. In early February 2021, Rykka advised the Receiver that it had come to an agreement in principle with Arirang Age-Friendly Community Centre (“**Arirang**”) to assign its right, title and interest in the APS to Arirang. Pursuant to the APS, any assignment of the APS requires the prior written consent of the Receiver.
  15. The Receiver is familiar with Arirang as they were one of the bidders during the original sale process the Receiver conducted in 2019. Arirang has advised the Receiver of the following:

- it is a not-for-profit corporation under the *Canada Not-for-profit Corporations Act* and is a registered charity.
  - its objects include “the provision of care and services to seniors through the operation of long term care homes.”
  - its board of directors is composed of various professionals from the Korean-Canadian community with expertise in healthcare, law, management, finance, account and real estate who “have intimate experience with the cultural and ethnic needs of the residents of the Rose of Sharon”.
  - it has raised in excess of \$3.5 million of funding for the purchase of the Nursing Home from donations from the Korean community, and will be seeking a mortgage for the balance of the purchase price. The Receiver notes that the APS is not conditional on obtaining sufficient financing;
  - it intends to continue the engagement of ACC to manage the Nursing Home on its behalf and to ensure continued employment of all salaried employees; and
  - it has consulted with professional advisors and it does not anticipate any obstacles to obtaining the Ministry’s approval for the transfer of the Nursing Home licence.
16. In view of the above, the Receiver advised Rykka in writing that it consents to the assignment of the APS to Arirang. Consequently, the parties executed an Assignment and Assumption Agreement dated February 26, 2021, a copy of which is attached hereto as **Appendix “H”**. The Receiver and Arirang have also entered into an amended and restated agreement of purchase and sale which is the same as the APS in all material respects but which reflects the previous amendments and waivers executed by Rykka, and corrects some of the terms in the prior version.
17. However, in order to complete the sale to Arirang, the AVO that was issued by this Court on December 17, 2019 needs in be amended to reflect Arirang as the Purchaser. As a result, the Receiver is asking the Court to amend the Approval and Vesting Order.

18. Once issued, the Receiver will need to commence a new licence transfer application with the Ministry who will need to restart their review process. As a result, the Receiver anticipates that it will be a further six to nine months to complete the LTC Transaction with Arirang.

#### **PANDEMIC RESPONSE**

19. ACC advises that the Nursing Home has followed all Ministry and Health Canada mandated pandemic protocols since the pandemic was declared. As of the date of this Eleventh Report, no Nursing Home resident or staff member has tested positive for Covid-19. The Receiver has been advised that all residents and staff have received at least the first injection of the vaccine.
20. The Nursing Home continues to be fully occupied, with a wait list exceeding 100, and continues to take the appropriate protective measures as mandated by the Ministry.

#### **STATUS OF THE CONVERSION TO CONDOMINIUMS**

21. As discussed in paragraph 9 of the Ninth Report, the Receiver and Gowlings have been working diligently to satisfy the conditions imposed by the City of Toronto before they will approve the Condominium Application. The Condominium Application was started by Rose in 2007 as it was a requirement under both the terms of the Construction Loan from Peoples Trust Company (“**Peoples**”) and the CMHC Special Conditions Forming Part of the Certificate of Insurance that the Building be registered as a condominium. The Receiver attempted to continue Rose’s initial Condominium Application, however, the timeframe to complete that application expired and the City would not extend it, resulting in the Receiver having to commence a new Condominium Application that was accepted on July 1, 2016, and which provides for a 5 year window to have the condominium registered.
22. After obtaining a final and binding decision of the Committee of Adjustment (the “**COA**”) on December 19, 2018 approving a minor variance to By-law #1682-89 (the “**By-law**”), the site specific by-law for the Rose lands, in respect of the parking at the Property (amending the allocation of the 30 underground parking spots in the building

from 15 Nursing Home / 15 Residential Component to 4 Nursing Home / 26 Residential Component) (the “**Parking Variance**”), in early 2019 Gowlings provided to the City the revised condominium drawings that reflected the Parking Variance.

23. On May 2, 2019, a meeting was convened that included representatives of the City’s planning and building departments, the Receiver and Gowlings at which the City raised the following two issues:
- a) the City contended that the building was not compliant with the usage sections of the By-Law concerning what was defined as “senior citizens’ apartment units” (the “**By-law Usage Issue**”); and
  - b) the City wanted assurances that a potential tenant of any of the existing residential units would be duly notified of the pending condominium registration (the “**Tenant Issue**”).
24. With respect to the By-law Usage Issue, the By-law, which was enacted in 1989, restricted the use of the Property to a “Continuum Care Facility” which was to consist of “senior citizens’ apartment units” and “senior citizens’ nursing/rest home beds”. The By-law defined “senior citizens’ apartment units” as “*a self-contained dwelling unit in connection with which one or more of the following personal services, facilities and amenities are provided to or required to be taken or both by the persons occupying the senior citizens’ apartment units: meals, attendant or other care, housekeeping, laundry, linen or other such services and other services of a personal nature designed to cater generally to the different and changing needs of senior citizens.*” The definition did not provide any age restrictions to the occupants of the units. The Receiver notes that Rose initially advertised the Building as a “Continuum Care Facility” whereby parties would purchase life-lease units, through which they could also purchase services provided by the Nursing Home. The Receiver understands that prior to the receivership, the Nursing Home had attempted to offer services to occupants of the Residential Component but there was no interest. The Receiver also notes that of the 43 units in the Residential Component that were occupied upon the commencement of the receivership, only 9 were occupied by the actual life-lease purchaser, while the other units were occupied by

relatives of the life-lease purchaser or were being rented out to third parties, many of whom were students. Consequently, prior to the receivership, the usage requirements of the By-law were not being observed, and upon the commencement of the receivership, it was unfeasible for the Receiver to begin to comply.

25. By letter dated May 9, 2019, Gowlings responded to the City as follows:
  - a) with respect to the By-law Usage Issue, by providing confirmation that the proposed condominium dwelling units do not conflict with the By-law definition of “senior citizen’s apartment units”; and
  - b) with respect to the Tenant Issue, by providing for a suggested condition to the condominium documents that would require the following direction to any life lease purchaser who may be sub-leasing its unit that they “*shall take immediate steps to notify your tenant of the pending condominium registration and your purchase of the unit and the potential therefore, of your tenant having to provide vacant possession.*”
26. On May 19, 2019, the City advised that it agreed with the Receiver’s proposal for dealing with the Tenant Issue.
27. On June 11, 2019, the City’s building department advised that it disagreed with the Receiver’s position regarding compliance with the By-law and advised that the Receiver would have to apply for a minor variance to the City’s Committee of Adjustment for a variance for the use and a separate zoning review would be required. The Receiver understood that a further variance and separate zoning review would be extremely time consuming and costly.
28. As a result, on July 16, 2019, Gowlings provided the City with a proposal that involved the offering of certain services by the Nursing Home to the residents of the Residential Component in order to be in compliance with the By-law Usage Issue.
29. At the Receiver’s request, a further meeting with the representatives of the City’s building and planning departments, along with their in-house legal counsel, was

convened on September 11, 2019 at which the parties discussed options for complying with the By-law Issue. At that meeting, the City raised new issues concerning compliance with the By-law concerning non-conforming gross floor area and amenity space ratios, which non-conformance arose upon the construction of the building (the “**By-law GFA Issue**”), which occurred prior to the commencement of the receivership. The City was raising this issue notwithstanding that the City had advised on July 16, 2018 that it had closed off the building permit for the Property, which the Receiver understood normally indicates that the City is satisfied that the Building, as constructed, is in compliance with the By-law.

30. On September 18, 2019, Gowlings followed up with a memorandum to the City setting out the Receiver’s plan for addressing the By-law Usage Issue (the “**Memorandum**”). It wasn’t until November 25, 2019 that the City responded to the Memorandum, at which time it advised that the Receiver’s plan to address the By-law Usage Issue was acceptable as long as it was documented under an agreement under section 45(9.1) of the *Planning Act* (the “**Usage Agreement**”). The City further advised that the By-law GFA Issue would need to be addressed through an application to the COA for a minor variance to the By-law (the “**GFA Variance**”), a process which typically takes about 4 months to complete. This would first require that a formal zoning review (the “**Preliminary Project Review**”) be submitted to the City’s building department so that the City could be satisfied that all zoning standards would be addressed by the GFA Variance.
31. The Receiver’s other option would have been to file for a zoning by-law amendment with the City’s planning department for a complete overhaul of the By-law in order to make it reflect the Building as it was ultimately constructed, along with the usage as ultimately determined by Rose prior to the receivership and what was inherited by the Receiver. Gowlings advised that this process typically is conducted over a one-year period and involves extended public consultation and reporting to City Council, with no guarantee that planning department staff would support the amendment application. As a result, the Receiver elected to move forward with the GFA Variance, but only once it and the Purchaser were satisfied with the terms of the Usage Agreement.

32. On November 28, 2019, Gowlings requested from the City the form of Usage Agreement that they required, which was received on December 18, 2019.
33. On December 11, 2019, Gowlings submitted a request for a Preliminary Project Review (the “**PPR**”). Gowlings was told that a response to the PPR would be received by January 16, 2020. On January 23, 2020, the City’s building department advised that the PPR had not yet commenced. Consequently, given the continued delays in resolving the By-law Usage Issue and the By-law GFA Issue, the Receiver and Gowlings reached out to the local City Councillor for his assistance in moving this matter forward.
34. On March 4, 2020, the City’s building department finally provided the Zoning Review. Then, on March 13, 2020, Gowlings was informed that the City Councillor had convened a meeting with the City’s building and planning departments at which they agreed that they would support an additional amendment to the By-law that removed the “seniors-related” clauses as part of the Receiver’s application for the GFA Variance (the “**GFA & Usage Variance**”).
35. Since the Receiver could not move forward with the GFA & Usage Variance until it received a response to the PPR, on April 20, 2020, Gowlings submitted a follow up request to the City. It wasn’t until May 15, 2020 that the Examiner’s Notice concerning the PPR was received.
36. On May 27, 2020, the Receiver submitted the GFA & Usage Variance application to the COA, which application was accepted, and appropriate fees paid within the following week. Due to Covid-19, the COA suspended the hearing of minor variance applications in late March 2020, which were not restarted until around July 30, 2020 through an on-line digital platform. The GFA & Usage Variance was eventually heard by the COA on December 10, 2020 which approved the variance. By letter dated December 31, 2020, the COA advised that their decision was final and binding. A copy of the COA decision is attached hereto as **Appendix “I”**.
37. With the GFA & Usage Variance matter concluded, on January 13, 2021, the City issued a Revised Notice of Decision Under S. 51 (45) of the *Planning Act* (the “**Revised**

**Notice**”) which set out the revised conditions that the City required be completed in order for the condominium to be approved and registered. A copy of the Revised Notice is attached hereto as **Appendix “J”**.

*Schedule “B” Consents*

38. The Receiver, its counsel and consultants are currently working toward making the final submissions to the City, which includes submitting the Declaration made pursuant to the *Condominium Act, 1998* (the “**Condominium Act**”). However, pursuant to clause 7(2)(b) of the Condominium Act, the Declaration shall contain “the consent of every person having a registered mortgage against the land or interests appurtenant to the land, as the land and interests are described in the description” (the “**Schedule “B” Consent(s)**”). A copy of the parcel register for the Property with a currency date of May 31, 2021 is attached hereto as **Appendix “K”**. The mortgages registered against the Property are summarized as follows:
- a) A first mortgage registered by Peoples Trust Company (“**Peoples**”) on May 18, 2007 as Number AT1450426, and is the construction loan advanced by Peoples to fund the construction of the Building;
  - b) A second mortgage registered by 2383431 Ontario Inc. (“**238**”) registered as Number AT1949790, as transferred by Transfer of Charge Numbers AT2908311 and AT3416400. This mortgage was originally registered by IWOK Corporation (“**IWOK**”) on November 14, 2008, a company controlled by the owner of Unimac Group Ltd. (“**Unimac**”), the general contractor engaged to construct the Building, and was later transferred to Morrison Financial Services on December 30, 2011 and then to 238 on September 9, 2013, both transfers being after the date of the Appointment Date;
  - c) A third mortgage registered by Turfpro Investments Inc. (“**Turfpro**”) on registered as Number CA600752, as transferred by Transfer of Charge Number AT1040360. This mortgage was originally held by Mikal Construction Inc., on May 14, 1999 and was transferred to Turfpro on January 19, 2006;

- d) A fourth mortgage registered by Turfpro on August 2, 2002 and registered as Number E579089; and
  - e) A fifth mortgage registered by 238 as Number AT1040424, as transferred by Transfer of Charge Numbers AT1450745, AT2318865 and AT3461665. This mortgage was originally a third mortgage registered by Mijo Holdings Inc. on January 19, 2006, transferred to Unimac on May 18, 2007, then transferred to IWOK on March 2, 2010 and finally transferred to 238 on November 25, 2013.
39. While Peoples has advised that it is prepared to execute the Schedule “B” Consent, the Receiver has not obtained the Schedule “B” Consents from 238 or Turfpro. While both companies are being served, 238 and Turfpro are not currently participating in these proceedings. The Receiver anticipates that under a best-case scenario, after considering estimated future realizations from the sale of the Nursing Home and the Residential Units, Peoples will suffer a significant shortfall on its construction loan such that there is no prospect of 238 or Turfpro realizing anything on their mortgages. In order to complete the Declaration so that the Receiver can finalize its condominium application so that the life lease purchasers can complete the purchase of their units, the Receiver is seeking an order that the Schedule “B” Consents of 238 and Turfpro are not required under the Declaration.

*First Board of the Condominium Corporation*

40. The First Board Order provides the Receiver with the authority, as declarant under the Condominium Application, to appoint three officers of Deloitte, Hartley Bricks, Catherine Hristow and Paul Casey (the “**Receiver Appointees**”), as directors and officers of the First Board of the Condo Corporation. Paul Casey has announced his intention to resign from Deloitte and will no longer be an officer of Deloitte once the Condo Corporation is established. As a result, the Receiver is seeking the Court’s approval to amend the Receiver Appointees in the First Board Order by replacing Paul Casey with Jorden Sleeth, a Senior Vice President at Deloitte.

### *Unit Sale Vesting Orders*

41. Subject to the timing of the City to review the Receiver's final submissions, the Receiver estimates that the condominium will be registered in July/August 2021 at which time it will issue the Purchaser Notices and begin the process of closing the sale of the those Units to the life lease purchasers who elect to do so.
42. The Receiver intends to complete the sale of Units through the issuance of an approval and vesting order that will be triggered on a Unit-by-Unit basis. This will streamline the process for selling the Units. The Receiver intends to return to Court later in 2021 to seek the issuance of the approval and vesting order once the timing for the closing of unit sales becomes clearer.

### **STATUS OF APPEAL OF OLRB DECISION**

43. As set out in paragraphs 16 through 23 of the Ninth Report, the Receiver applied to the Divisional Court for a judicial review of the OLRB Decision released April 18, 2018 which declared that the Receiver was a successor employer of the Union and found:
  - a) the language of s. 14.06(1.2) of the BIA was not "explicit statutory language" that isolated the Receiver from being declared a successor employer; and
  - b) liability as a successor employer is not a "liability...that is in respect of employees of the debtor".
44. The Appeal was heard by the Divisional Court on November 18, 2019 and the decision was reserved. On August 18, 2020, the Divisional Court Administrative Judge advised that in January and February 2020, the Divisional Court requested supplementary submissions from parties in administrative law cases under reserve when the Supreme Court of Canada delivered its decision in *Canada v. Vavilov*, 2019 SCC 65 ("*Vavilov*") was released in December 2019, and unfortunately, through the Divisional Court's oversight, the request was not sent to the parties of the Appeal.
45. By September 11, 2020, all of the parties of the Appeal had submitted their supplementary submissions respecting the effect of *Vavilov*.

46. On March 31, 2021, the Divisional Court finally released its Reasons for Decision in which it dismissed the Appeal. A copy of the Reasons for Decision is attached hereto as **Appendix “L”**. The Receiver has not appealed the Divisional Court’s decision.

## **STATUS OF RECEIVER’S LITIGATION**

### *Deficiency Claim*

47. As detailed in paragraphs 174 through 182 in the Third Report, given the extent of deficiencies identified in Building, on September 14, 2012, Rose, by its Receiver, issued and served a Statement of Claim (the “**Deficiency Claim**”) against i) Trisura Guarantee Assurance Company (“**Trisura**”), the surety of a \$7,420,000 Performance Bond issued in respect of the Construction Contract for the Building, as a result of the breaches by Unimac Group Ltd. (“**Unimac**”) pursuant to the Performance Bond; ii) Unimac operating as Mikal-Calladan Construction Inc., Unimac Group Ltd. and Mikal Calladan Construction Inc. (the general contractor) (“**Mikal Calladan**”), iii) Victor J. Heinrichs Architect Inc. and Victor J. Heinrichs Inc., (the architect) (“**Heinrichs**”), iv) York Health Care Developments Inc. (the project manager) (“**York Health**”), v) Jain & Associates Limited (an engineering consultant who prepared mechanical, plumbing and electrical specifications for the project and electrical consultant to the architect) (“**Jain**”), and vi) M.V. Shore Associates (1993) Limited (mechanical engineers on the project and consultant to the architect) (“**Shore**”), for breach of contract and/or negligence in connection with the construction of the Property. The Deficiency Claim was later amended to include Royal Windsor Mechanical Inc. (“**Royal Windsor**”) as a party defendant.
48. As set out in paragraph 53 of the Seventh Report, on January 21, 2015, Peoples and Trisura entered into a settlement concerning the Construction Lien. As a condition of that settlement, the Receiver obtained an order dismissing the Deficiency Claim as against Trisura, without costs.
49. The Receiver agreed to a settlement with Jain and Shore and the parties entered into a Full and Final Release dated June 19, 2015, which provided for the terms of settlement to not be disclosed. The settlement funds have been received.

50. With respect to the claims against Heinrichs, after proceeding through mediation in 2016, the Receiver eventually agreed to a settlement with Heinrichs and entered into a Full and Final Release executed on October 22, 2018. The settlement funds have been received.
51. With respect to the claim against York Health, after proceeding through mediation in 2016, the Receiver eventually agreed to a settlement with York Health in 2017. The agreement provides that the Receiver will receive certain funds upon the closing of the purchase of Unit 901 by Assured Care Consulting Inc. The settlement provides that upon receipt of payment, the claim and all cross claims against York Health will be dismissed without costs and the Receiver will provide a full and final release. Consequently, this settlement will probably not be completed until later this year.
52. With respect to the claim against Royal Windsor, they failed to defend the proceeding and were noted in default. The Receiver was advised that Royal Windsor was no longer an operating entity, and as such, rather than incurring the expense of obtaining judgment, the Receiver elected not to proceed further with this claim.
53. With respect to the claims against Mikal-Calladan, despite numerous requests, and contrary to a court-ordered Discovery Plan, they did not produce witnesses for examinations for discovery. As a result, the Receiver had their defence struck on November 15, 2019 and the Registrar issued a Requisition noting them in default on November 26, 2019. The Receiver determined that Mikal-Calladan was no longer an operating entity, and as such, rather than incurring the expense of obtaining judgment, the Receiver elected not to proceed further with this claim.

#### *Yoon Claim*

54. On September 23, 2013, the Receiver on behalf of Rose issued a Statement of Claim (the “**Yoon Claim**”) against John Yoon and SDM Design Consulting Inc (“**SDM**”). John Yoon was the former Chief Executive Officer of Rose and SDM was a company he controlled. The Receiver brought the claim after reviewing the books and records of Rose from which it identified a number of transactions involving Yoon and SDM which suggested conflicts of interest leading to the receipt of secret commissions, breaches of

fiduciary duty, failure to exercise powers and discharge duties to the standard of care required under the *Ontario Business Corporations Act*, R.S.O. 1990, c. C-16 and unjust enrichment. A copy of the Yoon Claim is attached hereto as **Appendix “M”**.

55. Mr. Yoon and his wife Moon Yoon were the registered life lease purchasers of three units in the Residential Component (the “**Yoon Units**”). On November 14, 2013, Justice Mesbur issued an Order ordering and declaring that Peoples was entitled to priority over the Yoon Units (except for any construction lien claims found to be valid and prior). Peoples then directed the Receiver to attorn the rents on the Yoon Units and include those units in the Receiver’s future sale process.
56. The Receiver later determined that, except for his family home, Mr. Yoon was essentially impecunious, and, considering the costs involved, that continued pursuit of the Yoon Claim would likely not result in any further material realizations for the receivership estate. As a result, the Receiver is seeking an order to have the Yoon Claim dismissed without costs. The Receiver understands that Yoon has agreed to the disposition of the Yoon Claim in this manner.

#### **INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

57. Attached hereto as **Appendix “N”** is the Receiver’s Interim Statement of Receipts and Disbursements for the interim period April 1, 2017 to April 30, 2021 and for the entire period of the receivership, September 28, 2011 to April 30, 2021 (the “**R&D**”). The R&D indicates that as of April 30, 2021, the balance in the Receiver’s bank accounts in respect of the Life-Lease Residence, including the account maintained by Sterling Karamar Property Management (the firm engaged by the Receiver to manage the Life-Lease Residence), is \$129,194. The R&D excludes the bank account maintained by the Nursing Home manager for the Nursing Home which is discussed in the following paragraph.
58. The R&D includes receipts and disbursements from the Life-Lease Residence and receipts from the Ministry on account of monthly funding of the Nursing Home. In accordance with the Appointment Order, this funding is transferred to the bank account established for Nursing Home operations. As of April 30, 2021, the balance in the bank

account maintained by ACC was \$1,232,723. Any excess funds not required for operation of the Nursing Home are from time-to-time transferred back to the Receiver's bank account. Since the Appointment Date up to April 30, 2021, \$1,632,400 in excess funds have been transferred back to the Receiver's bank account. On May 14, 2021, the Receiver transferred back a further \$300,000 in order to maintain sufficient funds in the Receiver's bank account.

59. The Receiver is seeking the Court's approval of the R&D.

### **RECEIVER'S BORROWINGS**

60. Since the commencement of the receivership, the Receiver has borrowed \$6,500,000 from Peoples by way of Receiver's Certificates in order to fund the receivership, substantially as a result of the cost to remediate certain Building deficiencies (as discussed in the Second, Third and Seventh Reports) and to fund professional fees and disbursements in connection with the Priority Issue (the issue of priority between Peoples and the Life-Lease Purchasers as discussed in the Third through Sixth Reports), the Statement of Claim and the Construction Lien Action (as discussed in the Second, Third, Fifth, Seventh, Eighth Reports), the OLRB Decision and the Condominium Application. In addition, the Residential Component continues to operate at a recurring cash deficit of between \$15,000 to \$30,000 per month. The Receiver's borrowings are the maximum allowed under the Amended and Restated Appointment Order, which maximum amount was last increased by Order of Justice Wilton-Siegel dated March 16, 2015.
61. As indicated above, as at April 30, 2021, the balance of funds in the Receiver's possession is \$129,194. Due to the inability to borrow further funds due to the Court ordered limit on borrowings, the Receiver has been recouping funds from the Nursing Home bank account to support receivership disbursements, the most recent being transfer of \$300,000 occurring on May 14, 2021. As discussed above, the Receiver anticipates that it will be at least July/August before the condominium corporation will be established, such that Unit sales will not start to close until the fall of 2021. In order to provide it with sufficient financing to effectively operate the receivership through to the commencement of unit closures, the Receiver is seeking an increase in the borrowing

limit to \$7,000,000 which would make a further \$500,000 potentially available, if needed, to fund the receivership until sufficient sale proceeds are received such that further Receiver borrowing from Peoples will not be necessary.

#### **RECEIVER'S REQUEST TO THE COURT**

62. The Receiver is respectively seeking an Order as described in the Notice of Motion, including an Order:
- a) approving the Ninth Report, the Tenth Report, and this Eleventh Report and the actions and activities of the Receiver from April 1, 2017 to the date of this Eleventh Report;
  - b) amending the AVO to substitute Arirang as the Purchaser;
  - c) waiving the requirement for Schedule "B" Consents from 238 and Turfpro;
  - d) substituting Jordan Sleeth for Paul Casey as one of the Receiver Appointees;
  - e) dismissing the Yoon Claim without costs;
  - f) approving the R&D; and
  - g) increasing the maximum amount that the Receiver is authorized to borrow pursuant to paragraph 20 of the Appointment Order from \$6,500,000 to \$7,000,000.

All of which is respectfully submitted to this Honourable Court.

DATED this 1<sup>st</sup> day of June, 2021.

**DELOITTE RESTRUCTURING INC.**

Receiver and Manager of the current and future  
assets, undertakings and properties of  
Rose of Sharon (Ontario) Retirement Community  
and not in its personal capacity

Per:



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Hartley Bricks, MBA, CPA, CA, CIRP, LIT  
*Senior Vice-President*

# APPENDIX “A”

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



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE HONOURABLE** ) **TUESDAY , THE 27<sup>th</sup> DAY**  
 )  
**JUSTICE C. CAMPBELL** ) **OF SEPTEMBER, 2011**

**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**

**AMENDED AND RESTATED APPOINTMENT ORDER**

**THIS APPLICATION** made by Peoples Trust Company (“**Peoples Trust**” or the “**Applicant**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing Deloitte & Touche Inc. (“**Deloitte**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the

assets, undertakings and properties of Rose of Sharon (Ontario) Retirement Community (the “Debtor”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Michael Lombard sworn September 22, 2011, and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and counsel for the Debtor no one appearing for any other party although duly served as appears from the Affidavits of Service of Alma Cano, sworn September 23 and September 26, 2011, and on reading the Consent of Deloitte to act as the Receiver,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Deloitte is hereby appointed Receiver, without security, of all of the Debtor’s current and future assets, undertakings and properties of every nature and kind whatsoever, wherever situate, including all proceeds thereof (the “Property”).

### **RECEIVER’S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of

locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) subject to section 110 of the *Long-Term Care Homes Act*, S.O. 2007, c. 8 (the “**LTCHA**”) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) subject to section 110 of the LTCHA, to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order, and in this regard the Receiver is specifically authorized to retain counsel for the Applicant to advise and represent it save and except on matters upon which the Receiver in its judgment determines it requires independent advice, in which case the Receiver shall retain Blaney McMurtry LLP;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) Notwithstanding anything in this Order, the Debtor is the licensee (the “**Licensee**”) of the long-term care home located at 17 Maplewood Avenue, Toronto, Ontario which forms a part of the Property (the “**Home**”). The

Home is currently licensed pursuant to the LTCHA and the regulations thereunder. Toronto Central Local Health Integration Network (“**TC LHIN**”) will continue to pay the Licensee (and the Receiver will be entitled to receive such payments) pursuant to the Service Accountability Agreement in respect of the Home between the TC LHIN and the Debtor effective March 4, 2011 (the “**SAA**”) and the Ministry of Health and Long-Term Care (~~together with the TC LHIN, the “**MOH**”~~) will continue to pay the Licensee (which payments shall be received by the Receiver in accordance with this Order) pursuant to ~~the existing agreement.~~ agreements. Any monies received by the Debtor or the Receiver from the MOH or the TC LHIN shall be used or applied by the Receiver for the operation of the Home in accordance with the SAA, any agreement with the MOH and the LTCHA. Any payments by the TC LHIN shall be subject to TC LHIN review and reconciliation as provided for under the SAA and applicable law and written policy. Any payments by the MOH shall be subject to MOH review and reconciliation as provided for under any agreement with the Debtor or the Receiver and applicable law and written policy. For clarity, subject to the foregoing reconciliations, any surplus monies arising from the operation of the Home may be applied by the Receiver in accordance with this Order.

- (h) to settle, extend or compromise any indebtedness owing to the Debtor;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;

- (k) to apply for such permits, licenses, approvals or permissions as may be required by any governmental authority with respect to the Property, including, without limitation, licenses under the LTCHA
- (l) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (m) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000 provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, including without limitation Mr. Charles Daley and IWOK Corporation (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver and any party the Receiver retains in accordance with subparagraph 3(d) of this Order and section 110 of the LTCHA, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the

information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver or any party the Receiver retains in accordance with sub-paragraph 3(d) of this Order and section 110 of the LTCHA (the "**Manager**") except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver and the Manager, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a

security interest, or (iv) prevent the registration of a claim for lien. For clarity, this paragraph 9 shall apply to the Manager solely in its capacity as agent for the Receiver.

#### **NO INTERFERENCE WITH THE RECEIVER**

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver or Manager, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver, at least one of which will describe the account holder as "Deloitte & Touche Inc. as Rec. & Mgr. of Rose of Sharon (Ontario) Retirement Community" (the "**Post**

**Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

13. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. Neither the Receiver nor the Manager shall be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively,

**"Possession"**) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the **"Environmental Legislation"**), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the **"Receiver's Charge"**) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 81.4(4), and 81.6(2) of the BIA.

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. Subject to section 107 of the LTCHA, the whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections, 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **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.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **GENERAL**

24. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

26. **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.

27. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

28. **THIS COURT ORDERS** that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or,

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

~~29.~~ **28A. THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the Receiver and Manager shall comply with the SAA, the LTCHA and the regulations thereunder as they apply to the ~~management~~operation of the Home and ~~the~~neither TC LHIN nor MOH shall ~~not~~ be subject to paragraphs 9 and 10 of this Order in relation to any non-compliance with the SAA, the LTCHA and the regulations thereunder by the Receiver and/or the Manager with respect to the ~~management~~operation of the Home.

29. 30. \_\_\_\_\_

**THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

  
\_\_\_\_\_

**Natasha Brown**  
Registrar

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

DEC 23 2011

RECEIVED: 

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Deloitte & Touche Inc., the receiver and manager (the "**Receiver**") of the current and future assets, undertakings and properties of Rose of Sharon (Ontario) Retirement Corporation of every nature and kind whatsoever, wherever situate (the "**Debtor**"), including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Order**") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

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

4. All sums payable in respect of principal and interest under this certificate are payable at the head office of the Lender.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

DELOITTE & TOUCHE INC. solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_

Name: Daniel R. Weisz

Title: Senior Vice President

**PEOPLES TRUST COMPANY**  
Applicant

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

v.

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

**AMENDED AND RESTATED**  
**APPOINTMENT ORDER**

**GOWLING LAFLEUR HENDERSON LLP**  
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1 First Canadian Place  
100 King Street West, Suite 1600  
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Lawyers for the Applicant,  
Peoples Trust Company

# APPENDIX “B”

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

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]

**BETWEEN:**

**PEOPLES TRUST COMPANY**

**Applicant**

- and -

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

**Respondent**

**NINTH REPORT TO THE COURT OF THE RECEIVER**  
**(dated February 25, 2019)**

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**APPENDICES**

APPENDIX "A":	Amended and Restated Appointment Order dated September 27, 2011
APPENDIX "B":	Eighth Report to the Court of the Receiver dated May 12, 2017 (without appendices)
APPENDIX "C":	Order of Justice Pattillo dated June 6, 2017
APPENDIX "D":	Letter dated July 1, 2016 from the City of Toronto City Planning Division re Notice of Decision Under S.51(37) of <i>The Planning Act</i>
APPENDIX "E":	Legal description of a 2.2 metre strip of land to be conveyed to the City of Toronto

## INTRODUCTION

1. Pursuant to an Order (the "**Appointment Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 27, 2011 (the "**Appointment Date**"), Deloitte & Touche Inc., now known as Deloitte Restructuring Inc. ("**Deloitte**"), was appointed as receiver and manager (the "**Receiver**") of all of the current and future assets, undertakings and properties of Rose of Sharon (Ontario) Retirement Community ("**Rose**"). A copy of the Amended and Restated Appointment Order is attached hereto as **Appendix "A"**.
2. Capitalized terms not defined in this report are as defined in the Appointment Order, or the Receiver's First through Eighth Reports. All references to dollars are in Canadian currency unless otherwise noted.
3. Rose's principal asset is a 12-storey building (the "**Building**") located at 15-17 Maplewood Avenue, Toronto, Ontario (the "**Property**"), which is comprised of a 60 bed long-term care facility located on floors 4 through 6 (the "**Nursing Home**") and 91 life-lease units ("**Units**", and individually "**Unit**") located on floors 2, 3 and 7 through 12 (the "**Residential Component**").
4. On June 6, 2017, the Receiver brought a motion to, among other things, provide the Court with an update on the status of the conversion of the Units in the Residential Component to condominiums (the "**Condo Application**") and enter into a Marketing and Sales Agreement with Milborne Real Estate Inc. for the marketing and sale of the available residential condominium units. In support of that motion, the Receiver filed with the Court its Eighth Report to the Court dated May 12, 2017 (the "**Eighth Report**"). Based on the Eighth Report and the submissions made by counsel for the Applicant and the Receiver, the Court granted an order (the "**June 6 Order**") approving the relief sought. Copies of the Eighth Report without exhibits and the June 6 Order is attached hereto as **Appendices "B" and "C"**, respectively.
5. The purpose of this Ninth Report to the Court (the "**Ninth Report**") is to:

- a) seek the Court's approval to convey to the City of Toronto (the "City") a 2.2 metre strip of land that currently forms part of the Property; and
- b) seek the Court's approval to appoint three officers of Deloitte to the first Board of Directors of the Condominium Corporation, with sufficient and appropriate protections, until such time as a turn-over meeting is held at which point those three Deloitte officers can be replaced by board members selected by the future owners of the condominium units.

#### **TERMS OF REFERENCE**

6. In preparing this Ninth Report, the Receiver has relied upon the books and records of Rose. In addition, the Receiver has relied upon information provided by Unit-holders, or parties claiming to have a direct or indirect financial interest in the Units.
7. The Receiver has compared certain information contained in Rose's records to information that has been provided by Unit-holders. While the Receiver has reviewed certain information for reasonableness, the Receiver has not performed an audit or other verification of information that is contained in Rose's records or that has been provided to the Receiver and expresses no opinion thereon.
8. The Receiver has sought the advice of Gowling WLG (Canada) LLP ("Gowlings"), counsel to the Applicant, for general legal matters that have arisen in respect of the Rose receivership. Where the Receiver has required independent legal advice, the Receiver has sought the counsel of Blaney McMurtry LLP.

#### **STATUS OF THE CONDOMINIUM APPLICATION**

9. As discussed in paragraph 7 of the Eighth Report, by letter dated July 11, 2016 (the "Conditional Condo Approval Letter"), attached hereto as Appendix "D", the City provided its approval of the Condo Application subject to eleven conditions as set out in therein. The Receiver and Gowlings have continued to work towards satisfying those conditions, the most significant work of which includes:

- Undertaking various rectifications to the building in order to permit the project engineer to certify that the Building has been constructed in accordance with the regulations made under the *Condominium Act*, 1998 (the “**Condominium Act**”);
- Ensuring that the plans to be submitted for final approval and registration are substantially in accordance with the approved draft plans and that any revisions are approved by the Director of Community Planning, which included confirmation that no visitor parking spaces are required under the by-law;
- Making a minor variance application to the City to modify the allocation of the 30 underground parking spaces at the Property from the 50/50 allocation as stipulated under the by-law to 26 spaces allocable to the Residential Component and 4 spaces allocable to the Nursing Home. By letter dated December 19, 2018, the City advised of its final and binding decision approving the minor variance;
- Preparing the final Declaration and Description that contain the necessary reciprocal rights-of-way/easements between the Residential Component and the Nursing Home; and
- Preparing the Shared Services Agreement with respect to the shared services and shared facilities in the Building and preparing the by-laws, rules and policies that will govern the operation of the condominium.

#### **CONVEYANCE OF LAND TO THE CITY OF TORONTO**

10. Condition #10 of the Conditional Condo Approval Letter provides that:

“Prior to registration, the owner shall prepare all documents and convey to the City, at nominal cost, a 2.2 metre strip of land, in perpendicular width across the entire Vaughan Road frontage. Such lands to be free and clear of all encumbrance and subject to a right-of-way for access purposes in favour of the Grantor, until such time as said lands have been laid out and dedicated for public highway purposes, as contemplated by Condition No.

5 in the Site Plan Agreement registered on December 31, 1997 as Instrument No. CA517084.

11. The legal description of the 2.2 metre strip of land (the "**Vaughan Road Land**") is set out in the attached **Appendix "E"**. The Receiver is seeking an Order conveying the Vaughan Road Land to the City in order to satisfy Condition #10 of the Conditional Condo Approval Letter.

#### **APPOINTMENT OF INITIAL DIRECTORS AND OFFICERS OF THE CONDOMINIUM CORPORATION**

12. Section 42(1) of the Condominium Act provides that "Within 10 days after the registration of the declaration and description, the declarant shall appoint the first board of a corporation."
13. The Receiver understands that in a typical condominium registration, the developer/owner appoints the first board of the condominium corporation (the "**First Board**"). However, the "developer/owner" in this case is an insolvent not-for-profit organization whose board of directors resigned over seven years ago and which is under the authority of a court-appointed receiver. Further, while the Receiver contemplated approaching Unit-holders who entered into Settlements for the potential purchase of their Unit to fill positions on the First Board, the Settlements provide that the Unit-holders have 60 days from the date the Receiver issues its Purchase Notices (which are to be issued upon the registration of the Declaration and Description by the City) to elect to purchase and close their Units. As a result, no units will have closed within the 10-day period after registration of the Declaration and Description and it is unlikely the Receiver will be aware of which Unit-holders will close their purchase within that time frame. Consequently, the Receiver believes it would be commercially facilitative for three officers of Deloitte to be appointed to the First Board.
14. The following three Deloitte employees (the "**Proposed First Directors**") have agreed to be appointed to the First Board subject to certain protections being provided:
  1. Hartley Bricks, Senior Vice-President, Deloitte Restructuring Inc.

2. Catherine Hristow, Senior Vice-President, Deloitte Restructuring Inc.
3. Paul Casey, Senior Vice-President, Deloitte Restructuring Inc.

Each of the Proposed First Directors is a Licenced Insolvency Trustee. Hartley Bricks has been involved in the receivership of Rose since the Appointment Date and has thorough and detailed knowledge of the Property and the condominium application. Catherine Hristow has significant prior experience in non-profit housing projects and dealing with board of director issues in insolvency situations. Paul Casey is a senior restructuring partner at Deloitte with significant real estate experience.

15. Upon registration of the Declaration and Description, the Proposed First Directors have agreed to be appointed to the First Board in their personal capacities provided that the protections provided to the Receiver under Appointment Order as set out in paragraphs 9 (no exercise of rights or remedies), 15 (limitation on environmental liabilities), and 16 (limitation on the Receiver's liability) be extended to include the Proposed First Directors.

#### **STATUS OF APPEAL OF OLRB DECISION**

16. As set out in the First Report, on September 22, 2011, the Ontario Labour Relations Board ("OLRB") certified the United Food and Commercial Workers International Union, Local 175 (the "Union") as the bargaining agent of all employees of Rose of Sharon (Ontario) Retirement Community c.o.b. as Rose of Sharon Korean Long Term Care Home, save and except for Supervisors and persons above the rank of Supervisor, Office and Clerical Staff, Sales Representatives, the Director of Care, the RAI Coordinator, 1 Nurse in Charge and employees in the bargaining unit for which any trade union held bargaining unit rights as of August 31, 2011.
17. As of the Appointment Date, Rose and the Union had not entered into bargaining for a collective agreement. On October 3, 2011, the Union issued a notice to bargain to Rose; however, the Receiver advised the Union that the Appointment Order created a stay of proceedings as against Rose which included any bargaining with respect to a collective agreement. On November 11, 2011, the Union issued a notice to bargain to the Receiver.

The Receiver advised the Union that it was not a successor employer of Rose and that it was not required to bargain a collective agreement with the Union.

18. In 2017, the Union brought an application before the OLRB (the “**Union Application**”) under Section 69 of the *Labour Relations Act, 1995* (the “**Labour Relations Act**”) to have the Receiver and Rose declared as one employer and/or that a sale of a business has occurred between Rose and the Receiver. The Receiver opposed the Union Application on the basis of s. 14.06(1.2) of the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3* (the “**BIA**”) which provides that:

“Despite anything in federal or provincial law, if a trustee, in that position, carries on the business of a debtor or continues the employment of a debtor’s employees, the trustee is not by reason of fact personally liable in respect of a liability, including one as a successor employer, (a) that is in respect of the employees or former employees of the debtor or a predecessor of the debtor or in respect of a pension plan for the benefit of those employees; and (b) that exists before the trustee is appointed or that is calculated by reference to a period before the appointment.”

19. The Union Application was heard by the OLRB on January 23, 2018. On April 18, 2018, the OLRB issued its decision (the “**OLRB Decision**”) declaring that the Receiver was a successor employer and found:
- i) the language of s. 14.06(1.2) was not “explicit statutory language” that isolated the Receiver from being declared a successor employer; and
  - ii) liability as a successor employer is not “liability...that is in respect of employees of the debtor”.
20. As a result of the OLRB Decision, the Receiver is required to recognize the Union’s bargaining rights and enter into negotiations for a collective agreement.
21. On April 18, 2018, the Union issued a Notice to Bargain to Rose and on May 30, 2018 requested the appointment of a Conciliation Office under the Labour Relations Act.

22. The Receiver has applied to the Divisional Court for a judicial review of the OLRB Decision (the "Appeal"). The Appeal requests that an Order be made quashing the OLRB Decision and dismissing the OLRB proceedings as against the Receiver.
23. The Receiver filed its factum on May 22, 2018. The Union did not file its responding factum as required under the Rules. Counsel for the Union has committed to Receiver's counsel that they will file their factum by February 28, 2019. Should the Union fail to file its factum by that date, the Receiver intends to bring a motion to the Divisional Court to establish a schedule for the Appeal.

#### RECEIVER'S REQUEST TO THE COURT

24. The Receiver is respectfully seeking an Order:
- i) conveying the Vaughan Road Land to the City in order to satisfy Condition #10 of the Conditional Condo Approval Letter; and
  - ii) that, upon registration of the declaration and description, approving the appointment of the Proposed First Directors as directors and officers of the First Board subject to extending to the Proposed First Directors the protections provided under paragraphs 9, 15 and 16 in the Appointment Order.

All of which is respectfully submitted to this Honourable Court.

DATED this 25<sup>th</sup> day of February, 2019.

#### DELOITTE RESTRUCTURING INC.

Receiver and Manager of the current and future assets, undertakings and properties of Rose of Sharon (Ontario) Retirement Community and not in its personal capacity

*Deloitte Restructuring Inc.*

Per:

\_\_\_\_\_  
Paul Casey, CPA, CA, FCIRP, LIT  
*Senior Vice-President*

\_\_\_\_\_  
Hartley Bricks, MBA, CPA, CA, CIRP, LIT  
*Senior Vice-President*

# APPENDIX “C”

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE )  
JUSTICE CONWAY )

MONDAY, THE 1<sup>ST</sup>  
DAY OF APRIL, 2019

BETWEEN:

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 section 101 of the *Courts of Justice Act*, as amended

---

ORDER

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**THIS MOTION**, made by made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Rose of Sharon (Ontario) Retirement Community (the "**Debtor**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list,

1. **THIS COURT ORDERS** that the Receiver, as declarant, may cause Hartley Bricks, Catherine Hristow and Paul Casey (the “**Receiver Appointees**”) to be appointed as directors and officers of the first board of the condominium corporation (the “**Corporation**”) within 10 days after the registration of the declaration and description as required under Section 42(1) of the *Condominium Act, 1998*, which appointments shall remain until such time as the Receiver Appointees are replaced on the board at a duly called turn-over meeting.

2. **THIS COURT ORDERS** that the Receiver Appointees, in their capacity as directors and officers of the Corporation, and for the duration of that appointment and for a period of one year after their replacement on the board of the Corporation [or, and until the Receiver is discharged as Receiver], shall be entitled to and shall have the same protections as are provided to the Receiver by the Order dated 27 September 2011 (the “**Appointment Order**”), including, without limitation, paragraphs 9 (no exercise of rights or remedies), 15 (limitation on environmental liabilities), and 16 (limitation on the Receiver’s liability) and any references to the Receiver in those provisions of the Appointment Order shall include the Receiver Appointees.



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

APR 01 2019

PER / PAR: 

**BETWEEN:**

**PEOPLES TRUST COMPANY**

**Applicant**

**- and -**

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

**Respondent**

**ONTARIO**

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

**(PROCEEDING COMMENCED AT TORONTO)**

**ORDER**

**GOWLING WLG (CANADA) LLP**

Barristers and Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto, ON M5X 1G5

**E. Patrick Shea (LSUC No. 39655K)**

Tel: (416) 369-7399

Fax: (416) 862-7661

Solicitors for the Moving Party

# APPENDIX “D”

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

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

**BETWEEN:**

**PEOPLES TRUST COMPANY**

**Applicant**

- and -

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

**Respondent**

**TENTH REPORT TO THE COURT OF THE RECEIVER  
(dated December 13, 2019)**

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## APPENDICES

APPENDIX “A”:	Amended and Restated Appointment Order dated September 27, 2011
APPENDIX “B”:	Eighth Report to the Court of the Receiver dated May 12, 2017 (without appendices)
APPENDIX “C”:	Order of Justice Pattillo dated June 6, 2017
APPENDIX “D”:	Terms and Conditions of Sale
APPENDIX “E”:	Redacted Agreement of Purchase and Sale dated May 13, 2019 between the Receiver and Rykka Care Centres LP as amended

## CONFIDENTIAL APPENDICES

CONFIDENTIAL APPENDIX “A”:	Summary of First Round Offers
CONFIDENTIAL APPENDIX “B”:	Summary of Second Round Offers
CONFIDENTIAL APPENDIX “C”:	Unredacted Agreement of Purchase and Sale dated May 13, 2019 between the Receiver and Rykka Care Centres LP
CONFIDENTIAL APPENDIX “D”:	CBRE and Altus Appraisal Letters

## INTRODUCTION

1. Pursuant to an Order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 27, 2011 (the “**Appointment Date**”), Deloitte & Touche Inc., now known as Deloitte Restructuring Inc. (“**Deloitte**”), was appointed as receiver and manager (the “**Receiver**”) of all of the current and future assets, undertakings and properties of Rose of Sharon (Ontario) Retirement Community (“**Rose**”). A copy of the Amended and Restated Appointment Order is attached hereto as **Appendix “A”**.
2. Rose’s principal asset is a 12-storey building (the “**Building**”) located at 15-17 Maplewood Avenue, Toronto, Ontario (the “**Property**”), which is comprised of a 60 bed long-term care facility located on floors 4 through 6 (the “**Nursing Home**”) and 91 life-lease units (“**Units**”, and individually “**Unit**”) located on floors 2, 3 and 7 through 12 (the “**Residential Component**”).
3. On June 6, 2017, the Receiver brought a motion to, amongst other things, seek the Court’s approval to enter into an Exclusive Listing Agreement with John A. Jensen Realty Inc. (“**Jensen**”) to market and sell the Nursing Home. In support of that motion, the Receiver filed with the Court its Eighth Report to the Court dated May 12, 2017 (the “**Eighth Report**”). Based on the Eighth Report and the submissions made by counsel for the Applicant and the Receiver, the Court granted an order (the “**June 6 Order**”) approving the relief sought. Copies of the Eighth Report without exhibits and the June 6 Order are attached hereto as **Appendices “B”** and “**C**”, respectively.
4. The purpose of this Tenth Report to the Court (the “**Tenth Report**”) is to:
  - a) provide the Court with results of the Receiver’s marketing and sale process for the Nursing Home; and
  - b) request the Court issue an order approving an Agreement of Purchase and Sale dated May 10, 2019 as amended (the “**APS**”), as between the Receiver and Rykka Care Centres LP (“**Rykka**” or the “**Purchaser**”) and, to the extent the conditions of the APS are satisfied, vesting in the Purchaser all the right, title and interest in the Assets

(as defined in the APS) free and clear of all liens, security interests and other encumbrances, save and except for the permitted encumbrances referred to in the APS; and

- c) request the Court temporarily seal the confidential appendices contained in the confidential supplement to this Report (the “**Confidential Supplement**”), filed with this Court from the public record until the closing of the transaction contemplated in the APS and the filing of the Receiver’s Certificate (as defined and described below) or further order of this Court.

### **TERMS OF REFERENCE**

5. In preparing this Tenth Report, the Receiver has reviewed unaudited financial information and other records related to the Rose and the Nursing Home provided by Assured Care Consulting Inc. (“**ACC**”), the manager of the nursing home, and information provided by third-party sources, and has held discussions with individuals involved in administering the Nursing Home (collectively, the “**Information**”). Except as described in this report:

- (a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information;
- (b) some of the information referred to in this Tenth Report consists of forecasts and projections which were prepared based on estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable and as a consequence, no assurance can be provided regarding the forecasted or projected results. Accordingly, the reader is cautioned that the actual results

will likely vary from the forecasts or projections, even if the assumptions materialize, and the variations could be significant; and

- (c) the Receiver has prepared this Tenth Report in its capacity as a Court-appointed officer to support the Court's approval of its course of action with respect to a sale of the Property, and the other relief being sought. Parties using this report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes.
6. Capitalized terms not defined in this report are as defined in the Appointment Order, or the Receiver's First through Ninth Reports. All references to dollars are in Canadian currency unless otherwise noted.
7. The Receiver has sought the advice of Gowling WLG (Canada) LLP ("**Gowlings**"), counsel to the Applicant, for general legal matters that have arisen in respect of the Rose receivership. Where the Receiver has required independent legal advice, the Receiver has sought the counsel of Blaney McMurtry LLP.

#### **RECEIVER'S MARKETING AND SALE PROCESS**

8. Following the issuance of the June 6 Order, and in accordance with that order, the Receiver entered into an Exclusive Listing Agreement dated June 28, 2017 (the "**Listing Agreement**") with John A. Jensen Realty Inc. ("**Jensen**") for a six-month period.
9. While the Receiver intended to have Jensen commence the sale process forthwith after the issuance of the June 6 Order, the commencement of the sale process was delayed until November 2018 as a result of the following:
- Delays in satisfying conditions imposed by the City of Toronto in connection with the Receiver's plan of condominium application. The delays involved completion of required repairs to the Property, the requirement to obtain a reserve fund study setting out the funding requirements for future repairs to the Building, and the preparation of the various condominium documents, including the Declaration and Description and the Shared Facilities Agreement, which were key documents

that would govern the future operation and costs facing a potential purchaser of the Nursing Home;

- A determination in early 2018 that it would be appropriate to seek a minor variance of the site specific by-law in respect of the allocation of the 30 parking spots in the underground parking garage, from 15 spaces to each component to 26 spaces for the Residential Component and 4 for the Nursing Home (the “**Minor Variance**”). This allocation of parking spots reflected the historic usage of parking at the facility and also freed up more parking spots to be sold with condominium units, thereby enhancing realizations. As a result, the Receiver submitted a Committee of Adjustment (the “**Committee**”) Application for the Minor Variance on June 27, 2018. The application was heard by the Committee on November 28, 2018 and a final and binding decision of the Committee approving the Minor Variance was received on December 19, 2018.
10. As a result of these delays, the Receiver accordingly extended the period of the Listing Agreement.
  11. Jensen formally commenced the marketing process for the Nursing Home on November 8, 2018. Jensen’s marketing campaign consisted of:
    - preparing a comprehensive information package about the Nursing Home and the investment opportunity;
    - advertising the Nursing Home on its website;
    - sending marketing information on the Nursing Home to its proprietary database of contacts of parties interested in senior’s housing opportunities as well as those parties that had previously contacted the Receiver directly expressing interest in the Nursing Home; and
    - placing two advertisements in The Globe & Mail newspaper;

12. Jensen has advised the Receiver that it received inquiries about the Nursing Home from 77 parties, 31 of which executed confidentiality agreements. Those parties which signed confidentiality agreements were provided with:
  - a confidential information memorandum prepared by Jensen; and
  - access to a secure website maintained by Jensen which contained financial and other pertinent information about the Nursing Home.
13. Jensen's marketing program, and the Terms and Conditions of Sale (the "TCS") prepared by the Receiver and attached hereto as **Appendix "D"**, incorporated a sunset date approach whereby offers were to be submitted by noon on January 15, 2019 (the "**Offer Due Date**"), which allowed interested parties over two months to conduct their due diligence and submit their offer.
14. Other key components of the TCS were (capitalized terms below are as defined in the TSC):
  - Interested Parties seeking to make an Offer were to present their Offer on the Offer Form as prepared by the Receiver and posted in the Virtual Data Room;
  - Attached as Appendix "A" to the Offer Form was a Draft APS which reflected the terms and conditions by which the Receiver was prepared to complete the sale of the Nursing Home. Offerors were directed to provide a blacklined copy of the Draft APS along with their Offer Form which indicated their requested changes to the Draft APS (the "**Marked APS**"); however, Offerors were advised that those Offers whose Marked APS adhered to the Draft APS would be preferred;
  - Offers were to be made and accepted on the basis that the Offeror has inspected the Assets described therein and has relied entirely upon its own inspection and investigation of such Assets and title to same, and has agreed that any Offer and any Transaction is on an "**as is, where is**" basis with respect to the Assets and without any representation, warranty or condition;

- No Offer containing financing condition(s) in order to fund the payment of the Purchase Price at Closing would be considered;
- All Offers were to be accompanied by a deposit representing no less than 10% of the purchase price;
- An Offeror which the Receiver determined had a reasonable prospect of completing a transaction in respect of the purchase of the Assets, would be designated a “Qualified Offeror” and would be promptly notified of such designation by the Receiver. As the case may be, the Qualified Offeror must have been able to justify its ability to carry out all of the terms and conditions of its Offer within five (5) business days following a request from the Receiver to that effect. The Receiver reserved the right to seek clarifications with respect to any and all Offers;
- The highest or any Offer would not necessarily be accepted and the Receiver reserved the right to reject any or all Offers;
- Following receipt of a Notice of Acceptance by a Qualified Offeror, the Marked APS would be negotiated and would represent a definitive agreement between the Receiver and the Qualified Offeror for the sale of the applicable Assets on the Closing Date;
- The Closing of the Transaction pursuant to the Agreement shall occur on or before 5:00 PM (Toronto Time) on the date that is no later than 20 days after the date that the Ministry of Health and Long-Term Care (“MOHLTC”) issues its letter approving the transfer of the licences of the Nursing Home to the Offeror and the transfer of title to the Assets to the Purchaser would be by way of an approval and vesting order: (a) approving the Agreement and the Transaction outlined therein, and (b) vesting the Assets subject to the Agreement free and clear of any claims, charges, liens or encumbrances. The Closing is to occur upon the delivery by the Receiver to the Purchaser of a Receiver’s certificate (the

“**Receiver’s Certificate**”) certifying that all conditions precedent in the Agreement have been satisfied or waived and that the balance of the Purchase Price, including applicable taxes, has paid in full by the Purchaser by irrevocable wire transfer, certified cheque or bank draft.

15. By the Offer Due Date, the Receiver received six Offers (the “**First Round Offers**”). A summary of those Offers is in the attached **Confidential Appendix “A”**.
16. Of the First Round Offers, the Receiver concluded that four Offerors had a reasonable prospect of completing a transaction and designated them each to be Qualified Offeror. The Receiver wrote to each of the Qualified Offerors on January 17, 2019 to: i) advise them that they had been designated as a Qualifying Offeror, ii) seek clarification on certain parts of their Offer, and iii) allow them to submit an amended Offer Form with an improved purchase price, should they so desire. The Qualified Offerors were provided until 5:00 pm on January 28, 2019 (the “**Second Offer Due Date**”) to submit their amended Offer Form.
17. By the Second Offer Due Date, the Receiver had received responses from all four Qualified Offerors, three of whom elected to increase their purchase price (the “**Second Round Offers**”). A summary of those Second Round Offers is in the attached **Confidential Appendix “B”**.
18. As a result of the Second Round Offers received, the Receiver determined that the offer from Rykka Care Centres LP (“**Rykka**” or the “**Purchaser**”) represented the best Offer in the circumstances. It made this determination based on the following:
  - Rykka has significant senior’s housing experience, owning nine long-term care homes and two retirement communities;
  - Rykka’s Managing Partner, Responsive Management Inc., has significant experience with the MOHLTC’s license transfer process, having been involved in 11 license transfers in the last 9 years. They advised that they have developed a “comprehensive proprietary licence transfer package template” that they use to “ensure an efficient expedited process which results in faster license transfers by

anticipating the MOHLTC's questions and concerns and being transparent and forthright in the information provided upfront". The Receiver considered this to be an important qualification since the Nursing Home's licences were non-profit licences, whereas Rykka is a for-profit entity, and, while the Receiver is aware that the *Long-Term Care Homes Act, 2007* (the "LTCHA") permits the transfer of non-profit licences to a for-profit entity in circumstances such as these receivership proceedings, the Receiver has been advised by the MOHLTC that there have been no previous applications for such a transfer since the LTCHA was enacted;

- Rykka's advised that while their offer included a due diligence condition, they had completed substantially all of their operational due diligence prior to submitting their Offer and that their remaining due diligence would centre around obtaining environmental and building condition reports and searching title; and
- Rykka's Offer provided the highest purchase price of the Second Round Offers by a significant margin.

19. As a result, on February 4, 2019, the Receiver wrote to Rykka to notify them that their Offer had been accepted, subject to negotiating acceptable terms of a definitive Agreement of Purchase and Sale (the "APS"). On that day, the Receiver also wrote to the other Second Round Offers to advise them that the Receiver had elected to proceed with another offer. The deposits received from all of the unsuccessful Offerors were then returned.

#### **AGREEMENT OF PURCHASE AND SALE**

20. Subsequent to the Receiver's acceptance of Rykka's offer, the Receiver entered into discussions with Rykka to negotiate the APS. Those discussions resulted in the Receiver and Rykka executing the APS on May 13, 2019. A redacted copy of the APS is attached hereto as **Appendix "E"**, and the unredacted copy is attached as **Confidential Appendix "C"**.

21. A key term of the APS is a Due Diligence Condition, primarily for the purpose of investigating title to the Property. The Due Diligence Period was 45 days from the date of the APS. On June 28, 2019, Rykka requested, and the Receiver agreed to, a 16-day extension of the Due Diligence Period to allow Rykka to complete its title searches. The parties agreed to further extensions of the Due Diligence Period until, on July 25, 2019, the parties executed a Waiver and Amending Agreement to the APS which, amongst other things:
- amended the definition of Closing Date to the date which is fifteen (15) days immediately following the later of written confirmation from the Vendor to the Purchaser that: (a) the Approval and Vesting Order has been granted, and (b) the MOHLTC has approved the purchase by the Purchaser contemplated under this Agreement and the MOHLTC has issued or approved the Purchaser for transfer of the Licence(s) or for issue of licences similar to the Licence(s) to the Purchaser; or such earlier date as agreed by the parties, but in no event will the Closing Date be later than September 1, 2020;
  - waived the Due Diligence Condition;
  - provided for the Purchaser to be satisfied with the documents for the registration of the condominium on or prior to January 31, 2020, defined as the Further Due Diligence Condition; and
  - provided for the parties to mutually agree on the form and content of the Shared Facilities Agreement by September 15, 2019;
22. As a result of continued delays in the completion of the plan of condominium, the parties were unable to meet the September 15, 2019 deadline for mutual agreement on the form and content of the Shared Facilities Agreement. After a number of extensions of that date without any resolution of the plan of condominium with the City of Toronto, the parties agreed to amend the APS such that the entering into of a Shared Facilities Agreement and any other agreement(s) required by the City of Toronto in connection with the plan of

condominium in form and substance satisfactory to the Purchaser would be a condition of Closing.

23. Other key terms of the APS are as follows:

- The Vendor is selling the Assets on an “as is, where is” basis as they exist on the Closing Date, with no representation, warranty, or condition expressed or implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality, or assignability;
- Rykka shall offer employment to all Salaried Employees on terms no less favourable in the aggregate to the same terms and conditions as they had been employed by Rose and will recognize the seniority and years of service of the Salaried Employees with Rose;
- Rykka shall become the successor employer with respect to those employees who are members of the United Food and Commercial Workers International Union, Local 175 (the “**Unionized Employees**”);
- An approval and vesting order (the “**AVO**”) will have been made by the Court approving the APS and the Transaction and vesting in the Purchaser all the right, title and interest of the debtor in the Assets free and clear of all liens, security interests and other encumbrances, save and except for the Permitted Encumbrances; and
- The Closing of the Transaction is to occur within fifteen (15) days following the satisfaction of the conditions to Closing.

24. Rykka has paid all of the deposits required under the APS, as amended, and those funds are being held in trust by Gowlings pending Closing of the Transaction.

25. The Receiver is seeking this Court’s approval of the APS. In support of that request, the Receiver notes the following:

- i) as described above, the marketing process effectively canvassed and exposed the Nursing Home to the market, and generated significant interest resulting in six Offers;
  - ii) the purchase price being offered by Rykka represents commercially reasonable value, being the highest of the six Offers received and also exceeding two market value appraisals obtained by the Receiver in 2018 (the “**Appraisals**”). Summary copies of those Appraisals are attached hereto in **Confidential Appendix “D”**;
  - iii) the Purchaser is an experienced senior’s housing operator and has previously successfully navigated the MOHLTC’s licencing transfer process;
  - iv) the Purchaser has advised the Receiver that it intends to continue to operate the Nursing Home as a Korean-focused facility, which the Receiver believes is a key component to obtaining MOHLTC approval;
  - v) the Purchaser will offer employment to all salary staff and will become a successor employer for all Unionized Employees;
  - vi) the sale will allow for a permanent operator and employer to assume management of the Nursing Home, bringing the receivership of this portion of the Property finally to a close; and
  - vii) Peoples Trust Company, the first secured creditor who expects to experience a shortfall on its loan to Rose, has advised the Receiver that it approves of the sale to Rykka.
26. Should this Court approve the APS and issue the AVO, the Receiver will work with Rykka to obtain MOHLTC approval for the transfer of the bed licences to Rykka pursuant to the provisions of the LTCHA. Based on discussions with the MOHLTC, and the Receiver’s experience with previous license transfers, the process could take up to or in excess of six months to complete before the licence transfer is approved. The Receiver will also continue to work with the City of Toronto to register the condominium and

negotiate the Shares Facilities Agreement or any other agreement(s) that are necessary to register the condominium. The issues raised by the City of Toronto may require that the Receiver apply for a further minor variance of the site-specific by-law and/or the entering into of a formal agreement with respect to the facilities that will be available to the condominium residents going forward.

27. To the extent that this Court does not approve the Receiver completing the APS or if the APS is approved by the Court but is not completed for other reasons, public disclosure of the offers received and the contents of the APS, including the purchase price, as well as the Appraisals, could materially negatively impact the Receiver's re-marketing of the Nursing Home. For that reason, the Receiver is seeking an Order of this Honourable Court to seal the Confidential Supplement which contains the unredacted copies of Confidential Appendices "A", "B" and "C" and Confidential Appendix "D" until the Receiver's Certificate has been filed with this Honourable Court.

#### **RECEIVER'S REQUEST TO THE COURT**

28. For the reasons set out above, the Receiver recommends that the Court make an Order;
- i) approving the activities of the Receiver in executing the marketing and sale process for the Nursing Home;
  - ii) approving the APS, together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, for the Sale of the Nursing Home to Rykka, and authorizing and directing the Receiver to carry out the terms of the APS;
  - iii) vesting Rose's right, title and interest in the Nursing Home to Rykka subject to the filing by the Receiver of a Receiver's Certificate; and
  - iv) temporarily sealing the Confidential Supplement, together with the confidential exhibits thereto, filed with this Court from the public record until the Closing of the Transaction and the filing of the Receiver's Certificate or further order of this Court.

All of which is respectfully submitted to this Honourable Court.

DATED this 13<sup>th</sup> day of December, 2019.

**DELOITTE RESTRUCTURING INC.**

Receiver and Manager of the current and future  
assets, undertakings and properties of  
Rose of Sharon (Ontario) Retirement Community  
and not in its personal capacity

Per:

*Deloitte Restructuring Inc.*

\_\_\_\_\_  
Paul Casey, CPA, CA, FCIRP, LIT  
*Senior Vice-President*

\_\_\_\_\_  
Hartley Bricks, MBA, CPA, CA, CIRP, LIT  
*Senior Vice-President*

# APPENDIX “E”

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) TUESDAY, THE 17<sup>TH</sup>  
JUSTICE CONWAY ) DAY OF DECEMBER, 2019

BETWEEN:



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 section 101 of the *Courts of Justice Act*, as amended

APPROVAL AND VESTING ORDER

**THIS MOTION**, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Rose of Sharon (Ontario) Retirement Community (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and RYKKA Care Centres LP (the “**Purchaser**”) dated 13 May 2019 (as amended) and appended to the Tenth Report of the Receiver dated 10 December 2019 (the “**Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list:

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 amendments as the Receiver may deem necessary.
2. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to: (i) subject to obtaining the approval of the Purchaser, complete the Schedules to the certificate in the form attached as Schedule A (the "**Receiver's Certificate**"); and (ii) 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.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Receiver's Certificate all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement, including the property identified on **Schedule 1** to the Receiver's Certificate shall vest absolutely in the Purchaser, as beneficial owner, and as the Purchaser may direct on closing, as registered owner, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order dated 27 September 2011; (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 2** to the Receiver's Certificate (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 3** to the Receiver's Certificate) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for Land Titles Division of Metropolitan Toronto (64 and 66) (CRO#80) of an Application for Vesting Order in the form prescribed by the *Land Titles Act and/or the Land Registrations Reform Act*, the Land Registrar is hereby directed to enter such person as the Purchaser may direct on closing as the owner of the real property identified on Schedule 1 to the Receiver's Certificate (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 3 to the Receiver's Certificate.

5. **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.

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

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

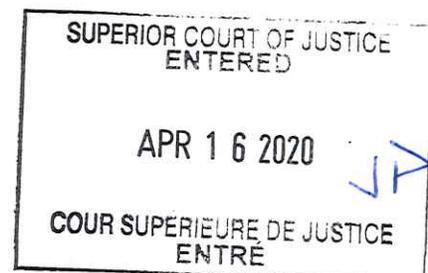
8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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

9. **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-11-9399-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**PEOPLES TRUST COMPANY**

Applicant

- and -

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

Respondent

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

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Ontario Superior Court of Justice dated 27 September 2011, Deloitte Restructuring Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of Rose of Sharon (Ontario) Retirement Community (the “**Debtor**”).

B. Pursuant to an Order of the Court dated 17 December 2019, the Court approved an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and RYKKA Care Centres LP (the “**Purchaser**”) dated 13 May 2019 (as amended) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, including the real property identified on Schedule 1 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 section [Number] of 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.

C. 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 Purchaser has consented to the attached Schedules;
3. The conditions to Closing as set out in section [Number] of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
4. The Transaction has been completed to the satisfaction of the Receiver.
5. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**DELOITTE RESTRUCTURING INC., in its capacity as Receiver of the undertaking, property and assets of Rose of Sharon (Ontario) Retirement Community, and not in its personal capacity**

Per: \_\_\_\_\_

Name:

Title:

**Schedule 1**  
**Real Property**

**Schedule 2**

**Claims to be deleted and expunged from title to Real Property**

**Schedule 3**

**Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(Unaffected by the Vesting Order)**

TOR\_LAW 1009671211

# APPENDIX “F”

**Bricks, Hartley**

---

**From:** Allore, Margaret (MLTC) <Margaret.Allore@ontario.ca>  
**Sent:** Monday, July 20, 2020 11:15 AM  
**To:** Bricks, Hartley  
**Cc:** tess.romain@tc.lhins.on.ca; Madan, Navleen (MLTC); Briones, Agnes (MLTC)  
**Subject:** [EXT] Rose of Sharon

Dear Mr. Bricks,

We are reviewing your letter of April 16, and the material submitted with it. In order for the ministry to complete its review, we would asked that you provide further information as set out below.

Information re NFP Transfer Issue

As you are aware, under the *Long Term Care Homes Act 2007* (“LTCHA”), s. 105(9), “a non-profit entity may not transfer a licence or beds to a for-profit entity except in the limited circumstances provided for in the regulations.” As you know, the debtor/current licensee is a non-profit entity under the legislation (Reg. s. 269).

Section 271 of the Ontario Regulation 79/10 (the “Regulations”), states :

271. For the purposes of subsection 105 (9) of the Act, a non-profit entity may transfer a licence or beds to a for-profit entity where both of the following conditions are met:

1. A debt or the performance of some other obligation of the non-profit entity is secured by a security interest in the licence.
2. The non-profit entity is in default of any obligation secured by the security interest and,
  - i. the non-profit entity made reasonable efforts to avoid the default, or
  - ii. the holder of the security interest compels the transfer by exercising the security interest, whether or not the non-profit entity made reasonable efforts to avoid the default.

So that we have proper documentation to support the applicability of the exception set out in s. 271 to the proposed licence transfer, we would request that the Receiver provide the ministry with a letter explaining and documenting how the exception applies to the circumstances of this proposed transfer.

Reconciliations Issue

Under s. 3 (g) of the Order Appointing the Receiver dated September 27, 2011, ministry and LHIN LTC home funding streams were continued to the Licensee / Receiver on the basis that it would continue to be subject to the Reconciliation provisions set out in the applicable law and funding

agreements, (s. 243 of the Regulation, and s. 3 of Regulation 264/07 under the Local Health System Integration Act, 2006).

Thank you for providing a copy of the Vesting Order dated December 17 2019 and stamped April 16, 2020. As far as we are aware the ministry and the LHIN were not served with notice of that proposed order in advance, and did not have the opportunity to arrange and/or make submissions requesting the usual types of clauses that provide continuing explicit arrangements in respect of the reconciliations. We note that the APS appears to contain provisions that imply a protected treatment of the Reconciliations (clause (b) of definition of Excluded Assets, "MOH Debt Assumption", "Pre-Closing MOH Reconciliations", "Reconciliation Amounts", s. 2.7(c) and 2.8, 2.9, 2.11), but nowhere in the APS is it set out explicitly that the Receiver is undertaking an obligation to satisfy the payment of the Reconciliations to the ministry and the LHIN. (The ministry/LHIN are also not in privity through the APS, so could not rely on any terms which could be waived by any party.)

We would appreciate clarification from the Receiver in this regard, which should include (or reference) a formal assurance that despite anything to the contrary in the Vesting Order, the ministry and the LHIN will receive the applicable Reconciliations (up to the time of closing) from the Receiver and that for this purpose the Receiver will hold back an adequate amount from the purchase funds on closing to ensure that it is able to meet this obligation. (The ministry/LHIN would provide an estimate of the maximum reconciliation amount prior to closing, but the final amount could not be accurately fixed until some time after closing.) The ministry and LHIN may rely on such an assurance instead of seeking to reopen the Vesting Order to explicitly provide for the payment of the reconciliations. If the Receiver is of the view that it might be necessary for the ministry/LHIN to seek to reopen the Vesting Order in order to explicitly provide for the reconciliations, please advise accordingly. Otherwise we will assume it is not necessary.

Both of the above matters could be addressed by a letter from the Receiver to the MLTC and the LHIN.

We look forward to providing a more complete response, once the requested additional information is provided.

Margaret

Margaret Allore  
Manager, LTC Licensing  
Long- Term Care Homes Division  
1075 Bay Street, 11<sup>th</sup> Floor  
Toronto, Ontario.

Tel: 416-428-0217

# APPENDIX “G”



Deloitte Restructuring Inc.  
8 Adelaide St. West  
Suite 200  
Toronto ON M5H 0A9  
Canada

Tel: 416-775-7326  
Fax: 416-601-6690  
www.deloitte.ca

August 10, 2020

Ministry of Long-Term Care  
Licensing, Policy and Development Branch  
Long-Term Care Operations  
Ministry of Long-Term Care  
1075 Bay Street, 11<sup>th</sup> Floor  
Toronto ON M5S 2B1

**Attention: Margaret Allore, Manager, LTC Licensing**

Dear Madam:

**Rose of Sharon Korean Long-Term Care – Proposal for a LTC Home Licence Transaction**

We are writing to respond to your email of July 20, 2020 in which you set out two questions for the Receiver to address concerning the Receiver’s proposal to transfer the nursing home licence (the “**Licence**”) issued to Rose of Sharon Korean Long-Term Care Home (the “**Nursing Home**”) to Rykka Care Centres LP (“**Rykka**”). Defined terms not otherwise indicated herein are as defined in our proposal letter dated April 16, 2020 or the Agreement of Purchase and Sale with Rykka (the “**APS**”).

First, you have requested an explanation, including documentation, that supports that the Receiver’s proposal to transfer the Licences to Rykka qualifies under the limited exception set out in s. 271 of the *Ontario Regulation 79/10* (the “**Regulations**”), which states:

*271. For the purposes of subsection 105 (9) of the Act, a non-profit entity may transfer a licence or beds to a for-profit entity where both of the following conditions are met:*

- 1. A debt or the performance of some other obligation of the non-profit entity is secured by a security interest in the licence.*
- 2. The non-profit entity is in default of any obligation secured by the security interest and,
 
  - i. the non-profit entity made reasonable efforts to avoid the default, or*
  - ii. the holder of the security interest compels the transfer by exercising the security interest, whether or not the non-profit entity made reasonable efforts to avoid the default.**

With respect to compliance with s. 271(1), the Application Record for the appointment of Deloitte as Receiver over the property, assets and undertakings of Rose of Sharon (Ontario) Retirement Community, a copy of which is attached, sets out that Peoples Trust Company (“**Peoples**”) was provided with a security interest over Rose of Sharon to secure the construction loan advanced to Rose of Sharon. A copy of the General Security Agreement dated August 4, 2007 is attached as Exhibit “E” to the Affidavit of Michael Lombard sworn September 22, 2011.

Ministry of Long-Term Care  
August 10, 2020  
Page 2

With respect to compliance with section 271(2), this was met through the act of seeking the Appointment Order, which was applied for by Peoples by exercising its security interest, and then the subsequent issuance of the Approval and Vesting Order for the sale of the Nursing Home to Rykka, which Order was sought by the Receiver with the approval of Peoples.

With respect to your question regarding filing of the Reconciliations up to the Closing Date, pursuant to section 2.11 of the APS, Rose of Sharon/the Receiver will be responsible for preparing and filing those account reconciliations. With respect to any amounts due as a result of filing those reconciliations, including any further amounts that may be payable as a result of subsequent reviews of the reconciliations by the MLTC, pursuant to section 2.8 of the APS, Rykka would assume those obligations.

We trust this addresses your questions. Please let us know if you would like to discuss this further.

Yours very truly,

**DELOITTE RESTRUCTURING INC.**  
**in its capacity as Receiver and Manager of the**  
**assets, undertakings and properties of**  
**Rose of Sharon (Ontario) Retirement Community**  
**and not in its personal capacity**

Per: 

Hartley Bricks, MBA, CPA, CA, CIRP, LIT  
*Senior Vice President*

Enc.

cc: Steven Gray, Rykka Care Centres Inc.

# APPENDIX “H”

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement (the "**Agreement**") made as of February 26, 2021

**BETWEEN:**

**RYKKA CARE CENTRES LP**

(the "**Assignor**")

OF THE FIRST PART

- and -

**ARIRANG AGE FRIENDLY COMMUNITY CENTRE**

(the "**Assignee**")

OF THE SECOND PART

**WHEREAS:**

- A. Pursuant to an agreement of purchase and sale dated as of May 13, 2019, as amended, between Deloitte Restructuring Inc. solely in its capacity as court-appointed receiver and manager of Rose of Sharon (Ontario) Retirement Community (the "**Vendor**") as vendor, and the Assignor as purchaser, which agreement and amendments (the "**Purchase Agreement**") are attached hereto as Schedule "A", the Vendor agreed to sell to the Assignor the "**Assets**";
- B. All capitalized terms and phrases defined in the Purchase Agreement and not otherwise expressly defined herein shall have the same meaning herein as specified in the Purchase Agreement, except that references in the Purchase Agreement to "MOH Approval" are herein called "**MLTC Approval**";
- C. In accordance with the provisions of the Purchase Agreement, the Assignor has paid or caused to be paid to the Vendor's Solicitors, Gowling Lafleur Henderson LLP (now Gowling WLG (Canada) LLP), in trust, the Deposits in the aggregate amount of \$765,000.00 (which amount, together with interest earned thereon up until January 31, 2021 in the amount of \$9,689.27 is herein collectively referred to the "**Deposit Amount**").
- D. Any assignment of the Purchase Agreement requires the prior written consent of the Vendor (the "**Vendor Consent**"); and
- E. Effective from and after the Effective Date (as defined herein), the Assignor wishes to assign, transfer and set over to the Assignee the Purchase Agreement and all the Assignor's right, title and interest therein and thereto and the Assignee wishes to assume all obligations of the Assignor under the Purchase Agreement as if it were the original purchaser thereunder in the place and stead of the Assignor.

**NOW THEREFORE IN CONSIDERATION OF TEN DOLLARS (\$10.00)**, the exchange of mutual covenants set out herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. **Assignment by Assignor to the Assignee.** The Assignor hereby absolutely and irrevocably assigns to the Assignee all its right, title, benefit and interest in and to the Purchase Agreement effective, subject to Section 5, as of the date on which the Vendor gives the Vendor Consent, or such other date following obtaining the Vendor Consent as the parties may in writing agree (the “**Effective Date**”).
2. **Assumption by Assignee.** The Assignee hereby expressly
  - (a) assumes and covenants to perform and be bound by all of the Assignor's covenants, obligations and liabilities arising or flowing from and under or in any way connected with the Purchase Agreement effective from and including the Effective Date; and
  - (b) covenants and agrees with the Assignor to duly keep, observe, perform and comply with or cause to be kept, observed, performed and complied with all such obligations and all stipulations, restrictions, provisions and conditions set forth in and in accordance with the provisions of the Purchase Agreement as if the Assignee was originally named as purchaser thereunder and had entered into the Purchase Agreement as an original signatory thereto in the place and stead of the Assignor.

Without limiting the foregoing, from and after the Effective Date, the Assignee shall be entitled to the benefit of the reporting and other obligations of the Vendor under the Transition Agreement.

3. **Deposits and Other Payment.** Concurrently with execution of this Agreement, the Assignee shall pay to the Assignor’s solicitors, Gardiner Roberts LLP, in trust, the amount of \$924,689.27 (the “**Assignment Payment**”) (such amount being made up of the Deposit Amount and the balance being on account of partial compensation to the Assignor for its costs to date and the assignment hereunder), to be held in escrow pending receipt of the Vendor Consent. For greater certainty, (a) on the Effective Date, the Purchaser’s interest in the Deposit Amount is hereby expressly assigned by the Assignor to and in favour the Assignee; and (b) upon receipt of the Vendor Consent the Assignment Payment shall be released to the Vendor.
4. **Assignor’s Representations and Warranties.** The Assignor hereby represents and warrants to the Assignee that:
  - (a) Schedule “A” attached hereto is a true and complete copy of the Purchase Agreement including all amendments thereto, and except as referenced herein, the Purchase Agreement has not otherwise been further amended or assigned, and is the entire agreement between the Assignor and the Vendor with respect to the subject matter thereof;

- (b) By waiver and amending agreement dated July 25, 2019 (the “**First Amendment**”), the original agreement of purchase and sale between the Assignor and the Vendor dated May 13, 2019 was amended; among other things, the First Amendment contemplated the delivery by the Assignor of a Third Deposit in the amount of \$150,000 upon the satisfaction or waiver of certain conditions specified in the Purchase Agreement (as amended by the First Amendment); as a result of certain delays beyond the control of the Assignor and the Vendor, such Third Deposit was not delivered to the solicitors for the Vendor, with the parties agreeing that notwithstanding this the Purchase Agreement remained in full force and effect;
  - (c) The Purchase Agreement is in full force and effect, in good standing and the Assignor is not in default thereunder, and to the knowledge of the Assignor, without inquiry, the Vendor is not in default thereunder;
  - (d) The Assignor has not assigned or otherwise encumbered its interest under the Purchase Agreement;
  - (e) To the knowledge of the Assignor, there has been no event, transaction or information relating to the Assets that has come to the attention of the Assignor which would, individually or in the aggregate, be reasonably expected to have a material adverse effect on the Assets which has not been disclosed to the Assignee. As used herein, “material adverse effect” means any fact, change, effect, event, circumstance, occurrence or development, whether individually or in the aggregate, that has, or could reasonably be expected to have, a cost or value in excess of \$250,000 on (a) the business, properties, assets, liabilities, condition (financial or otherwise), prospects, management, results of operations of the Business; or (b) the ability of the Assignee to operate the Business substantially in the same manner as currently conducted, after giving effect to (i) the finalization of the Shared Facilities Agreement and (ii) the registration of the Condominium Documents; and
  - (f) Other than the Vendor’s Consent and, if required by the Vendor, the consent of the Court, no consents are required to be obtained, and no notices are required to be given, by or on behalf of the Assignor to any person in order to give effect to the assignment and assumption made hereby. The Assignee acknowledges that the MLTC Approval remains outstanding and any sale of the Assets to the Assignee will require such Approval.
5. **Consent of the Vendor.** The assignment and assumption contemplated hereby is conditional on obtaining the Vendor Consent. In the event that the Vendor Consent is not received by February 22, 2021, this Agreement shall automatically terminate unless extended by mutual agreement of the parties, and the Assignment Payment shall be returned to the Assignee without interest, deduction or set-off.
6. **Information Supplied by Vendor.**
- (a) The Assignor has delivered to the Assignee all documents and materials in respect of the Assets in its possession or control which have been delivered to the Assignor

by or on behalf of the Vendor (the “**Vendor’s Supplemental Information**”). In making the Vendor’s Supplemental Information available to the Assignee, the Assignor has not made any alterations or modifications thereto and the Vendor’s Supplemental Information has been transmitted as received from the Vendor. The Assignor makes no representation or warranty whatsoever in regard to the contents or accuracy of the of any information or materials provided by the Vendor directly or indirectly whether (i) as part of the Vendor’s original bidding process for the Assets in 2019, or (ii) as constituting the Vendor’s Supplemental Information.

- (b) In addition to the Vendor’s Supplemental Information, the Assignor also made available to the Assignee certain other information and materials which the Assignor prepared or had prepared in connection with the Transaction (the “**Assignor’s Supplemental Information**”). The Assignor’s Supplemental Information was supplied to the Assignee pursuant to a confidentiality agreement (the “**Confidentiality Agreement**”) between the Assignor and the Assignee dated August 20, 2020. The Assignor consents to, and shall not hereafter object to, the retention and use by the Assignee of the Assignor’s Supplemental Information in connection with the Transaction. The parties acknowledge that the Confidentiality Agreement is hereby amended so as to give effect to this Section 6.

7. **Assignor’s Additional Obligations.** The Assignor shall take no action which directly or indirectly interferes, or is intended to directly or indirectly interfere, with the completion of Transaction by the Vendor and the Assignee. Without limiting the foregoing, the Assignor shall not directly or indirectly oppose issuance of the MLTC Approval in favour of the Assignee.
8. **Confidentiality.** Subject to Section 9 hereof, the parties shall, and shall cause their respective consultants, agents, advisors and solicitors to, keep confidential the terms and conditions of this Agreement and all information, documentation and any other matters with respect to this Agreement, including the identity of each party or its respective Affiliates or the relationship between the parties; provided that nothing herein shall preclude the parties from disclosing same if required by law or to its consultants, agents, advisors and solicitors so as long as such party requires such consultants, agents, advisors and solicitors to agree to keep same confidential.
9. **Public Announcement.** Neither party shall issue any press release or otherwise make any public statement with respect to this Agreement or any other discussions or agreements between the parties relating to the Assets or the transaction contemplated herein, without the prior consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Assignor and the Assignee agree that:
- (a) the existence and contents of this Agreement may need to be disclosed to the Ontario Ministry of Long Term Care, the Court and possibly other applicable Governmental Authorities as appropriate; and

- (b) either party may disclose the nature and contents of this Agreement in response to any reputational claims against such party by third parties. Such disclosure may not include the amount or terms of the payment made pursuant to Section 3.
10. **Further Assurances.** Except as otherwise expressed herein to the contrary, each party shall, without receiving additional consideration therefor, co-operate with and take such additional action as may be requested by the other party, acting reasonably, in order to carry out the purpose and intent of this Agreement.
11. **Notices.** Any notice, demand, approval, consent, information, agreement, offer, request or other communication (hereinafter referred to as a “**Notice**”) to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery during regular business hours on any Business Day or by electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

in the case of the Assignor:

3760 14<sup>th</sup> Avenue, Suite 402  
 Markham, ON L3R 3T7  
 Attention: Steve Gray  
 Email: steve.gray@responsivegroup.ca

with a copy to the Assignor’s solicitors:

Gardiner Roberts LLP  
 22 Adelaide Street West Suite 3600  
 Toronto, Ontario M5H 4E3  
 Attention: John Atchison  
 Email: jatchison@grllp.com

in the case of the Assignee:

205-130 Dundas Street East  
 Mississauga ON L5A 3V8  
 Attention: Tong Hahn  
 Email: THahn@canahahns.com

with a copy to the Assignee’s solicitors:

WeirFoulds LLP  
 66 Wellington Street West Suite 4100  
 Toronto, Ontario M5K 1B7  
 Attention: Susan Han  
 Email: shan@weirfoulds.com

Any Notice personally delivered, couriered or e-mailed shall be deemed to have been delivered, received and effective on the next Business Day following the date on which same was so

personally delivered, couriered or electronically transmitted by e-mail, as the case may be, unless it was personally delivered, couriered or transmitted by e-mail, in each case, prior to 5:00 p.m. (Toronto time) on such Business Day, in which case, it will be deemed delivered, received and effective on such Business Day provided (and so long as) a written record noting the date, time and identity of the person who accepted delivery of the personally delivered or couriered Notice is maintained by the transmitting party or a copy of the e-mailed transmission is maintained by the transmitting party which confirms that the transmission of such e-mailed notice was successfully sent or transmitted.

Any party to this Agreement may at any time and from time to time, change its address for delivery for the purposes of this Section by giving at least ten (10) days' prior Notice to the other party.

## 12. **General.**

- (a) This Agreement has been executed in the Province of Ontario and, for all purposes, shall be construed in accordance with and governed by the laws in effect within the Province of Ontario.
- (b) The representations, warranties, covenants and agreements set forth in this Agreement shall not merge upon the closing of the transaction contemplated herein but shall survive thereafter in full force and effect for a period of 12 months from the Effective Date.
- (c) This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.
- (d) To the extent required by law, this Agreement is subject to compliance with Section 50 of the Planning Act (Ontario).
- (e) Each agreement and obligation of any of the parties hereto in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.
- (f) This Agreement, including all schedules thereto, shall constitute the entire agreement between the Assignor and the Assignee and there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Assets other than as expressed in writing. This Agreement shall be read with all changes of gender or number required by the context. The captions and headings contained herein are for reference only and in no way affect this Agreement or its interpretation. The word “**includes**” or “**including**” shall mean “**includes without limitation**” or “**including without limitation**”, respectively.
- (g) Time shall in all respects be of the essence hereof provided that the time for the doing or completing of any matter referred to herein may be extended or abridged by an agreement, in writing, executed by the Assignor and the Assignee or their respective solicitors who are hereby expressly appointed for that purpose.
- (h) No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar), nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

13. **Electronic Transmission and Counterparts.** This Agreement may be executed in counterparts and transmitted by telecopier or e-mail, each of which counterpart so executed and transmitted shall constitute and be deemed to be an original, and all of which together shall constitute one and the same agreement, being on the parties hereto provided each party hereto has executed at least one counterpart.

**[SIGNATURES APPEAR ON NEXT PAGE]**

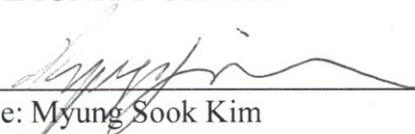
**IN WITNESS WHEREOF** the parties have executed this Assignment and Assumption Agreement as of the date first above written, to be effective on the Effective Date.

**RYKKA CARE CENTRES LP** by its General  
Partner **RYKKA CARE CENTRES GP INC.**

\_\_\_\_\_  
Name:

Title: Authorized Signing Officer

**ARIRANG AGE FRIENDLY  
COMMUNITY CENTRE**

  
\_\_\_\_\_  
Name: Myung Sook Kim

Title: Chair

**SCHEDULE "A"**  
**PURCHASE AGREEMENT AND AMENDMENTS**

**AGREEMENT OF PURCHASE AND SALE**

**BETWEEN:**

**DELOITTE RESTRUCTURING INC.,  
solely in its capacity as court-appointed receiver and manager of  
Rose Of Sharon (Ontario) Retirement Community  
and not in its personal or corporate capacity,  
as Vendor**

– and –

**RYKKA CARE CENTRES LP  
as Purchaser**

**MAY 13, 2019**

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<b>Exhibit A</b>	Form of Approval and Vesting Order
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**AGREEMENT OF PURCHASE AND SALE**

**THIS AGREEMENT** is dated as of May 13, 2019

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

**DELOITTE RESTRUCTURING INC.**, solely in its capacity as court-appointed receiver and manager of ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY and not in its personal or corporate capacity

(the “**Vendor**”)

- and -

**RYKKA CARE CENTRES LP**, a limited partnership existing under the laws of Ontario

(the “**Purchaser**”)

**CONTEXT:**

- A.** Pursuant to the Appointment Order (as defined herein) he Vendor was appointed receiver and manager (the “**Receiver**”) of the Debtor’s assets, undertakings and properties pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101 of the *Courts of Justice Act* (Ontario) with the authority, *inter alia*, to market and sell the assets, undertakings, and properties of the Debtor over which the Vendor was appointed.
- B.** On June 6, 2017, the Court authorized the Receiver to enter into an Exclusive Listing Agreement with John A. Jensen Realty Inc. to market and sell Rose of Sharon Korean Long Term Care.
- C.** The Vendor wishes to sell and the Purchaser wishes to purchase the Assets of Rose of Sharon Korean Long Term Care (as defined below) upon and subject to the terms and conditions of this Agreement.

**FOR GOOD AND VALUABLE CONSIDERATION**, the parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement the following terms have the following meanings:

“**Acceptance Date**” means the date this Agreement is executed by each of the parties hereto.

“**Accrued Payroll**” means the portion of the payroll (for wages) which has been earned by the Assumed Employees as at the Closing Date but which has not been paid.

“**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to control a Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the term “controlled” shall have a similar meaning.

“**Agreement**” means this agreement, including all Schedules and Exhibits, as it may be supplemented, amended, restated, or replaced from time to time by written agreement between the parties.

“**Allocation of Purchase Price**” is defined in Section 2.10 and as more particularly described in **Schedule 10**.

“**Applicable Law**” means, at any time, with respect to any Person, property, transaction, or event, all applicable laws, statutes, regulations, treaties, judgments and decrees and (whether or not having the force of law) all applicable official directives, rules, consents, approvals, by-laws, permits, authorizations, guidelines, orders and policies of any governmental or regulatory body or Persons having authority over that Person, property, transaction or event.

“**Appointment Order**” means the Appointment Order dated September 27, 2011 issued by the Ontario Superior Court of Justice (Commercial List) appointing the Vendor as receiver and manager of all of the current and future assets, undertakings and properties of the Debtor.

“**Approval and Vesting Order**” is defined in Section 4.3(a).

“**Arbitrator**” is defined in Section 2.9(g)(i).

“**Assets**” means the right, title and interest of the Debtor, if any, in and to the Owned Real Property, Buildings and Fixtures, Equipment, Inventory, and the Business Names, Receivables, Intangibles, Assumed Contracts, Resident Trust Funds, Books and Records and Licences used in the Business but specifically excludes the Excluded Assets.

“**Assumed Contracts**” means the Assumed Current Contracts and the Assumed Future Contracts.

“**Assumed Current Contracts**” is defined in Section 2.2 hereof.

“**Assumed Employees**” means collectively, the Assumed Salaried Employees and the Unionized Employees.

“**Assumed Employee Liabilities**” is defined in Section 2.17(a).

“**Assumed Future Contracts**” is defined in Section 2.2 hereof.

“**Assumed Obligations**” means: (i) all obligations and liabilities of the Debtor and/or the Vendor under the Assumed Contracts; and (ii) the Assumed Employee Liabilities.

“**Assumed Salaried Employees**” means Salaried Employees who accept offers of employment made by the Purchaser in accordance with the provisions of Section 2.13 hereof, but excluding the Unionized Employees.

“**Benefit Plans**” means any of the following (whether written, unwritten or terminated): (a) any employee welfare benefit plan, including but not limited to, any medical plan, life insurance plan, short term or long term disability plan and dental plan; and, (b) any employee pension plan, including, but not limited to any supplemental or excess pension plan, any deferred compensation plan, any registered pension plan or any other arrangement under which employees are provided with retirement income; in each case, provided, sponsored, administered or contributed to by the Debtor in relation to the Assumed Employees.

“**Bill of Sale**” is defined in Section 5.2.

“**Books and Records**” means:

- (a) all plans and specifications in the Debtor’s possession or under its control relating to the Buildings and Fixtures situate on or forming part of the Owned Real Property including, without limiting the generality of the foregoing, all such electrical, mechanical and structural drawings related thereto as are in the possession or under the control of the Debtor; and
- (b) all personnel records, inspection record and other records, books and accounting records, documents and databases relating to the operation of the Business as are in the possession or under the control of the Debtor, the Vendor and the Manager, but excluding any documents that are proprietary to the Manager.

“**Buildings and Fixtures**” means the plant, buildings, structures, erections, improvements, appurtenances and fixtures situate on, in, under, over or forms part of the Owned Real Property on the Closing Date, including those set out in the Buildings and Fixtures listing in **Schedule 7**.

“**Business**” means the business carried on at the Owned Real Property on the Closing Date in any way related to the operation of a long-term care facility at the Owned Real Property.

“**Business Day**” means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario or any other day on which the principal chartered banks located in the City of Toronto are not open for business during normal banking hours.

“**Business Names**” means the name Rose of Sharon Korean Long Term Care and other intellectual property related to the Business.

“**Closing**” means the successful completion of the Transaction.

“**Closing Date**” means the date which is fifteen (15) days immediately following the later of written confirmation from the Vendor to the Purchaser that: (a) the Approval and Vesting Order has been granted, and (b) the MOH has approved the purchase by the Purchaser contemplated under this Agreement and the MOH has issued or approved the Purchaser for transfer of the Licence(s) or for issue of licences similar to the Licence(s) to the Purchaser; or such earlier date as agreed by the parties, but in no event will the Closing Date be later 13 months from the date that the Due Diligence Condition has been waived by the Purchaser.

“**Collective Agreement**” means the collective agreements, if any, in force between the Debtor and the Union, as more particularly described in Schedule 2 attached hereto as of the date of this Agreement or such replacement, amendment or other collective agreement(s) as may be bargained and agreed between the Purchaser and the Union prior to the Closing Date.

“**Communication**” means any notice, demand, request, consent, approval or other communication which is required or permitted by this Agreement to be given or made by a party.

“**Confidential Information**” means any and all data and information, financial or otherwise, with respect to the Business disclosed by the Debtor, its representatives or agents, including without limitation the Vendor and/or the Manager, to the Purchaser other than data or information which was in the public domain prior to the date of receipt by the Purchaser.

“**Contracts**” means the agreements listed in **Schedule 2**.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Debtor**” means Rose of Sharon (Ontario) Retirement Community.

“**Deposits**” is defined in Section 2.7(b).

“**Deposit Interest**” is defined in Section 2.7.

“**Due Diligence Condition**” is defined in Section 4.1(a).

“**Due Diligence Expiry Date**” means the date on which a Notice of Satisfaction is delivered by the Purchaser to the Vendor.

“**Due Diligence Period**” means the period commencing on the Acceptance Date to and including the date which is no later than forty-five (45) days immediately thereafter.

“**Employee Liabilities Adjustment**” is defined in Section 2.9(a)(i).

“**Employee List**” is defined in Section 2.16.

“**Employees**” means collectively, the Salaried Employees and the Unionized Employees.

“**Equipment**” means the equipment, machinery, furniture, tools and other chattels owned by the Debtor located at the Owned Real Property and used in the Business, including those set out in the Equipment Listing attached to **Schedule 5**.

“**ETA**” means the *Excise Tax Act* (Canada).

“**Excluded Assets**” means all property and assets other than the Assets and includes but is not limited to the Excluded Assets listed on **Schedule 9**, and includes the following property and assets:

- (a) all cash, bank balances, money in possession of banks and other depositories, term or time deposits and similar cash or cash equivalents of, owned or held by or for the account of the Business;
- (b) the amount of any funding from the MOH referable to the operation of the Business by the Debtor prior to the Closing Date, whether the amount is payable before or after the Closing Date;
- (c) all policies and procedures, programs, manuals and documentation that are the proprietary to the Manager, including any continuous quality improvement programs;
- (d) all the corporate, financial and other records of the Debtor and/or Vendor not pertaining to the operation of the Business, or which are confidential and/or privileged; and
- (e) any account(s) receivable between the Debtor and any Person related to or affiliated with the Debtor or the Manager.

“**Final MOH Debt Assumption**” is defined in Section 2.8(b).

“**First Deposit**” is defined in Section 2.7(a).

“**Future Contracts**” means those Contracts entered into by the Vendor between the date that is the day after the date of expiration of the Due Diligence Period and the date on which MOH Approval is received.

“**GAAP**” means the Generally Accepted Accounting Principles from time to time approved by the Canadian Institute of Chartered Accountants, or its successor, applicable as at the date on which the applicable calculation(s) is made or required to be made in accordance with GAAP.

“**Governmental Authority**” means:

- (a) any federal, provincial, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of the foregoing exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory or taxing authority or power of any nature; or
- (b) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing.

“**HST**” means all harmonized sales taxes payable under the ETA.

“**Intangibles**” means the choses in action and other similar rights or claims directly related to the Business, including goodwill related to the Business.

“**Inventory**” means the inventory owned by the Debtor located at the Owned Real Property and used in the Business as at the Closing Date.

“**Leases**” means the leases and/or occupancy agreements for the Residents of the Business, including those set out in the Leases Rent Roll attached to **Schedule 8**.

“**Licence(s)**” means the licences listed in **Schedule 3**.

“**LHSIA**” means the *Local Health Systems Integration Act, 2006* (Ontario).

“**LTCHA**” means the *Long-Term Care Homes Act, 2007* (Ontario).

“**Manager**” means Assured Care Consulting Inc., the manager retained by the Vendor to manage the Business.

“**MOH**” means the Ontario Ministry of Health and Long-Term Care, and includes the Toronto Central Local Health Integration Network.

“**MOH Approval**” has the meaning ascribed thereto in Section 4.3(c).

“**MOH Debt Assumption**” is defined in Section 2.7(c).

“**Notice of Satisfaction**” means the written notice delivered by the Purchaser to the Vendor, on or before the expiry of the Due Diligence Period, confirming the Purchaser’s satisfaction, in its sole, absolute and unfettered discretion, with the results of the Due Diligence.

“**Owned Real Property**” means the lands and premises more particularly described in **Schedule 4** and includes four (4) parking spaces on level B of the building.

“**Permitted Encumbrances**” means the encumbrances and other documents affecting title to the Owned Real Property, as described in **Schedule 4**, which shall be accepted and/or assumed on Closing by the Purchaser.

“**Person**” means an individual, body corporate, sole proprietorship, partnership or trust or unincorporated association, unincorporated syndicate, unincorporated organization, or another entity, and a natural person, acting in his or her individual capacity or in his or her capacity as executor, trustee, administrator or legal representative, and any Governmental Authority.

“**Pre-closing MOH Reconciliations**” is defined in Section 2.11.

“**Preliminary MOH Closing Assumption**” is defined in Section 2.8(a).

“**Purchase Price**” means the sum of \$7,100,000.00 in lawful money of Canada.

“**Purchaser’s Solicitors**” means the firm of Gardiner Roberts LLP, 22 Adelaide Street West, Suite 3600, Toronto, Ontario M5H 4E3, Attention: John Atchison, Telephone No. (416) 865-6647, Telecopier No. (416) 865-6636.

“**Receivables**” means all accounts receivable, bills receivable, trade accounts, book debts, tax refunds and insurance claims directly or indirectly used in, arising from, or relating in any manner to the Business together with any unpaid interest accrued on such items (and expressly excluding any account(s) between the Debtor or Vendor and any Person related to or affiliated with the Debtor or Vendor or the Manager) as at the Closing Date, including those as listed in **Schedule 6**, which schedule shall be updated and substituted as at the Closing Date, but specifically excluding the amount of any funding from the MOH referable to the operation of the Business by the Debtor prior to the Closing Date, whether the amount is payable before or after the Closing Date.

“**Reconciliation Amounts**” means all amounts repayable by the Debtor or Vendor to the MOH pursuant to Ontario Regulation 79/10, s. 243, under the LTCHA, pursuant to Ontario Regulation 264/07, s. 3, under the LHSIA, or pursuant to any applicable agreement between the Debtor and the MOH for the years prior to the year in which the Closing takes place and following up to the Closing Date.

“**Replacement Licence**” has the meaning ascribed thereto in Section 4.4.

“**Residents**” means Residents of the Business as set out in the Leases Rent Roll attached to Schedule 8.

“**Resident Trust Funds**” means all money held on behalf of the Residents of the Business.

“**Retained Employee Liabilities**” is defined in Section 2.17(b).

“**Salaried Employees**” means all persons who are employed in the Business, as at the Closing Date, including those on short term disability leave, maternity leave, or other permitted leave, but excluding the Unionized Employees.

“**Second Deposit**” is defined in Section 2.7(b).

“**Transaction**” means the transaction of purchase and sale of the Assets and the transfer or issuance of Replacement Licence as set out in Section 4.4, all as contemplated by this Agreement.

“**Union**” means the United Food & Commercial Workers International Union, Local 175.

“**Unionized Employees**” means all persons who are employed in the Business as at the Closing Date, who are members of the Union.

“**Unionized Employees Accrual Amount**” means the amount that Vendor shall have accrued on account of retroactive wage settlements with the Unionized Employees pending the resolution of a Collective Agreement with the Union. As of the date of this Agreement, the Unionized Employees Accrual Amount is \$67,958.

“**Vendor’s Solicitors**” means the firm of Gowling Lafleur Henderson, LLP, Barristers & Solicitors, 1 First Canadian Place, 100 King Street West, Suite 1600, Toronto, Ontario M5X 1G5, Attention: E. Patrick Shea, LSM, CS, Telephone No. (416) 369-7399, Telecopier No. (416) 862-7661.

“**Work Order**” means any work order, deficiency notice, notice of violation or other notice of non-compliance or notice requiring compliance regarding the Owned Real Property or, any part thereof, under any Applicable Laws.

## 1.2 **Entire Agreement**

This Agreement, together with the agreements and other documents to be delivered pursuant to this Agreement, constitute the entire agreement between the parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no representations, warranties or other agreements between the parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement or the other agreements and documents delivered pursuant to this Agreement.

## 1.3 **Time of Day**

Unless otherwise specified, references to time of day or date mean the local time or date in the City of Toronto, Province of Ontario.

## 1.4 **Business Day**

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, the payment is to be made or action taken on the next Business Day following.

## 1.5 **Governing Law and Attornment**

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario. Each of the parties hereby irrevocably and unconditionally attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

## 1.6 Certain Rules of Interpretation

- (a) In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word “including” in this Agreement is to be construed as meaning “including, without limitation”.
- (b) The division of this Agreement into Articles and Sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) Wherever in this Agreement reference is made to a calculation to be made in accordance with GAAP, the reference is to the GAAP from time to time approved by the Canadian Institute of Chartered Accountants, or its successor, applicable as at the date on which the calculation is made or required to be made in accordance with GAAP.
- (d) References in this Agreement to an Article, Section, Schedule, or Exhibit are to be construed as references to an Article, Section, Schedule, or Exhibit of or to this Agreement unless the context requires otherwise.
- (e) Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.
- (f) Unless otherwise specified, any reference in this Agreement to any statute includes all regulations made thereunder or in connection therewith from time to time, and is to be construed as a reference to such statute as amended, supplemented, or replaced from time to time.

## 1.7 Schedules and Exhibits

The following is a list of Schedules and Exhibits:

<b>Schedule</b>	<b>Subject Matter</b>	<b>Section Reference</b>
1	Appointment Order	1.1
2	Contracts	1.1
3	Licenses	1.1
4	Owned Real Property	1.1; 2.4
5	Equipment	1.1

6	Receivables	1.1
7	Building and Fixtures	1.1
8	Leases Rent Roll for Residents of the Business	1.1
9	Excluded Assets	1.1
10	Allocation of Purchase Price	2.10
11	Due Diligence Materials	2.18
12	Transition Agreement	5.7

<b>Exhibit</b>	<b>Subject Matter</b>	<b>Section Reference</b>
Exhibit A	Form of Approval and Vesting Order	4.3
Exhibit B	Form of Bill of Sale and Assignment	5.2

## **ARTICLE 2 SALE AND PURCHASE AND ASSIGNMENT**

### **2.1 Sale and Purchase of Assets**

Subject to the terms and conditions of this Agreement, the Vendor will sell to the Purchaser and the Purchaser will purchase the Assets on the Closing Date. The Purchaser acknowledges that it is not purchasing any other property or assets of the Debtor other than the Assets.

### **2.2 Assignment and Assumption of Contracts**

The Purchase shall assume those Contracts listed on **Part 1 of Schedule 2** (the “**Assumed Current Contracts**”). With respect to Future Contracts, within five (5) Business Days of receipt of the MOH Approval, the Vendor shall provide the Purchaser with a list of all Future Contracts. Within five (5) Business Days of receipt of the list of Future Contracts, the Purchaser shall provide the Vendor with the list of Future Contracts it wishes to assume on Closing (the “**Assumed Future Contracts**”), failing which, the Purchaser shall be deemed to have agreed to assume all Future Contracts on Closing. Subject to the conditions and terms of this Agreement, the Vendor will assign to the Purchaser all of the Debtor’s rights, benefits, and interests in and to the Assumed Contracts, if any, and the Purchaser will assume and perform the Assumed Obligations from an after the Closing Date, save and except as otherwise specified herein. For greater certainty, the Purchaser shall not be responsible for performance of any Contracts not assumed or deemed assumed by the Purchaser.

This Agreement and any document delivered under this Agreement will not constitute an assignment or an attempted assignment of any Contract contemplated to be assigned to the Purchaser under this Agreement which is not assignable without the consent of a third party if such consent has not been obtained and such assignment or attempted assignment would constitute a breach of such Contract or, in the alternative, if an Order of the Court authorizing and approving the assignment of the Contracts to the Purchaser has not been obtained. At the option of the Vendor, any such assignment may be made in the name of and on behalf of the Debtor.

### 2.3 “As is, Where is”

The Purchaser acknowledges that, subject to Sections 3.2 and 5.8, the Vendor is selling the Assets on an “as is, where is” basis as they exist on the Closing Date. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Assets and that the Purchaser has conducted or will have conducted during the Due Diligence Period such inspections of the condition of and title to the Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty, or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality, assignability or in respect of any other matter or thing whatsoever concerning the Assets or the right of the Vendor to sell them save and except as expressly represented or warranted in this Agreement or the Appointment Order. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply to this transaction of purchase and sale and have been waived by the Purchaser. The description of the Assets contained in the Schedules is for purposes of identification only. No representation, warranty, or condition has or will be given by the Vendor concerning completeness or the accuracy of such descriptions.

### 2.4 Owned Real Property

The Purchaser acknowledges that it will, at its own expense, examine title to the Owned Real Property on or prior to Due Diligence Expiry Date and that it shall have satisfied itself (in its sole and unfettered discretion) as at such date with:

- (a) the condition of the title to the Owned Real Property;
- (b) any Work Orders affecting the Owned Real Property outstanding as at such date; and
- (c) the use of the Owned Real Property being in accordance with applicable zoning requirements and satisfied itself that the Buildings and Fixtures may be insured to the satisfaction of the Purchaser.

The Purchaser further acknowledges that, notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions on title or in regard to any outstanding Work Orders.

Notwithstanding the foregoing or anything to the contrary in this Agreement, if any Work Order is issued by any Governmental Authority within the period beginning on the fifth (5<sup>th</sup>) day prior to

the Due Diligence Expiry Date and ending on the Closing Date, the Vendor may, in its sole and absolute discretion, elect to clear the Work Order. If the Vendor elects to not clear the Work Order, the Purchaser may terminate this Agreement. If the Vendor elects to clear the Work Order and the matters set out in the Work Order cannot be cleared prior to Closing, the Purchaser shall accept an undertaking from the Vendor to complete the work required within 60 days after Closing and there shall be a holdback from the Purchase Price in the amount required to complete the work with a holdback agreement to be negotiated by the parties acting reasonably.

The Debtor and Vendor consent to Governmental Authorities releasing to the Purchaser details of all outstanding municipal work orders or deficiency notices affecting the Owned Real Property and it will execute any authorizations in connection therewith, provided that such consent shall not, without the consent of the Vendor, provide for any inspections to be conducted by any such Governmental Authority.

## 2.5 Assumed Obligations

In connection with its acquisition of the Assets, the Purchaser will assume the Assumed Obligations on Closing. On Closing, to the extent necessary, the Purchaser will enter into an assumption agreement in form and substance satisfactory to each of the Purchaser and the Vendor, acting reasonably. The Purchaser acknowledges that the Vendor and Debtor will have no responsibility whatsoever for curing any defaults, paying any arrears, or performing any obligations under or with respect to the Assumed Contracts, save and except as otherwise specified herein.

## 2.6 Excluded Obligations

Other than the Assumed Obligations, the Purchaser will not assume and will not be liable for any other liabilities or obligations of the Debtor.

## 2.7 Payment of the Purchase Price

The Purchase Price shall be paid, accounted for and satisfied as follows:

- (a) by the Purchaser having delivered to the Vendor (and payable to the Vendor's Solicitors in trust), the sum of **\$615,000.00** (the "**First Deposit**"), which sum shall be held by the Vendor's Solicitors, in trust, as a deposit pending Closing or termination of this Agreement;
- (b) by the Purchaser delivering to the Vendor's Solicitors, in trust, the further sum of **\$300,000.00** Dollars within three (3) Business Days following waiver of the Due Diligence Condition (the "**Second Deposit**"), which sum shall be held by the Vendor's Solicitors, in trust, as a deposit pending Closing or termination of this Agreement (the First Deposit and the Second Deposit are collectively referred to as the "**Deposits**"); and
- (c) the balance of the Purchase Price, after crediting: (i) the Deposits; (ii) the Deposit Interest; (iii) the MOH Debt Assumption and subject to the adjustments to Purchase Price set forth in Section 2.9, by payment at Closing to the Vendor or as it may

otherwise direct in writing by the Vendor.

The Vendor and the Purchaser agree and hereby authorize and direct the Vendor's Solicitors to invest the Deposits in an interest-bearing term deposit or interest-bearing account of a Canadian chartered bank bearing current market rate of interest, which interest (the "**Deposit Interest**") shall be paid or credited to the Purchaser at the Closing, unless the Purchaser forfeits the Deposits as provided below in which event the Deposit Interest will be paid to the Vendor.

Unless otherwise agreed, all amounts payable to the Vendor either by way of Deposits or at Closing will be paid to the Vendor by certified cheque or bank draft of a major Canadian bank listed in Schedule I to the *Bank Act* (Canada) or by wire transfer. The Purchaser acknowledges and agrees that the Deposits and Deposit Interest are non-refundable save and except as provided under Section 5.10.

## 2.8 Assumed MOH Debt

On or before the Closing Date, the Vendor and the Purchaser, each acting reasonably, shall use their best efforts to agree on an estimate of the Reconciliation Amounts. On Closing, from the Purchase Price an amount equal to the Reconciliation Amounts shall be adjusted for on Closing.

## 2.9 Adjustments to Purchase Price

The Purchase Price shall be subject to the adjustments contemplated in Section 2.8 and as set out below:

### (a) Adjustment for Certain Employee Liabilities

- (i) Subject to Subsection 2.9(a)(ii), the Purchaser shall be responsible for Assumed Employee Liabilities.
- (ii) All unpaid amounts owing as at Closing to the Assumed Employees and for which the Purchaser becomes liable at or after Closing for Accrued Payroll and/or other Retained Employee Liabilities (and expressly excluding all Assumed Liabilities), as well as the other amounts set out in Section 2.17 shall be credited against the Purchase Price unless such amounts have been paid by the Debtor such that there is no recourse against the Purchaser (the "**Employee Liabilities Adjustment**"). Notwithstanding the foregoing or anything else to the contrary in this Agreement:

A. the Vendor shall be responsible for all retroactive wage settlements and other liabilities that arise out the settlement of the collective agreement for the Unionized Employees by the Vendor and that relate to the period up the Closing Date, but the Purchaser shall be liable for all such obligations that arise arise out the settlement of a new Collective Agreement for the Unionized Employees by the Purchaser with the Union on or after the Closing Date; and

B. the Purchase Price shall be adjusted in favour of the Purchaser by

the Unionized Employees Accrual Amount. The Vendor covenants and agrees that it shall continue to accrue and add to the Unionized Employees Accrual Amount until the Closing Date on the same basis as it has done to date unless a new Collective Agreement is entered into between the Union and the Vendor prior to the Closing Date.

- (iii) The Vendor shall prepare and provide to the Purchaser at least four (4) Business Days before the Closing Date, a statement of the calculation of the Employee Liabilities Adjustment as of the Closing Date, together with relevant supporting documentation, satisfactory to the Purchaser, acting reasonably.

**(b) Owned Real Property Adjustments**

- (i) Real property taxes, local improvement rates, water/garbage rates, utilities/fuel costs, monthly amounts paid or payable by the MOH for the month in which the Closing occurs, and amounts payable in respect of Leases and any Assumed Contract and other usual and customary items which are the subject of commercial real property retirement and long term care facility transaction adjustments (and expressly excluding the Collective Agreement, Benefit Plans, and Assumed Employee Liabilities) shall be adjusted as of the Closing Date.

- (ii) On the Closing Date, the Vendor shall arrange that all deposits and/or security deposits in respect of utilities shall be returned to the Vendor.

- (c) The Vendor shall deliver a statement of adjustments acceptable to the Purchaser, acting reasonably, for the items set out in subsections (a) and (b) above to the Purchaser at least four (4) Business Days before Closing together with background information as may be reasonably required to complete and verify the items on the statement of adjustments, and the parties shall undertake to readjust any item on or omitted from the statement of adjustments for a period of six (6) months from Closing

**(d) No Adjustments for Inventory.**

There shall be no adjustment to the Purchase Price in favour of the Vendor or the Purchaser on account of Inventory.

**(e) No Adjustments for Receivables.**

The Receivables shall become the property of the Purchaser on Closing and shall be collected by the Purchaser on its own account thereafter. There shall be no adjustment to the Purchase Price in favour of the Vendor or the Purchaser on account of the Receivables.

**(f) No Right of Set off/Holdback.**

The Purchaser hereby agrees that there shall be no right of set off against the Purchase Price or any element of the Purchase Price except as expressly provided in this Agreement, but including, without limitation, any adjustments required under Sections 2.8(b) and 2.9(b). To secure the Vendor's obligation to readjust under Section 2.9(c), the Vendor's Solicitor shall withhold from the closing proceeds **\$100,000** to satisfy any claims the Purchaser may have under Section 2.9(c) provided, if the Purchaser makes a claim within this period and it is dealt with under clause (g) below, the said solicitor shall continue to withhold this amount until the dispute is resolved under such clause and shall pay such amount in accordance with the direction of the parties, or in accordance with the Arbitrator's decision on receipt thereof, without further inquiry.

**(g) Adjustment Dispute Resolution.**

- (i) Should there be any dispute concerning the calculation of the Employee Liabilities Adjustment, the Owned Real Property adjustments and/or the Final MOH Debt Assumption that remains unresolved, the Purchaser and the Vendor shall cooperate in good faith to resolve any such dispute as promptly as possible. If the Purchaser and the Vendor are unable to resolve any dispute regarding calculation of the Employee Liabilities Adjustment, the Owned Real Property adjustments and/or the Final MOH Debt Assumption within fifteen (15) days of a dispute arising or such longer period as the Purchaser and the Vendor shall mutually agree in writing, the Vendor and the Purchaser shall engage a mutually agreeable independent accounting firm (the "**Arbitrator**") to resolve all issues bearing on such dispute and to determine finally the actual Employee Liabilities Adjustment, the Owned Real Property adjustments, and/or the MOH Closing Adjustment as of the Closing Date. The parties agree that such resolution and determination shall be final and binding on the Vendor and the Purchaser.
- (ii) The Arbitrator shall use commercially reasonable efforts to complete its work within fifteen (15) days of its engagement. The expenses of the Arbitrator shall be shared equally by the Vendor and the Purchaser, or as otherwise determined by the Arbitrator.
- (iii) The Vendor's Solicitors shall pay out any funds held for these adjustments with interest earned thereon, if any, in accordance with the direction of the Vendor and the Purchaser if they agree or in accordance with the Arbitrator's decision on receipt thereof, without further inquiry.

**2.10 Allocation of Purchase Price**

The Purchase Price shall be allocated in accordance with the Purchase Price Allocation set out on **Schedule 10** attached hereto.

### 2.11 Annual Account Reconciliation

The Debtor, with the assistance of the Vendor, shall be responsible for preparing and filing the annual account reconciliations with the MOH for the years prior to the year in which the Closing occurs and following up to the Closing Date (collectively, the “**Pre-closing MOH Reconciliations**”). The Purchaser agrees to provide reasonable access to the Vendor or its agent to the Books and Records for the purposes of complying with this Section 2.11.

### 2.12 Taxes

- (a) The Purchaser will be responsible for all registration fees relating to the Transfer/Deed of land and land transfer taxes payable in connection with the Transaction.
- (b) The Purchaser will pay upon Closing, all land transfer taxes, HST (if any is payable), and any other applicable federal, provincial, and municipal sales taxes exigible on the transfer and sale except those taxes payable by the Vendor or the Debtor in accordance with Applicable Law. Alternatively, where applicable, the Purchaser may furnish the Vendor with appropriate exemption certificates including for the Owned Real Property a warranty and indemnity that includes the Purchaser’s HST registration number in form satisfactory to the Vendor’s solicitors, acting reasonably. The Vendor shall, if requested by the Purchaser, execute jointly with the Purchaser an election under Section 167 of the ETA to exempt the sale of the Assets from the payment of HST.
- (c) The Purchaser agrees to indemnify and save the Vendor harmless from and against all claims and demands for payment of all applicable transfer and sale taxes as set out above including penalties and interest and any liability or costs incurred as a result of any failure to pay such taxes when due

### 2.13 Assumed Salaried Employees

- (a) On or before the Closing Date and subject to Closing, the Purchaser will offer employment to all Salaried Employees on terms and conditions which are no less favourable in the aggregate to the same terms and conditions as they had been employed by the Debtor. The Purchaser in making the offer of employment will recognize the seniority and years of service with the Debtor of the Salaried Employees for purposes of notice of termination, termination and/or severance pay as required by the *Employment Standards Act* (Ontario), as amended, only. The Vendor will be responsible for all payments to be made and all expenses, costs, and other liabilities and obligations, if any, of any kind whatsoever arising out of or in connection with those Salaried Employees who do not accept employment by the Purchaser.
- (b) The Purchaser acknowledges and agrees that:

- (i) the Debtor and the Vendor make no representation or warranty that any Salaried Employee will accept employment with the Purchaser; and
- (ii) the acceptance by Assumed Salaried Employees of offers of employment with the Purchaser will not constitute a condition to the Purchaser's obligation to complete the Transaction.

#### 2.14 **Unionized Employees**

In accordance with Applicable Law, the Purchaser shall become the successor employer with respect to the Unionized Employees shall be bound by and comply with the terms of the Collective Agreement, if any such agreement is negotiated by the Vendor prior to the Closing Date, except that the Purchaser and the Union shall be free (upon mutual agreement) to change the terms and conditions of employment for the Unionized Employees or otherwise modify or enter into a new Collective Agreement and except further that any employee benefits provided to the Unioned Employees through a Benefit Plan maintained by the Debtor or the Vendor as of the Closing Date whether or not required to be provided under the Collective Agreement shall instead be provided by the Purchaser through a benefit plan maintained by the Purchaser, subject to the Union's agreement, if required.

#### 2.15 **Notice of Change of Employment**

The Purchaser may give such notice to the Assumed Employees concerning the change of their employer with respect to the Business as the Purchaser, in light of Applicable Law, considers reasonable.

#### 2.16 **Employee List**

Within 5 Business Days following the execution of this Agreement, the Vendor, shall provide the Purchaser with a current list of Employees (the "**Employee List**"), in a format to be agreed upon by both of the parties hereto, each acting reasonably. The Employee List shall include for each Employee their name, job title, hire date, wage or salary rate, amount of accrued vacation pay and rate that vacation pay accumulates, and a job duty outline, and for hourly employees, the number of hours generally worked per week. At least ten (10) Business Days before the Closing Date, the Vendor shall deliver to the Purchaser an up to date Employee List of all Employees as at such date. On the Closing Date, the Vendor shall also deliver to the Purchaser a further updated Employee List as at the Closing Date.

#### 2.17 **Assumed Employees General**

- (a) The Purchaser shall be responsible for and shall assume (collectively, the "**Assumed Employee Liabilities**"):
  - (i) In respect of the Assumed Salaried Employees:

- (1) any future severance pay, termination pay and/or pay in lieu of notice in the event it terminates any such employees, with the Purchaser having recognized the seniority and years of service with the Debtor for the purposes thereof; and
  - (2) to the extent the Purchaser receives a credit related thereto under Section 2.9(a)(ii):
    - (I) accrued vacation entitlements; and
    - (II) Accrued Payroll and Retained Employee Liabilities; and
- (ii) Subject to Section 2.9(a)(ii), in respect of the Unionized Employees:
- (1) any future severance pay, termination pay and/or pay in lieu of notice in the event it terminates any such employees, with the Purchaser having recognized the seniority and years of service with the Debtor for the purposes thereof; and
  - (2) to the extent the Purchaser receives a credit related thereto under Section 2.9(a)(ii):
    - (I) accrued vacation entitlements and sick leave credits (if any); and
    - (II) Accrued Payroll and Retained Employee Liabilities.
- (b) Until the Closing Date, subject to the Employee Liabilities Adjustment, the Debtor will be responsible for payment of all: (A) wages, (B) statutory deductions, (C) remittances, (D) assessments, (E) bonuses, (F) vacation pay, (G) severance pay, termination pay or amounts paid in lieu of notice due or owing, (H) payments under the Collective Agreement, if any, for the Unionized Employees and (I) any other remuneration, benefits and deductions for all the Assumed Employees, including without limitation, Benefit Plan premiums and contributions and any other amounts required to be paid in respect of pension plans in which the Assumed Employees participate, that actually become due and payable prior to the Closing Date (the “**Retained Employee Liabilities**”). On the Closing Date, the Purchaser will assume the Assumed Employee Liabilities and other items in the Employee Liabilities Adjustment for the Assumed Employees, as provided in Section 2.9(a) hereof.
- (c) Effective as of the Closing Date, the Purchaser will assume the obligations of the Debtor (and the obligations of the Vendor, if any) with respect to the Assumed Employee Liabilities.
- (d) Except to the extent otherwise imposed by Applicable Law, the Debtor will comply with all Applicable Law in respect of all unpaid workers’ compensation amounts,

including payroll premiums, non-compliance charges, experience rating surcharges, work week surcharges, levies and penalties relating to the Assumed Employees arising out of events occurring prior to the Closing Date. The Purchaser will comply with all Applicable Law in respect of such amounts arising out of events occurring on or after the Closing Date relating to the Assumed Employees.

- (e) The Vendor agrees to indemnify and save the Purchaser harmless from and against all claims and demands for payment in connection with its responsibility for Employee Liabilities as provided in Sections 2.17(a) and 2.17(b) hereof. The Purchaser agrees to indemnify and save the Vendor harmless from and against all claims and demands for payment in connection with the Employee Liabilities for the Assumed Employees attributable to the period on or after the Closing Date including the Employee Liabilities Adjustment as provided in Section 2.8(a), and its responsibilities as provided in Sections 2.14 and 2.17(c).

## 2.18 Due Diligence Information

The Vendor shall, upon the execution of this Agreement by both parties, make available to the Purchaser, in digital form, to the extent same are available or are in its possession or control, the documentation set forth in Schedule 11. In addition, during the Due Diligence Period, at the request of the Purchaser, the Vendor shall as soon as reasonably possible make available or deliver to the Purchaser any additional information and documentation as the Purchaser may reasonably require to the extent such additional information and documentation is specific to the Assets, and is within the possession or control of the Vendor. Up to the Closing Date, the Vendor shall continue to provide written disclosure to the Purchaser of any material new or changed fact, circumstance or event relevant to the Assets and all documentation relating thereto.

## ARTICLE 3 REPRESENTATIONS AND WARRANTIES

### 3.1 Purchaser's Representations

The Purchaser represents and warrants to the Vendor that:

- (a) the Purchaser is a limited partnership duly formed, organized and subsisting under the laws of Ontario;
- (b) the Purchaser has all the necessary power, authority and capacity to enter into this Agreement and to perform its obligations and the execution and delivery of this Agreement and the consummation of the transactions contemplated have been duly authorized by all necessary corporate actions on the part of the Purchaser;
- (c) the Purchaser is not a party to, bound or affected by or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance by it of any of the terms contained in this Agreement; and

- (d) the Purchaser is not a non-Canadian person as defined in the *Investment Canada Act*.

### 3.2 Vendor's Representations

The Vendor represents and warrants to the Purchaser that:

- (a) the Vendor has the right to enter into this Agreement and, subject to the granting of the Approval and Vesting Order by the Court, to complete the Transaction;
- (b) the Vendor is not a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada);
- (c) save and except for the charges created pursuant to the Appointment Order, the Vendor has not previously sold or done any act to encumber the Assets; and
- (d) to the best of the Vendor's knowledge, no actions or proceedings are pending and none have been threatened to restrain or prohibit the completion of the Transaction contemplated by this Agreement.

## ARTICLE 4 CONDITIONS

### 4.1 Conditions of the Purchaser

The obligation of the Purchaser to complete the Transaction is subject to the fulfillment of each of the following conditions before the Closing Date or such earlier date specified below (unless otherwise specified, or unless otherwise waived by the Purchaser as it may determine in its sole and unfettered discretion):

- (a) the inspections and investigations contemplated in Section 5.6, the investigation of title to the Owned Real Property and the restrictions on its use and any Work Orders and other due diligence by the Purchaser of the Assets and Business (as determined by the Purchaser in its sole and unfettered discretion) shall have been completed and the Purchaser shall be satisfied (in its sole and unfettered discretion) with the results of those inspections, investigations—and (collectively, the “**Due Diligence**”) and prior to expiration of the Due Diligence Period (the “**Due Diligence Condition**”);
- (b) the Purchaser shall be satisfied as to any conditions imposed by the MOH on the Transaction within fifteen (15) days of written receipt by the Purchaser of the MOH Approval;
- (c) on closing, the Purchaser shall have obtained from the MOH the Replacement Licence;
- (d) all representations and warranties of the Vendor contained in this Agreement will be true as of the Closing Date with the same effect as though made on and as of that

date;

- (e) no action or proceedings will be pending or threatened to restrain or prohibit the completion of the Transaction contemplated by this Agreement on the Closing Date;
- (f) the Vendor will have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date; and
- (g) no material loss or damage to the Assets will have occurred on or before the Closing Date, subject to the provisions of Section 5.8.

The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition may be waived by the Purchaser in whole or in part. Any such waiver will be binding on the Purchaser only if made in writing.

#### **4.2 Conditions of the Vendor**

The obligation of the Vendor to complete the Transaction is subject to the fulfillment of each of the following conditions before the Closing Date (unless otherwise specified, or unless otherwise waived by the Vendor in its sole discretion):

- (a) all representations and warranties of the Purchaser contained in this Agreement will be true as of the Closing Date with the same effect as though made on and as of that date;
- (b) no action or proceedings will be pending or threatened to restrain or prohibit the completion of the Transaction contemplated by this Agreement;
- (c) the Purchaser will have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date; and
- (d) no material loss or damage to the Assets will have occurred on or before the Closing Date subject to the provisions of Section 5.8 hereof.

The foregoing conditions are for the exclusive benefit of the Vendor. Any condition may be waived by the Vendor in whole or in part. Any such waiver will be binding on the Vendor only if made in writing.

#### **4.3 Mutual Conditions**

The obligations of the Vendor and Purchaser to complete the Transaction are subject to the following conditions being fulfilled or performed at or prior to the Closing:

- (a) On or within twenty (20) days following satisfaction or waiver by the Purchaser of the Due Diligence Condition, an Order will have been made by the Court approving this Agreement and the Transaction and vesting in the Purchaser all the right, title, and interest of the Debtor in the Assets free and clear of all liens, security interests

and other encumbrances, save and except for the Permitted Encumbrances, such order to be substantially in the form of the order attached hereto as **Exhibit A** (the “**Approval and Vesting Order**”);

- (b) the Approval and Vesting Order will not have been stayed, varied or vacated and no order will have been issued and no action or proceeding will be pending to restrain or prohibit the completion of the Transaction; and
- (c) on or before the first anniversary of the waiver of the Due Diligence Condition by the Purchaser, the MOH shall have approved the purchase by the Purchaser contemplated under this Agreement and the MOH shall have approved the Purchaser for transfer of the Licence(s) or for issue of the Replacement Licence (the “**MOH Approval**”).

The parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendor and the Purchaser.

#### 4.4 **Transfer of Licenses**

The Vendor, with the assistance of the Debtor, shall make within fifteen (15) Business Days of the obtaining of the Approval and Vesting Order the necessary filings of material with the MOH to request the granting of approval of the Transaction including notice of surrender of the Licence(s) on condition the MOH issue licence(s) similar to the Licence(s) (the “**Replacement Licence**”) to the Purchaser.

The Purchaser shall submit the materials required by the MOH to initiate the approval of the issuance of the Replacement Licence within twenty (20) Business Days of the obtaining of the Approval and Vesting Order and thereafter take all commercially reasonable steps necessary and use due diligence to obtain the Replacement Licence.

#### 4.5 **Non-Satisfaction of Conditions**

- (a) With the exception of the condition in Section 4.1(a), any condition set out in this Article is not satisfied or performed prior to the time specified therefor, a party for whose benefit the condition is inserted shall in writing:
  - (i) ~~(a)~~ waive compliance with the condition in whole or in part in its sole discretion by written notice to the other party and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or
  - (ii) ~~(b)~~ elect by written notice to the other party delivered on or before the date specified for the condition to terminate this Agreement.
- (b) In connection with the Due Diligence Condition in Section 4.1(a), on or before the expiry of the Due Diligence Period, the Purchaser shall, if satisfied, in its sole, absolute and unfettered discretion, with the results of the Due Diligence, deliver a Notice of Satisfaction to the Vendor, and the Purchaser will be deemed to have

agreed to proceed with the purchase of the Purchased Assets in accordance with the terms hereof. Failure to deliver a Notice of Satisfaction will terminate the Purchaser's obligation to complete the purchase of the Assets as set forth herein whereupon all the obligations of the Parties provided for herein (except those which are expressly stated to survive the termination of this Agreement) will cease, and the First Deposit, including any interest accrued thereon, shall forthwith be returned to the Purchaser, without any deduction or set-off, the whole without any recourse by either Party against the other.

#### 4.6 Exclusive Dealings

Until the earlier of termination of this Agreement in accordance with its terms or Closing, neither the Vendor nor the Debtor shall take any action, directly or indirectly, to encourage, initiate or engage in discussions or negotiations with, or provide any information to any Person, other than the Purchaser and its designated and authorized representatives, concerning any sale, transfer, assignment, licence, merger or similar transaction involving the Assets.

### ARTICLE 5 CLOSING

#### 5.1 Closing

The completion of the Transaction will take place at the offices of the Vendor's Solicitors, on the Closing Date or as otherwise determined by mutual agreement of the parties in writing.

#### 5.2 Purchaser's Deliveries on Closing

At or before the Closing Date, the Purchaser will execute and deliver to the Vendor the following, each of which will be in form and substance satisfactory to the Vendor's Solicitors, acting reasonably:

- (a) a Bill of Sale and Assignment substantially in the form of **Exhibit B** (the "**Bill of Sale**");
- (b) a certificate of a senior officer of the Purchaser dated the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (c) a certificate of a senior officer of the Purchaser dated the Closing Date, confirming that each of the conditions precedent in Section 4.1 hereof, other than those previously stated as fulfilled, performed or waived by the Purchaser, have been fulfilled, performed or waived as of the Closing Date;
- (d) an assumption agreement as contemplated by Section 2.5;
- (e) possession and control of the Resident Trust Funds, subject to the rights of the

beneficial owner of the Resident Trust Funds;

- (f) an undertaking to readjust any item on or omitted from the statement of adjustments as provided for in Section 2.9(c);
- (g) a mutual indemnity agreement in respect of the Assumed Employees as contemplated by Section 2.17(e); and
- (h) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

The Purchaser shall also deliver the balance of the Purchase Price in accordance with the provisions of Section 2.7(c).

### 5.3 Vendor's Deliveries on Closing

At or before the Closing Date, the Vendor, with the assistance of the Debtor, will execute and deliver to the Purchaser the following, each of which will be in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) a statement of adjustments as contemplated by Section 2.9(c);
- (b) a Bill of Sale;
- (c) a certificate of an officer of the Vendor dated the Closing Date confirming that all of the representations and warranties of the Vendor contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (d) a certificate of an officer of the Vendor dated the Closing Date confirming that each of the conditions precedent in Section 4.2 have been fulfilled, performed or waived as of the Closing Date;
- (e) an assumption agreement as contemplated by Section 2.5;
- (f) an undertaking to readjust any item on or omitted from the statement of adjustments as provided for in Section 2.9(d);
- (g) a mutual indemnity agreement in respect of the Assumed Employees as contemplated by Section 2.17(e);
- (h) the Approval and Vesting Order and Receiver's Certificate and Transfer/Deed of Land in registrable form;
- (i) any keys, entry devices and passcodes in the possession or control of the Vendor;
- (j) an updated Employee List;
- (k) a transfer of the Resident Trust Funds together with related records; and

- (l) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

#### 5.4 Purchaser's Acknowledgement

The Purchaser acknowledges that the Vendor is selling the right, title and interest of the Debtor in and to the Assets pursuant to the Vendor's powers as authorized by the Appointment Order and the Approval and Vesting Order substantially in the form attached hereto as **Exhibit A**. The Purchaser agrees to purchase and accept the right, title and interest of the Debtor in and to the Assets pursuant to and in accordance with the terms of: (i) this Agreement; (ii) the Approval and Vesting Order; and (iii) the Bill of Sale and other assignment agreements delivered pursuant to the terms of this Agreement.

#### 5.5 Possession of Assets and Resident Trust Funds

The Vendor will remain in possession of the Assets until the Closing Date. On Closing, the Purchaser will take possession of the Assets and the Resident Trust Funds wherever situate as at the Closing Date. In no event will the Assets be sold, assigned, transferred or set over to the Purchaser until the Purchaser has satisfied all delivery requirements outlined in Section 5.2 hereof.

#### 5.6 Access to Assets

- (a) The Purchaser and its duly authorized representatives may have reasonable access to the Assets located at the Debtor Owned Real Property during normal business hours during the Due Diligence Period and until Closing for the purpose of enabling the Purchaser to conduct such inspections of the Assets as it deems appropriate, provided the Purchaser gives the Vendor at least forty-eight (48) hours prior notice of the times it intends to conduct such inspections. Such inspection will only be conducted in the presence of a representative of the Vendor if so required at the discretion of the Vendor.
- (b) The Vendor will furnish to the Purchaser and its duly authorized representatives any financial and operating data and other information and documentation with respect to the Business as the Purchaser reasonably requests, including all working papers in any way relating to the Business and all documents relating to the Owned Real Property, but only to the extent that such information is in the possession or under the control of the Vendor. The parties expressly agree and understand that there will be some documents not within the possession or control of the Vendor.
- (c) The Purchaser agrees to indemnify and save the Vendor and the Debtor harmless from and against all claims, demands, losses, damages, actions and costs incurred or arising from or in any way directly related to the inspection of the Assets or the attendance of the Purchaser, its employees, contractors or agents at the Owned Real Property.

### 5.7 Conduct of Business Before Closing

The Vendor and the Purchaser shall enter into a Transition Agreement in the form attached as **Schedule 12**. During the period beginning on the Acceptance Date to and including the Closing Date, the Vendor shall:

- (a) operate the Business in the ordinary course, including having Employees take their regularly scheduled vacation;
- (b) provide the Purchaser with the reports concerning the management of the Property that the Manager currently provides to the Vendor;
- (c) maintain and keep the Assets in their present state of repair, ordinary wear and tear excepted and not sell any Assets;
- (d) notify the Purchaser of any breach of any representation, warranty or covenant in this Agreement;
- (e) not do any act or omit to do any act that would cause a breach of any representation, warranty, covenant or agreement contained in this Agreement; and
- (f) not make any material change in the terms of employment of Employees or hire any new Employees or amend any Contracts without the prior approval of the Purchaser.

### 5.8 Risk

The Assets will be and remain at the risk of the Vendor until Closing and at the risk of the Purchaser from and after Closing. Pending completion, the Vendor will hold insurance policies covering the Assets and any proceeds derived therefrom for the parties as their respective interest may appear. If, prior to Closing, the Assets are substantially damaged or destroyed by fire or other casualty, then, at its option, the Purchaser may decline to complete the transaction. Such option will be exercised within 15 days after notification to the Purchaser by the Vendor of the occurrence of damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 days of the Closing Date) in which event this Agreement will be terminated automatically and the Purchaser will be entitled only to a return of the Deposits paid under Section 2.7 hereof and the Deposit Interest but without any other compensation. If the Purchaser does not exercise such option, or where any damage or destruction is not substantial, the Purchaser will complete the Transaction and will be entitled to the proceeds of any insurance payable as a result of the occurrence of such loss, damage or destruction.

For the purposes of this Section, “**substantially damaged or destroyed**” means damage or destruction for which the cost of repair or restoration will exceed \$500,000.

### 5.9 Arbitration

If any dispute arises under Section 5.8 hereof as to whether any damage or destruction is substantial or with respect to the amount of any abatement, such dispute will be determined by an arbitrator

mutually acceptable to the parties. If the parties fail to agree on an arbitrator, either may, after such party has notified the other of such failure to agree, give notice to the other party that it wishes to submit the dispute to arbitration by a single arbitrator in accordance with the *Arbitration Act*, 1991 (Ontario). The decision of the arbitrator, which will be final and binding on the parties, will be made as soon as possible following his appointment. The fees and expenses of the arbitration will be borne equally by the parties or as otherwise determined by the arbitrator. If an arbitration proceeding is commenced pursuant to this Section prior to the Closing Date, the Closing Date will be automatically extended to the date, which is four (4) Business Days from the date of the decision of the arbitrator.

#### 5.10 Termination

If either the Vendor or the Purchaser validly terminates this Agreement pursuant to the provisions of Sections 4.5(b) or 5.8 hereof:

- (a) all the obligations of both the Vendor and Purchaser pursuant to this Agreement will be at an end; and
- (b) neither party will have any right to specific performance or other remedy against, or any right to recover damages or expenses from, the other.

In addition the event that the Purchaser terminates this Agreement following the expiration of the Due Diligence Period for any reason other than :

- (1) non-satisfaction of the Mutual Conditions set out in Section 4.3; or
- (2) the non-satisfaction of the Conditions in favour of the Purchaser set out in Sections 4.1 (c) to (g);
- (3) the right provided by Section 2.4; or
- (4) as a result of the Vendor's default hereunder,

the Deposits along with the Deposit Interest shall be released by the Vendor's Solicitors from trust and paid to the Vendor in full satisfaction of all damages, losses, costs and expenses resulting therefrom and the Purchaser shall be released from all other liability and obligations contained hereunder.

In the event that the Purchaser terminates this Agreement prior to the expiration of the Due Diligence Period or pursuant to the right provided by Section 2.4, the Vendor's Solicitor shall forthwith return the Deposits and the Deposit Interest to the Purchaser without setoff or deduction and neither party will have any right to specific performance or other remedy against, or any right to recover damages or expenses from, the other

#### 5.11 Limitation on Indemnity by the Vendor

Any claim under any indemnity in this Agreement must be made in writing on or before the end of the 12th month following the Closing Date

## **ARTICLE 6 GENERAL**

### **6.1 Electronic Registration**

The Purchaser agrees to cause all necessary procedures to be taken, as may be required by the Vendor or the Vendor's Solicitors, to complete the Owned Real Property part of the Transaction using the system for electronic registration operative and mandatory in the applicable land registry office ("**Ereg**") in accordance with the Law Society of Upper Canada's guidelines. The Purchaser agrees to use a lawyer authorized to use Ereg and who is in good standing with the Law Society of Ontario and the Purchaser's Solicitors will enter into the Vendor's Solicitors' standard form of escrow closing agreement or document registration agreement, which will establish the procedures for closing the Transaction provided same are in accordance with Law Society guidelines. If the Purchaser's Solicitors are unwilling or unable to complete this transaction using Ereg, then the Purchaser's Solicitors must attend at the Vendor's Solicitors' office or at another location designated by the Vendor's Solicitors at such time on Closing as directed by the Vendor's Solicitors to complete the transaction using Ereg utilizing the Vendor's Solicitors' computer facilities, in which event, the Purchaser shall pay to the Vendor's Solicitors a reasonable fee therefor.

### **6.2 Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered by the Vendor in connection with this Transaction or this Agreement, the provisions of this Agreement will prevail to the extent of such conflict or inconsistency.

### **6.3 Vendor's Capacity**

The Vendor acts solely in its capacity as Court-appointed receiver and manager of the Debtor as specifically set out in the Appointment Order and will have no personal or corporate liability under this Agreement.

### **6.4 Commission**

Other than commissions payable by the Vendor in connection with this Transaction, which may include a co-operating broker commission, each party acknowledges that there are no other agent or broker fees or other commissions payable by such party on the Purchase Price or otherwise in connection with the Transaction, and each party agrees to indemnify the other party against any claim for compensation or commission by any third party or agent retained by such party in connection with, or in contemplation of, the Transaction.

### **6.5 Confidentiality**

- (a) The Vendor will provide to the Purchaser Confidential Information including information which might reasonably be expected to materially affect: (i) the decision of a prospective purchaser to complete the Transaction; or (ii) the value of the Assets. The Vendor does not represent or warrant the accuracy or completeness

of any of the Confidential Information and the Vendor assumes no liability whatsoever to the Purchaser if information, which may be deemed by the Purchaser to have been material to a prospective purchaser to contemplate the Transaction or to the value of the Business, is not provided by the Vendor to the Purchaser.

- (b) All information exchanged between the Vendor and the Purchaser in connection with the Transaction will be considered Confidential Information. Any publicity relating to the Transaction and the manner of releasing any information regarding the Transaction will be mutually agreed upon by the Vendor and the Purchaser, both parties acting reasonably.
- (c) The Vendor will continue to have all right, title and interest in and to the Confidential Information and the Confidential Information will be held in trust by the Purchaser for the benefit of the Vendor. The Purchaser will not, directly or indirectly, use, exploit or disclose the Confidential Information for any reason other than evaluating and assessing the Assets for the purpose of acquiring the Assets. Disclosure or use of the Confidential Information by the Purchaser in breach of this Agreement will be deemed to cause the Vendor irreparable harm for which damages may not be an adequate remedy.
- (d) The Purchaser will disclose the Confidential Information only to those of the Purchaser's employees and professional advisors who will have a need to know the Confidential Information for the purpose of evaluating the Assets and, in each case, only after the relevant professional advisors agree in writing and in favour of the Vendor not to disclose the Confidential Information to any other person. The Purchaser will, upon request of the Vendor, deliver copies of such written agreements to the Vendor.
- (e) If the Agreement is terminated for any reason other than the default of the Vendor, the Purchaser will, upon request of the Vendor, immediately return all Confidential Information and copies thereof to the Vendor, or will destroy such Confidential Information and copies thereof, and furnish proof of their destruction to the reasonable satisfaction of the Vendor. If the Agreement is terminated by reason of a default of the Vendor, the Purchaser may delay return of such parts of the Confidential Information as may be reasonably required to deal with any action or claim arising out of such termination until such action or claim has been determined or otherwise resolved.

## 6.6 Costs and Expenses

Except as otherwise specified in this Agreement, all costs and expenses (including the fees and disbursements of accountants, legal counsel and other professional advisers) incurred in connection with this Agreement and the completion of the Transaction are to be paid by the party incurring those costs and expenses. If this Agreement is terminated, the obligation of each party to pay its own costs and expenses is subject to each party's respective rights arising from a breach or termination.

## 6.7 Time of Essence

Time is of the essence in all respects of this Agreement.

## 6.8 Notices

Any Communication must be in writing and either:

- (a) personally delivered;
- (b) sent by prepaid registered mail; or
- (c) sent by facsimile or similar method of recorded communication, charges prepaid.

Any Communication must be sent to the intended recipient at its address as follows:

**to the Purchaser at:**

3200 Dufferin Street  
Suite 407  
Toronto, Ontario M6A 3B2

**Attention:** Ben Friedman  
Email: ben@pfbi.ca

with a copy to the Purchaser's Solicitors:

22 Adelaide Street West  
Suite 3600  
Toronto, Ontario M5H 4E3

**Attention:-** John Atchison  
Email: jatchison@grllp.com

**to the Vendor at:**

Deloitte Restructuring Inc.  
8 Adelaide St. West, Suite 200  
Toronto, ON M5H 0A9

**Attention:** Hartley Bricks  
E-mail: hbricks@deloitte.ca

with a copy to the Vendor's Solicitors:

Gowling WLG (Canada) LLP  
1 First Canadian Place  
100 King Street, Suite 1600  
Toronto, ON M5X 1G5

**Attention:** E. Patrick Shea  
**E-mail:** patrick.shea@gowlingwlg.com

or at such other address as any party may from time to time advise the other by Communication given in accordance with this Section 6.8. Any Communication delivered to the party to whom it is addressed will be deemed to have been given and received on the day it is so delivered at that party's address, provided that if that day is not a Business Day then the Communication will be deemed to have been given and received on the next Business Day. Any Communication transmitted by facsimile or other form of recorded communication will be deemed to have been given and received on the day on which it was transmitted (but if the Communication is transmitted on a day which is not a Business Day or after 3:00 p.m. (local time of the recipient), the Communication will be deemed to have been received on the next Business Day). Any Communication given by registered mail will be deemed to have been received on the 5th Business Day after which it is so mailed. If a strike or lockout of postal employees is then in effect, or generally known to be impending, every Communication must be effected by personal delivery or by facsimile transmission.

#### **6.9 Further Assurances**

Each party shall, at the requesting party's cost, execute and deliver such further agreements and documents and provide such further assurances as may be reasonably required by the other party to give effect to this Agreement and, without limiting the generality of the foregoing, shall do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide such assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies or stock exchanges having jurisdiction over the affairs of a party or as may be required from time to time under applicable securities legislation.

#### **6.10 Amendment and Waiver**

No supplement, modification, amendment, waiver, discharge or termination of this Agreement is binding unless it is executed in writing by the party to be bound. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does such waiver constitute a continuing waiver unless otherwise expressly provided.

#### **6.11 Submission to Jurisdiction**

Without prejudice to the ability of any party to enforce this Agreement in any other proper jurisdiction, each of the parties irrevocably submits and attorns to the exclusive jurisdiction of the courts of the Province of Ontario to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by Applicable Law, each of the parties irrevocably waives

any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of the Province of Ontario or that the subject matter of this Agreement may not be enforced in the courts and irrevocably agrees not to seek, and hereby waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to herein, of the substantive merits of any such suit, action or proceeding. To the extent a party has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that party hereby irrevocably waives such immunity in respect of its obligations under this Agreement.

#### **6.12 Assignment and Enurement**

Neither this Agreement nor any right or obligation hereunder may be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, the Vendor hereby consents to the assignment by the Purchaser of this Agreement to a related or affiliated entity, and further consents to the Purchaser directing title to some or all of the Assets to such related or affiliated entity. The Purchaser shall not be released in whole or in part of its obligations under the Agreement by such permitted assignment. This Agreement enures to the benefit of and is binding upon the parties and their respective successors and permitted assigns.

#### **6.13 Severability**

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

#### **6.14 Counterparts**

This Agreement may be executed and delivered by the parties in one or more counterparts, each of which when so executed and delivered will be an original and such counterparts will together constitute one and the same instrument.

#### **6.15 Planning Act**

This Agreement is effective to create an interest in the Property only if the subdivision control provisions of the *Planning Act* (Ontario), as amended, are complied with on or before Closing.

#### **6.16 Interpretation**

- (a) Words importing the singular include the plural and *vice versa*. Words importing gender include all genders.

- (b) The word “includes” or “including” shall mean “includes without limitation” or “including without limitation”, respectively.
- (c) The captions and headings contained herein are for reference only and in no way affect this Agreement or its interpretation.
- (d) Except as otherwise expressly provided in this Agreement, any references to a statute or regulation shall be construed as a reference such statute or regulation as it may be amended, re-enacted or superseded from time to time.
- (e) If under this Agreement any payment or calculation is to be made or any other action is to be taken, on or as of a day which is not a Business Day, then notwithstanding any provision of this Agreement, that payment or calculation shall instead be made, and that other action shall instead be taken, as applicable, on or as of the next day that is a Business Day.
- (f) In the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the words “to” and “until” each mean “to but excluding”.

#### 6.17 **Facsimile Signatures**

Delivery of this Agreement by facsimile or PDF transmission constitutes valid and effective delivery.

*[signature page follows]*

**EACH OF THE PARTIES** has executed and delivered this Agreement, as of the date noted at the beginning of the Agreement.

**DELOITTE RESTRUCTURING INC., solely in its capacity as Court-appointed receiver and manager of ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY and not in its personal or corporate capacity**

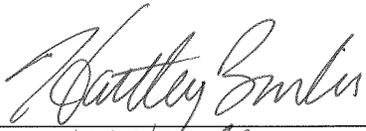
Per: \_\_\_\_\_  
Name:  
Title:

**RYKKA CARE CENTRES LP, by its general partner, RYKKA CARE CENTRES GP INC.**

Per:  \_\_\_\_\_  
Name:  
Title:

EACH OF THE PARTIES has executed and delivered this Agreement, as of the date noted at the beginning of the Agreement.

**DELOITTE RESTRUCTURING INC., solely in its capacity as Court-appointed receiver and manager of ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY and not in its personal or corporate capacity**

Per:   
Name: HARTJEN BRICKS  
Title: SENIOR VICE-PRESIDENT

**RYKKA CARE CENTRES LP, by its general partner, RYKKA CARE CENTRES GP INC.**

Per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 1  
APPOINTMENT ORDER**

Attached

**SCHEDULE 2  
CONTRACTS [SECTION 1.1]**

Attached

**SCHEDULE 2  
CONTRACTS**

Vendor Name	Service Provided	Term of Contract	Term	Billing Cycle	Pricing	Number of visits per year
1 Toronto Standard Community Corporation No. _____	Shared Facilities Agreement	No term length	TBD	Monthly	Subject to Section 8 and Schedule "A" of the SFA	N/A
2 Compass Group Canada Ltd.	Food and Nutrition Services and Environmental Services	On-going. Can be terminated without cause at any time on 90 days prior written notice to the other party.	November 1, 2015 onward	Monthly	Food and Management Services - \$29,958.62 per month Dietitian Services - \$2,369.54 per month Environmental Services - \$18,353.39 (above costs increased annually by 1.5%) \$8.33 per resident day for raw food costs (adjusted based on MOHLIC funding)	N/A
3 Toronto Central Local Health Integration Network	Service Accountability Agreement	3 years	April 1, 2019 to March 31, 2022	not applicable	not applicable	not applicable
4 Dr. Matthew Kim (Medical Director)	Medical Director Agreement as required by Ontario Ministry of Health and Long Term Homes Program Manual to perform renegotiate services	3 years or until either one of the parties give 60 days written notice to terminate or renegotiate	March 1, 2019 to March 1, 2022	Not applicable	Long Term Care Home a) to pay administrative services fee in the amount of 0.36 per resident which may be more but not less than the amount established by MHLIC and OMA. Annual adjustments will be paid immediately or retroactively b) to pay the Medical Director's fees for education (CME) c) to reimburse the medical director's annual membership fee	NA
5 Dr. Matthew Kim (Attending Physician)	Attending Physician Agreement as required by Ontario Ministry of Health and Long Term Care to perform services and provide care to individual residents within the Home	2 years or until either one of the parties give 60 days, 90 days written notice to terminate or renegotiate	March 1, 2019 to March 1, 2022	Not applicable	Not applicable	Not applicable
6 Dr. Sangoh Shawn Lee (Attending Physician)	Attending Physician Agreement as required by Ontario Ministry of Health and Long Term Care to perform services and provide care to individual residents within the Home	2 years or until either one of the parties give 60 days, 90 days written notice to terminate or renegotiate	March 1, 2019 to March 1, 2022	Not applicable	Not applicable	Not applicable

**SCHEDULE 2  
CONTRACTS**

Vendor Name	Service Provided	Term of Contract	Term	Billing Cycle	Pricing	Number of visits per year
7 MediSystem Pharmacy Limited	An agreement for the provision of the pharmaceutical services	60 months from Effective Date and option to be extended for a period of up to 60 months. Agreement extended for 14 months.	Jan 1, 2014 to Dec 31, 2018. Extension: Jan 1, 2019 to Feb 29, 2020	Not applicable	Not applicable	Not applicable
8 Active Health Services Ltd. ("Active")	Service Agreement Amended (Physiotherapy and additional programs)	Not applicable	Original Service Agreement date: Aug 22, 2013 Amended effective date: Jan 1, 2015	Not applicable	Physio - Active to provide approx. 8.5 hrs/week of physio time, to a max of 442hrs/year. As well as approach. 910 hrs/year. Funding provided by the Ministry of Health and Long Term Care based on the envelope of \$765 per resident/year for 60 beds and annual max of \$45,900. The Home will be invoiced based on the hours provided each calendar month. <b>Additional Program</b> - for 60 beds, annual max of \$5,913 based on the envelope of \$0.27 cents per diem per resident, Active will provide group exercise approx. 5.24 hrs/week to a max of 273 hrs/year of physio assistant time within the funding listed above. Home will be invoiced based on hours provided each calendar month	Not applicable
9 SIL Diagnostic Imaging Inc.	Service Level Commitment Agreement to provide mobile x-ray and ultrasounds services	2 years commencing on the date this Agreement is executed by the Facility. It will renew automatically for one year. It will terminate with written notice provided 3 months prior to the expiry	April 19, 2018 to April 19, 2020	Not applicable	Fees for service will be billed to the OHIP directly.	Not applicable

SCHEDULE 2  
CONTRACTS

Vendor Name	Service Provided	Term of Contract	Term	Billing Cycle	Pricing	Number of visits per year
10 MedEx ek Health Services Inc.	Service Agreement to provide laboratory services and additional services such as ECG, Emergency/STAT phlebotomy, critical result delivery, supplies for blow draw, client service rep etc.	3 years with an option to renew. Termination at anytime upon 60 days notice	April 15, 2014 to April 15, 2017	Not applicable	Invoices should be submitted with full documentation. Regular visit \$50. Stat visit \$75. Each client \$5. Electrocardiogram \$15 per resident. Unscheduled courier service \$25	Not applicable
11 VitalAire Canada Inc.	Service Agreement to provide oxygen services, distribute medical gases, respiratory and medical equipment, related supplies and associated therapeutic and diagnostic services including registered respiratory therapists and care practitioners and nurses or practical nurses to perform services.	1 year from the first date written on the agreement and renewed automatically for 2 years unless written notice at least 60 days prior to expiry is received	April 14, 2014 to April 14, 2017. Extension to 2019 is confirmed.	Not applicable	Not applicable	Not applicable
12 Colleen Tomlinson Comfort Foot care	Service Agreement to provide the consultant to provide foot care services as an independent contractor	Annual	Feb 25, 2011 and review on an annual basis unless terminated	Invoice due and payable within 15 days	Twice per month on Friday or mutually agreed day and to pay consultant \$25 per client	Not applicable
13 24HR Pest Control	Service Agreement to provide pest control	Monthly inspection by licensed technician to common areas.	Original date: Jan 14, 2011	Monthly	No initial charge to set up. Monthly cost \$70 plus HST. Additional cost for additional equipment	Not applicable
14 Dr. Y S Choi Dentist	Service Agreement to provide dental services	3 years from the date of the contract. Termination is upon written notice 60 days prior to expiration. This contract will automatically extend for an additional term	March 2017 to March 2020	Not applicable	To bill the patient or responsible party directly for services rendered.	Not applicable

**SCHEDULE 2  
CONTRACTS**

Vendor Name	Service Provided	Term of Contract	Term	Billing Cycle	Pricing	Number of visits per year
15 Woongjin Coway of Toronto	Rental Agreement of appliances (water filters) on 6th floor activity room	Not applicable	June 9, 2018	Monthly	Downpayment of \$100 - Monthly rental fee of \$67.80. 1st month free	Not applicable
16 Woongjin Coway of Toronto	Rental Agreement of appliances (water filters) on 4th floor activity room	Not applicable	December 5, 2017	Invoice every quarter	Registration fee of \$100 - Monthly rental fee of \$67.80.	Not applicable
17 Woongjin Coway of Toronto	Rental Agreement of appliances (water filters x2) on 5th floor and staff room	Not applicable	June 9, 2018	Monthly	Downpayment of \$200 - Monthly rental fee of \$135.60.	Not applicable
18 Access Abilities	Service Agreement to provide maintenance on a regular basis to medical equipment such as wheelchair cleaning twice annually	Contract may be terminated upon 30 days notice	February 19, 2019	Not applicable	10% discount off standard rates for more complex repairs	Not applicable

**SCHEDULE 3  
LICENCES [SECTION 1.1]**

See attached.



Ministry of Health  
and Long-Term Care  
Ministère de la Santé  
et des Soins de longue durée

**Long-Term Care Home Licence**  
*Long-Term Care Homes Act, 2007*

**Permis autorisant un foyer  
de soins de longue durée**

*Loi de 2007 sur les foyers de soins de longue durée*

This licence is issued under section 99 of the *Long-Term Care Homes Act, 2007*.  
Le présent permis est délivré aux termes de l'article 99 de la *Loi de 2007 sur les foyers de soins de longue durée*.

**Rose of Sharon (Ontario) Retirement Community**

(Name of Licensee / Nom du titulaire du permis)

Long-Term Care Home:  
Foyer de soins de longue durée :

**Rose of Sharon Korean Long Term Care**

(Name of Home / Nom du foyer)

**17 Maplewood Avenue, Toronto, Ontario**

(Address of Home / Adresse du foyer)

Long-Term Care Home Licence Number:  
Numéro du permis :

**3038-L01**

Effective Date:  
Date d'entrée en vigueur du permis :

**2011-03-04**

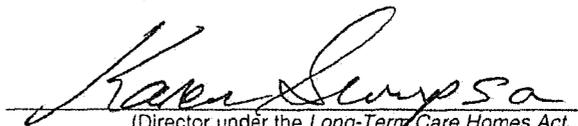
Expiry Date:  
Date d'expiration du permis :

**2041-03-03**

The number of beds allowed under this licence is:  
Nombre de lits autorisé en vertu du permis :

**60**

This licence is subject to the condition(s) in Appendix A.  
Le présent permis est assorti des conditions énoncées à l'annexe A.

  
(Director under the *Long-Term Care Homes Act, 2007* /  
Directeur en vertu de la *Loi de 2007 sur les foyers de soins de longue durée*)



Ministry of Health  
and Long-Term Care  
Ministère de la Santé  
et des Soins de longue durée

## Long-Term Care Home Licence

*Long-Term Care Homes Act, 2007*

## Permis autorisant un foyer de soins de longue durée

*Loi de 2007 sur les foyers de soins de longue durée*

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### Appendix A Annexe A

Long-Term Care Home Licence Number:

Numéro du permis du foyer de soins de longue durée : 3038-L01

*The licence noted above is subject to the following condition(s):*

*Le permis mentionné ci-dessus est soumis aux conditions suivantes :*

*Note: This revised licence document replaces a previous licence document in respect of the long-term care beds under this licence, effective as of January 1, 2015, to incorporate a one-time extension of the term of the licence by five years pursuant to subsection 193.1(1) of the Long-Term Care Homes Act, 2007.*

**SCHEDULE 4  
OWNED REAL PROPERTY [SECTION 1.1]**

**Legal Description**

PIN – 10468-0554(LT)

LOTS 25, 26 AND PART OF LOT 24, BLOCK F, PLAN 875 DESIGNATED AS PARTS 1 AND 2 ON PLAN 66R-22215. CITY OF TORONTO (FORMERLY CITY OF YORK). S/T A RIGHT OF WAY OVER PART 2 ON PL 66R-22215 AS IN TB374581 IN FAVOUR OF PT LTS 23 AND 24 BLOCK F PL 875. S/T A RIGHT AS IN CA439308 OVER PART 2 PL 66R-22215 IN FAVOUR OF PT LTS 23 AND 24 BLOCK F, PL 875.

**Municipal Address**

17 Maplewood Avenue, Toronto

**Permitted Encumbrances**

**SCHEDULE 5  
EQUIPMENT LISTING [SECTION 1.1]**

See attached

**SCHEDULE 5**

**EQUIPMENT**

Floor	Room/Area	Item/description
6	601	Chair (Medium)
6	601	Bed
6	601	Bureau
6	601	Meal Table
6	601	Bedside Table
6	602	Bed
6	602	Bedside Table
6	602	Bureau
6	603	Bedside Table
6	603	Bureau
6	603	Chair (Medium)
6	603	Meal Table
6	603	Bed
6	604	Bed
6	604	Chair (Medium)
6	604	Bureau
6	604	Bedside Table
6	604	Meal Table
6	605	Bureau (2)
6	605	Bed (2)
6	605	Chair (Medium) (2)
6	605	Bedside Table (2)
6	606	Chair (Medium)
6	606	Meal Table
6	606	Bedside Table
6	606	Bed
6	606	Bureau
6	606	Maxi 500 Resident Lift
6	607	Bed
6	607	Bedside Table
6	607	Bureau
6	607	Chair (Medium)
6	608	Bed
6	608	Bureau
6	608	Bedside Table
6	608	Chair (Medium)
6	609	Bed
6	609	Bureau
6	609	Chair (Medium)

## SCHEDULE 5

## EQUIPMENT

Floor	Room/Area	Item/description
6	609	Bedside Table
6	610	Bedside Table
6	610	Bed
6	610	Chair (Medium)
6	610	Bureau
6	611	Bed (2)
6	611	Chair (Medium) (2)
6	611	Bureau (2)
6	611	Bedside Table (2)
6	612	Bed
6	612	Bureau
6	612	Bedside Table
6	613	Bed
6	613	Bureau
6	613	Bedside Table
6	613	Chair (Medium)
6	614	Bedside Table
6	614	Bed
6	614	Bureau
6	614	Meal Table
6	614	Chair (Medium)
6	615	Chair (Medium) (2)
6	615	Bed (2)
6	615	Bedside Table (2)
6	615	Bureau (2)
6	616	Bed (2)
6	616	Bedside Table (2)
6	616	Bureau (2)
6	616	Chair (Medium) (2)
6	Janitor Closet	Mop Bucket
6	Janitor Closet	Cleaning Cart
6	Cleaning Utility	Lift Batterys (3)
6	Cleaning Utility	Linen Cart
6	Nursing Station	Office Chair
6	Nursing Station	Lenovo Laptop
6	Nursing Station	Nurse Call Phone
6	Nursing Station	Sphygmomanometer
6	Nursing Station	Spot Vital Signs Lxi
6	Nursing Station	Office Chair (2)

**SCHEDULE 5**  
**EQUIPMENT**

Floor	Room/Area	Item/description
6	Nursing Station	Small Desk
6	Nursing Station	Large Desk
6	Hallway	Care Works Monitor V2 (1) V3 (1)
6	Hallway	Dirty Linen Cart (Large) (2)
6	Hallway	Meal Table (2)
6	Hallway	Chair (Medium)
6	Hallway	Dirty Linen Cart (Small) (2)
6	Hallway	Cleaning Cart
6	Hallway	Nurse Chair
6	Hallway	Rubermaid Light Cart
6	Rai Mds	Office Chair
6	Rai Mds	Filing Cabinet
6	Rai Mds	Desk
6	Rai Mds	Office Phone
6	Rai Mds	Coat Rack
6	Rai Mds	Bookshelf
6	Rai Mds	HP Printer
6	Rai Mds	HP Laptop
6	Spa Room	Shower Chair
6	Spa Room	Spa Tub
6	Spa Room	Bath Lift
6	Spa Room	Wash Chair
6	Spa Room	Potty Chair (2)
6	Spa Room	Tower Warmer
6	Spa Room	Linen Cart
6	Dining Hall	Care Works Monitor V1
6	Dining Hall	LG Fridge
6	Dining Hall	Dining Room Cart (Small)
6	Dining Hall	Dirty Linen Cart (Small)
6	Dining Hall	Dining Table (2)
6	Dining Hall	Butterfly Tables (5)
6	Dining Hall	Nurse Stool (3)
6	Dining Hall	Suction Machine
6	Dining Hall	Chairs (5)
6	Servery	Toaster
6	Servery	Heavy Duty Commercial Microwave (Amana)
6	Servery	Shelf
6	Servery	Heavy Duty Mini Fridge (True)
6	Servery	Bunn Machine Hot Water

**SCHEDULE 5**  
**EQUIPMENT**

Floor	Room/Area	Item/description
6	Servery	Bunn Coffee Machine
6	Servery	Ice Machine Hoshizaki
6	Lounge/Activity Room	Physio Arm Trainer
6	Lounge/Activity Room	Healthometer Professional (Scale)
6	Lounge/Activity Room	Physio Leg Exerciser
6	Lounge/Activity Room	Speaker
6	Lounge/Activity Room	Wall Cabinet
6	Lounge/Activity Room	Chair (Medium)
6	Lounge/Activity Room	Chair (Small) (13)
6	Lounge/Activity Room	Blue Chair (Medium) (3)
6	Lounge/Activity Room	Fold Out Table (Large) (5)
6	Lounge/Activity Room	Dining Room Table Square (2)
6	Lounge/Activity Room	Side Table Small
6	Lounge/Activity Room	Samsung TV
6	Lounge/Activity Room	Love Seat
6	Lounge/Activity Room	Portable Whiteboard
6	Equipment Storage	IV Stands (2)
5	501	Bed
5	501	Chair (Medium)
5	501	Bureau
5	501	Bedside Table
5	502	Bed
5	502	Bedside Table
5	502	Bureau
5	502	Chair (Medium)
5	503	Bed
5	503	Bureau
5	503	Bedside Table
5	504	Bed
5	504	Bedside Table
5	504	Bureau
5	504	Chair (Medium)
5	505	Bed (2)
5	505	Bureau (2)
5	505	Chair (Medium) (2)
5	505	Bedside Table (2)
5	506	Bed
5	506	Bureau
5	506	Bedside Table

**SCHEDULE 5**  
**EQUIPMENT**

Floor	Room/Area	Item/description
5	506	Chair (Medium)
5	507	Bed
5	507	Bedside Table
5	507	Chair (Small)
5	507	Bureau
5	508	Chair (Small)
5	508	Bureau
5	508	Bed
5	508	Bedside Table
5	509	Bed
5	509	Bureau
5	509	Chair (Medium)
5	509	Bedside Table
5	510	Bed
5	510	Bureau
5	510	Bedside Table
5	510	Chair (Medium)
5	511	Bureau (2)
5	511	Bedside Table (2)
5	511	Bed (2)
5	512	Bed
5	512	Bedside Table
5	512	Bureau
5	512	Chair (Medium)
5	513	Bed
5	513	Bedside Table
5	513	Bureau
5	513	Chair (Medium)
5	514	Bed
5	514	Bureau
5	514	Bedside Table
5	514	Chair (Medium) (2)
5	515	Bed (2)
5	515	Bureau (2)
5	515	Bedside Table (2)
5	515	Chair (Medium)
5	515	Chair Small
5	516	Bed (2)
5	516	Bedside Table (2)

**SCHEDULE 5**

**EQUIPMENT**

Floor	Room/Area	Item/description
5	516	Bureau (2)
5	Hallway	Care Works Work Station
5	Hallway	Dirty Linen Cart (Large) (2)
5	Hallway	Dirty Linen Cart (Small) (2)
5	Hallway	Cleaning Cart
5	Hallway	Nurse Chair
5	Hallway	Care Works Monitor V2 (1) V3 (1)
5	Hallway	Resident Lift
5	Clean Utility	Rubermaid Light Cart
5	Nursing Station	Office Chair (2)
5	Nursing Station	Laptop Lenovo
5	Nursing Station	Phone
5	Nursing Station	Nurse Chair (4)
5	Nursing Station	Rubermaid Light Cart
5	Nursing Station	Spots Vital
5	Nursing Station	Sphygmomanometer
5	Nursing Station	HP Laptop
5	Medication	IV Stand
5	Nurse Manager	Bookshelves (2)
5	Nurse Manager	Coat Rack
5	Nurse Manager	Office Chair
5	Nurse Manager	Desk
5	Spa Room	Shower Chair
5	Spa Room	Rubermaid Light Cart
5	Spa Room	Chair (Small)
5	Spa Room	Bath Lift
5	Spa Room	Bath Chair
5	Spa Room	Potty Chair
5	Spa Room	Tower Warmer
5	Spa Room	Linen Cart
5	Equipment Storage	Walkers (2)
5	Equipment Storage	Wheelchair
5	Equipment Storage	Recline Chair
5	Equipment Storage	Potty Chair
5	Equipment Storage	Medi Chair
5	Lounge	Love Seat
5	Lounge	Chair (Medium) (11)
5	Lounge	Chair (Small) (14)
5	Lounge	Wheel Chair Scale

**SCHEDULE 5**  
**EQUIPMENT**

Floor	Room/Area	Item/description
5	Lounge	Dining Tables (4)
5	Lounge	Wall Cabinet
5	Lounge	Dynex TV
5	Lounge	Resident Lift Standing
5	Lounge	Chair Scale
5	Dining Hall	Care Works Monitor V1
5	Dining Hall	Whirlpool Fridge
5	Dining Hall	Dirty Linen Cart (Small)
5	Dining Hall	Dining Room Cart (Small)
5	Dining Hall	Meal Table (2)
5	Dining Hall	Oval Table
5	Dining Hall	Nurse Stool (3)
5	Dining Hall	Dining Table (2)
5	Dining Hall	Chairs (9)
5	Dining Hall	Butterfly Tables (5)
5	Dining Hall	Suction Machine
5	Servery	Bunn Machine Hot Water
5	Servery	Shelf
5	Servery	Curtis Coffee Maker
5	Servery	Heavy Duty Commercial Microwave (Amana)
5	Servery	Toaster
5	Servery	Ice Machine (Hoshizaki)
5	Servery	Heavy Duty Fridge (Norlake)
4	401	Bed
4	401	Bureau
4	401	Bedside Table
4	401	Chair (Medium)
4	402	Bed
4	402	Bureau
4	402	Chair (Medium)
4	402	Bedside Table
4	403	Bureau
4	403	Bed
4	403	Bedside Table
4	403	Chair (Medium)
4	404	Bedside Table
4	404	Bed
4	404	Chair (Medium)
4	404	Meal Table

**SCHEDULE 5**  
**EQUIPMENT**

Floor	Room/Area	Item/description
4	404	Bureau
4	405	Bed (2)
4	405	Bureau (2)
4	405	Bedside Table (2)
4	405	Chair (Medium) (2)
4	406	Bed
4	406	Bedside Table
4	406	Bureau
4	406	Chair (Medium)
4	407	Bed
4	407	Chair (Medium)
4	407	Bureau
4	407	Bedside Table
4	408	Bed
4	408	Bedside Table
4	408	Bureau
4	408	Chair (Medium)
4	409	Bureau
4	409	Chair (Medium)
4	409	Bed
4	409	Bedside Table
4	410	Bed
4	410	Bedside Table
4	410	Bureau
4	411	Bed (2)
4	411	Bedside Table (2)
4	411	Bureau (2)
4	411	Chair (Medium)
4	412	Bed
4	412	Bureau
4	412	Bedside Table
4	413	Chair (Medium)
4	413	Bed
4	413	Bureau
4	413	Bedside Table
4	414	Bed
4	414	Bureau
4	414	Bedside Table
4	415	Bureau (2)

**SCHEDULE 5**  
**EQUIPMENT**

Floor	Room/Area	Item/description
4	415	Bedside Table (2)
4	415	Bed (2)
4	415	Floor Mat (2)
4	416	Bed (2)
4	416	Bedside Table (2)
4	416	Bureau (2)
4	Hallway	Care Works Work Station
4	Hallway	Dirty Linen Cart (Large) (2)
4	Hallway	Dirty Linen Cart (Small) (2)
4	Hallway	Care Works Monitor V2 (1) V3 (1)
4	Hallway	Cleaning Cart
4	Nursing Station	Camera System Computer
4	Nursing Station	Nursing Chair (4)
4	Nursing Station	Laptop Asus
4	Nursing Station	Call Bell Phone
4	Nursing Station	Laptop Acer
4	Nursing Station	Vital Signs System
4	Nursing Station	Wheel Chair
4	Nursing Station	Sphygmomanometer
4	Clean Utility	Rubermaid Cart
4	Clean Utility	Lift Batteries (3)
4	Therapy	Coat Rack
4	Therapy	Office Chair (2)
4	Therapy	Desk
4	Therapy	Laptop HP
4	Spa Room	Shower Chair
4	Spa Room	Rubermaid Cart
4	Spa Room	Chair Small
4	Spa Room	Bath Lift
4	Spa Room	Tower Warmer
4	Spa Room	Linen Cart
4	Equipment Storage	Vital Signs System
4	Equipment Storage	Potty Chair
4	Equipment Storage	Bed Side Assistance Stand
4	Lounge	Loveseat
4	Lounge	Dining Table (2)
4	Lounge	Blue Chair (14)
4	Lounge	Portable Whiteboard
4	Lounge	Sitdown Scale

**SCHEDULE 5**  
**EQUIPMENT**

Floor	Room/Area	Item/description
4	Lounge	Maxi500 Bed Lift
4	Lounge	Sarah3000 Standing Lift
4	Lounge	Chair (Medium) (3)
4	Lounge	Wall Cabinet
4	Lounge	Samsung TV
4	4th Floor Balcony	Table
4	5th Floor Balcony	Chair (Medium) 5
4	6th Floor Balcony	Chair (White) 7
4	7th Floor Balcony	Loveseat
4	Dining Hall	Care Works Monitor V1
4	Dining Hall	Frigidare
4	Dining Hall	Dining Room Cart (Small)
4	Dining Hall	Dirty Linen Cart (Small)
4	Dining Hall	Meal Table (3)
4	Dining Hall	Small Stool (3)
4	Dining Hall	Chair (12)
4	Dining Hall	Butterfly Tables (5)
4	Dining Hall	Dining Table
4	Dining Hall	Suction Machine
4	Servery	Silver King Refridgerator
4	Servery	Ice Machine Hoshizaki
4	Servery	Toaster
4	Servery	Heavy Duty Commercial Mircowave (Amana)
4	Servery	Bunn Machine Hot Water
4	Servery	Curtis Coffee Maker
4	Servery	Shelf
Ground	Lobby	Loveseat (2)
Ground	Lobby	Chair
Ground	Lobby	Coffee Table
Ground	Lobby	Round Table
Ground	Reception	Filing Cabinet
Ground	Reception	Office Phone
Ground	Front Office	Office Table
Ground	Front Office	Filing Cabinet
Ground	Front Office	Office Chair (3)
Ground	Front Office	Side Table
Ground	Front Office	Main Office Chair
Ground	Front Office	Bosch Coffee Machine
Ground	Front Office	Standing Closet

**SCHEDULE 5**

**EQUIPMENT**

Floor	Room/Area	Item/description
Ground	Doc Office	Office Chair (2)
Ground	Doc Office	Maim Office Chair
Ground	Doc Office	Desk
Ground	Doc Office	Standing Cabinet
Ground	Auditorium And Chapel	Snow Blower
Ground	Auditorium And Chapel	Dining Chairs (30)
Ground	Auditorium And Chapel	Dining Tables 4
Ground	Auditorium And Chapel	Table
Ground	Auditorium And Chapel	Small Chair (19)
Ground	Offices	Mini Fridge
Ground	Offices	Ladder
Ground	Offices	Rubermaid Cart (2)
Ground	Offices	Hairdressing Chair (2)
Ground	Offices	Hair Dryer
Ground	Offices	Office Chair (2)
Ground	Offices	Coat Rack
Ground	Offices	Shelf
Ground	Offices	Filing Cabinet
Ground	Offices	Standing Closet
Ground	Offices	Microwave
Ground	Program Office	Microwave
Ground	Program Office	Laptop Asus (3)
Ground	Program Office	Desk
Ground	Program Office	Stand Up Heater
Ground	Program Office	Office Chair (3)
Ground	Program Office	Fold Out Chair
Ground	Storage	IMop
Ground	Storage	Filing Cabinet
Ground	Family Dining Room	Laptop Lenovo
Ground	Family Dining Room	Filing Cabinet
Ground	Family Dining Room	Office Chair
Ground	Family Dining Room	Fridge Hotpoint
Ground	Family Dining Room	Sanyo TV
Ground	Kitchen Office	Whirlpool Mini Fridge
Ground	Kitchen Office	Shelf
Ground	Kitchen Office	Table
Ground	Kitchen Office	Filing Cabinet
Ground	Kitchen Office	Phone
Ground	Kitchen Office	Laptop Lenovo

**SCHEDULE 5**

**EQUIPMENT**

Floor	Room/Area	Item/description
Ground	Kitchen	Ice Machine Hoshizaki Large
Ground	Kitchen	Under Fridge True
Ground	Kitchen	Fridge Dimchae
Ground	Kitchen	Metro Combination Oven
Ground	Kitchen	Food Processor
Ground	Kitchen	Blender
Ground	Kitchen	Pronto Garland
Ground	Kitchen	Dining Room Cart (Small)
Ground	Kitchen	Shelf (2)
Ground	Kitchen	Fridge Dimchae
Ground	Kitchen	American Range Oven
Ground	Kitchen	Standing Steamer Doyon
Ground	Kitchen	Food Containers
Ground	Kitchen	Transport Carts (3)
Ground	Kitchen	Fridge Curtis
Ground	Kitchen	Rubermaid Cart (2)
Ground	Kitchen	Hobart Dishwasher
Ground	Kitchen	Dish Trays (13)
Ground	Kitchen	Rubermaid Cart
Ground	Kitchen	Garbage Bin
Ground	Kitchen	ABN Walk in Fridge
Ground	Kitchen	Blender
Ground	Chapel	Chairs (6)
Ground	Chapel	Tables (3)
B2	LTC Storage	Shower Chair (2)
B2	LTC Storage	Shelf
B2	LTC Storage	Rubermaid Cart
B2	LTC Storage	Potty Chairs (3)
B2	Medical Supplies Storage	Shelves (3)
B2	Medical Records	Shelf
B2	Staff Room	Microwave
B2	Staff Room	Fridge
B2	Staff Room	Lockers (32)
B2	Staff Room	Shelves 4
B2	Staff Room	Coatrack
B2	Staff Room	Chairs (9)
B2	Staff Room	Tables (2)
B2	Staff Room	Coffee Machine
B2	Staff Room	Round Table

**SCHEDULE 5**  
**EQUIPMENT**

Floor	Room/Area	Item/description
B2	Staff Room	Couch (2)
B2	Staff Room	Phone
B2	Staff Room	Toaster
B2	Environmental Office And Shop	Laptop HP
B2	Environmental Office And Shop	Epson 590 Printer
B2	Environmental Office And Shop	Desk
B2	Environmental Office And Shop	Office Chair (2)
B2	Environmental Office And Shop	Phone
B2	Environmental Office And Shop	Tools
B2	Staff Members Room	Lockers (4)
B2	Hallway	Linen Carts (2)
B2	Hallway	Cleaning Cart
B2	Hallway	Small Table
B2	Laundry	Thermopatch
B2	Laundry	Phone
B2	Laundry	Fold Ouut Table (2)
B2	Laundry	Dirty Linen Cart (Small) (3)
B2	Laundry	Clean Linen Cart (4)
B2	Laundry	Laundry Bins (5)
B2	Laundry	Unimac Washin Machine
B2	Laundry	Harco Washing Machine
B2	Laundry	Unimac Dryer (2)
B2	Clean Closet	Shelfs (3)

**SCHEDULE 6**  
**RECEIVABLES LISTING [SECTION 1.1]**

See attached

# Rose of Sharon Korean Long Term Care

## Accounts Receivable Aging Summary by Resident February 2019

Payer : Resident  
 Exclude : None  
 Group : All

Resident	A/R Balance	Future ( Mar )	Current ( Feb )	30 Days ( Jan )	60 Days ( Dec )	90 Days ( Nov )	120 Days ( Oct )
AHN, KYONG SOO (340)		\$2,640.78					
AHN, SANG BUM (367)		\$2,675.78					
AN, YONG SIL (179)	\$10.00	\$1,425.17	\$10.00				
BAIK, MYUNG KYU (307)		\$2,549.76					
CHANG, JUNG SOON (176)		\$1,399.89					
CHO, YONG HWA (305)		\$2,554.76					
CHO, YOUNG HEE (359)		\$2,640.78					
CHU, SOON YI (370)	\$121.56	\$1,477.39	\$121.56				
CHUN, JUM RYE (328)	(\$1,077.75)	(\$1,077.75)					
CHUN, MYUNG JA (369)		\$2,640.78					
CHUNG, DONG SUCK (332)		\$2,665.78					
CHUNG, SOON NAE (162)		\$1,409.89					
CHUNG, SOON OK (302)		\$1,396.89					
HA, JUNG JA (351)		\$2,640.78					
HAM, SOON OK (165)		\$1,434.89					
HONG, HYAE SOOK (354)		\$2,665.78					
HONG, JAE OK (182)		\$1,492.67					
HONG, SEUNG KWAN (338)		\$1,396.89					
JEON, BYONGSIK (339)		\$1,026.00					
JUN, JUNG HO (127)	\$10.00	\$1,399.89	\$10.00				
JUNG, KYUNG-SOOK (368)		\$1,434.00					
JUNG, YOUNG SUK (303)		\$2,539.76					
KHANG, YONG SOON (330)		\$2,640.78					
KIM, BONG SOO (198)	\$10.00	\$2,484.40	\$10.00				
KIM, CHONG PIL (371)		\$1,475.94					
KIM, CHOON YOL (341)		\$2,640.78					
KIM, HYON-SOOK (349)		\$2,640.78					
KIM, IN HWAN (306)		\$2,564.76					
KIM, IN SEOP (329)		\$1,399.89					
KIM, JONG IM (163)		\$1,387.08					
KIM, JONG-KIL (350)		\$1,331.08					
KIM, MAL SOO (313)		\$2,595.42					
KIM, NAN OK (324)	\$10.00	\$1,387.08	\$10.00				
KIM, OK JA (320)		\$850.00					



**SCHEDULE 7**  
**BUILDINGS AND FIXTURES [SECTION 1.1]**

See attached

**SCHEDULE 7**

**Listed in Schedules 4 and 5**

**SCHEDULE 8  
LEASES RENT ROLL [SECTION 1.1]**

See attached

Rose of Sharon Korean Long Term Care  
Resident Rent Roll Report  
May 2019

Date: May 7, 2019  
Time: 14:32:30 ET  
User: Ryhan Ahmad

Rate Eff. Date	Adm. Date	Disch. Date	Unit	Unit Description	Rate Schedule	Rate Type	Payer	Monthly Charges	Daily Charges	Period Charges
<b>AHN, KYONG SOO (340)</b>										
7/1/2018	3/6/2017		6th Floor 602-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
<b>AHN, SANG BUM (367)</b>										
1/1/2019	1/10/2019	5/4/2019	6th Floor 608-1	null	Regular	Priv-D (After 07/01/15)	Resident	238.55	60.78	238.55
							Resident	102.20	26.04	102.20
							<b>Total Charges</b>	<b>340.75</b>	<b>86.82</b>	<b>340.75</b>
							<b>Total Period Charges</b>			<b>340.75</b>
<b>AN, YONG SIL (179)</b>										
7/1/2018	9/1/2011		5th Floor 505-A	null	CUSTOM	Ward Custom	Resident	1400.17	46.03	1400.17
							SUBSIDY	448.56	14.75	448.56
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
<b>BAIK, MYUNG KYU (307)</b>										
7/1/2018	1/10/2014		4th Floor 410-1	null	Regular	PRIV-B(After 07/01/13)	Resident	681.03	22.39	681.03
							Resident	1848.73	60.78	1848.73
							<b>Total Charges</b>	<b>2529.76</b>	<b>83.17</b>	<b>2529.76</b>
							<b>Total Period Charges</b>			<b>2529.76</b>
<b>CHANG, JUNG SOON (176)</b>										
7/1/2018	8/29/2011		4th Floor 411-A	null	CUSTOM	Ward Custom	Resident	1399.89	46.02	1399.89
							SUBSIDY	448.84	14.76	448.84
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
<b>CHO, YONG HWA (305)</b>										
7/1/2018	12/26/2013		5th Floor 504-1	null	Regular	PRIV-B(After 07/01/13)	Resident	681.03	22.39	681.03
							Resident	1848.73	60.78	1848.73
							<b>Total Charges</b>	<b>2529.76</b>	<b>83.17</b>	<b>2529.76</b>
							<b>Total Period Charges</b>			<b>2529.76</b>
<b>CHO, YOUNG HEE (359)</b>										
10/9/2018	10/9/2018		5th Floor 513-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
<b>CHU, SOON YI (370)</b>										
2/27/2019	2/27/2019		4th Floor 415-B	null	CUSTOM	Ward Custom	Resident	1386.25	45.57	1386.25
							SUBSIDY	462.48	15.21	462.48
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
<b>CHUN, MYUNG JA (369)</b>										
2/1/2019	2/1/2019		5th Floor 509-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>

Rose of Sharon Korean Long Term Care  
Resident Rent Roll Report  
May 2019

Date: May 7, 2019  
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User: Ryhan Ahmad

Rate Eff. Date	Adm. Date	Disch. Date	Unit	Unit Description	Rate Schedule	Rate Type	Payer	Monthly Charges	Daily Charges	Period Charges
<b>CHUNG, DONG SUCK (332)</b>										
7/1/2018	6/1/2016		6th Floor 604-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
<b>CHUNG, SOON NAE (162)</b>										
7/1/2018	5/30/2011		6th Floor 615-B	null	CUSTOM	Ward Custom	Resident	1399.89	46.02	1399.89
							SUBSIDY	448.84	14.76	448.84
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
<b>HA, JUNG JA (351)</b>										
7/1/2018	1/25/2018		5th Floor 503-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
<b>HA, YON HWA (372)</b>										
4/9/2019	4/9/2019		4th Floor 411-B	null	CUSTOM	Ward Custom	Resident	1427.92	46.95	1427.92
							SUBSIDY	420.81	13.83	420.81
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
<b>HAM, SOON OK (165)</b>										
7/1/2018	6/14/2011		6th Floor 616-A	null	CUSTOM	Ward Custom	Resident	1399.89	46.02	1399.89
							SUBSIDY	448.84	14.76	448.84
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
<b>HONG, HYAE SOOK (354)</b>										
7/1/2018	4/9/2018		4th Floor 413-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
<b>HONG, JAE OK (182)</b>										
7/1/2018	9/15/2011		4th Floor 416-A	null	CUSTOM	Ward Custom	Resident	1482.67	48.75	1482.67
							SUBSIDY	366.06	12.03	366.06
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
<b>HONG, SEUNG KWAN (338)</b>										
12/17/2018	11/7/2016		5th Floor 511-A	null	CUSTOM	Ward Custom	Resident	1396.89	45.93	1396.89
							SUBSIDY	451.84	14.85	451.84
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
<b>JEON, BYONGSIK (339)</b>										
7/1/2018	2/17/2017		6th Floor 605-B	null	CUSTOM	Ward Custom	Resident	1001.00	32.91	1001.00
							SUBSIDY	847.73	27.87	847.73
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>

Rose of Sharon Korean Long Term Care  
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Rate Eff. Date	Adm. Date	Disch. Date	Unit	Unit Description	Rate Schedule	Rate Type	Payer	Monthly Charges	Daily Charges	Period Charges
<b>JUN, JUNG HO (127)</b>										
7/1/2018	4/4/2011		5th Floor 515-A	null	CUSTOM	Ward Custom	Resident	1399.89	46.02	1399.89
							SUBSIDY	448.84	14.75	448.84
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
<b>JUNG, KYUNG-SOOK (368)</b>										
1/17/2019	1/17/2019		4th Floor 405-B	null	CUSTOM	Ward Custom	Resident	1424.00	46.82	1424.00
							SUBSIDY	424.73	13.96	424.73
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
<b>JUNG, YOUNG SUK (303)</b>										
7/1/2018	8/2/2013		4th Floor 406-1	null	Regular	PRIV-B(After 07/01/13)	Resident	681.03	22.39	681.03
							Resident	1848.73	60.78	1848.73
							<b>Total Charges</b>	<b>2529.76</b>	<b>83.17</b>	<b>2529.76</b>
							<b>Total Period Charges</b>			<b>2529.76</b>
<b>KHANG, YONG SOON (330)</b>										
7/1/2018	3/24/2016		5th Floor 502-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
<b>KIM, BONG SOO (198)</b>										
7/1/2018	1/18/2013		6th Floor 601-1	null	Regular	Priv-A (After 07/01/12)	Resident	625.67	20.57	625.67
							Resident	1848.73	60.78	1848.73
							<b>Total Charges</b>	<b>2474.40</b>	<b>81.35</b>	<b>2474.40</b>
							<b>Total Period Charges</b>			<b>2474.40</b>
<b>KIM, CHONG PIL (371)</b>										
3/15/2019	3/15/2019		4th Floor 401-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
<b>KIM, CHOON YOL (341)</b>										
7/1/2018	4/17/2017		6th Floor 607-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
<b>KIM, HYON-SOOK (349)</b>										
7/1/2018	1/25/2018		4th Floor 412-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
<b>KIM, IN HWAN (306)</b>										
7/1/2018	1/8/2014		6th Floor 610-1	null	Regular	PRIV-B(After 07/01/13)	Resident	681.03	22.39	681.03
							Resident	1848.73	60.78	1848.73
							<b>Total Charges</b>	<b>2529.76</b>	<b>83.17</b>	<b>2529.76</b>
							<b>Total Period Charges</b>			<b>2529.76</b>

Rose of Sharon Korean Long Term Care  
Resident Rent Roll Report  
May 2019

Date: May 7, 2019  
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User: Ryhan Ahmad

Rate Eff. Date	Adm. Date	Disch. Date	Unit	Unit Description	Rate Schedule	Rate Type	Payer	Monthly Charges	Daily Charges	Period Charges
<b>KIM, IN SEOP (329)</b>										
7/1/2018	12/22/2015		5th Floor 511-B	null	CUSTOM	Ward Custom	Resident	1399.89	46.02	1399.89
							SUBSIDY	448.84	14.76	448.84
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
<b>KIM, JONG IM (163)</b>										
7/1/2018	6/6/2011		4th Floor 416-B	null	CUSTOM	Ward Custom	Resident	1387.08	45.60	1387.08
							SUBSIDY	461.65	15.18	461.65
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
<b>KIM, JONG-KIL (350)</b>										
7/1/2018	1/25/2018		6th Floor 605-A	null	CUSTOM	Ward Custom	Resident	1331.08	43.76	1331.08
							SUBSIDY	517.65	17.02	517.65
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
<b>KIM, MAL SOO (313)</b>										
7/1/2018	11/27/2014		4th Floor 414-1	null	Regular	Priv-C (After 09/01/14)	Resident	1848.73	60.78	1848.73
							Resident	736.69	24.22	736.69
							<b>Total Charges</b>	<b>2585.42</b>	<b>85.00</b>	<b>2585.42</b>
							<b>Total Period Charges</b>			<b>2585.42</b>
<b>KIM, NAN OK (324)</b>										
7/1/2018	8/21/2015		6th Floor 611-A	null	CUSTOM	Ward Custom	Resident	1387.08	45.60	1387.08
							SUBSIDY	461.65	15.18	461.65
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
<b>KIM, SOON RYE (363)</b>										
12/18/2018	12/18/2018		5th Floor 506-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
<b>KO, SOON JO (177)</b>										
7/1/2018	9/1/2011		4th Floor 405-A	null	CUSTOM	Ward Custom	Resident	1399.89	46.02	1399.89
							SUBSIDY	448.84	14.76	448.84
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
<b>LEE, BONG SHIM (137)</b>										
7/1/2018	7/19/2012		5th Floor 516-B	null	CUSTOM	Ward Custom	Resident	1399.89	46.02	1399.89
							SUBSIDY	448.84	14.76	448.84
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
<b>LEE, HYANG SOON (347)</b>										
7/1/2018	11/8/2017		4th Floor 407-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>

Rose of Sharon Korean Long Term Care  
Resident Rent Roll Report  
May 2019

Date: May 7, 2019  
Time: 14:32:30 ET  
User: Ryhan Ahmad

Rate Eff. Date	Adm. Date	Disch. Date	Unit	Unit Description	Rate Schedule	Rate Type	Payer	Monthly Charges	Daily Charges	Period Charges
LEE, IN SOOK (140)	6/9/2011		4th Floor 403-1	null	Regular	Private (old)	Resident	1848.73	60.78	1848.73
							Resident	570.01	18.74	570.01
							<b>Total Charges</b>	<b>2418.74</b>	<b>79.52</b>	<b>2418.74</b>
							<b>Total Period Charges</b>			<b>2418.74</b>
LEE, JUNG HAI (199)	4/10/2013		6th Floor 609-1	null	Regular	Priv-D (After 07/01/12)	Resident	625.67	20.57	625.67
							Resident	1848.73	60.78	1848.73
							<b>Total Charges</b>	<b>2474.40</b>	<b>81.35</b>	<b>2474.40</b>
							<b>Total Period Charges</b>			<b>2474.40</b>
LEE, KYUNG SOOK (135)	4/15/2011		5th Floor 505-B	null	CUSTOM	Ward Custom	Resident	1399.89	46.02	1399.89
							SUBSIDY	448.84	14.76	448.84
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
LEE, MAN-YOUNG (360)	1/23/2018		6th Floor 606-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
LEE, MYUNG JA (352)	2/2/2018		4th Floor 408-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
LEE, SANGMAN (361)	12/1/2018		4th Floor 402-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
LEE, SEIN (344)	5/9/2017		5th Floor 508-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
LEE, SOON AE (308)	6/13/2014		4th Floor 415-A	null	CUSTOM	Ward Custom	Resident	1396.89	45.93	1396.89
							SUBSIDY	451.84	14.86	451.84
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.79</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
LEE, YONG-HEE (342)	5/1/2017		6th Floor 612-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>

Rose of Sharon Korean Long Term Care  
Resident Rent Roll Report  
May 2019

Date: May 7, 2019  
Time: 14:32:30 ET  
User: Ryhan Ahmad

Rate Eff. Date	Adm. Date	Disch. Date	Unit	Unit Description	Rate Schedule	Rate Type	Payer	Monthly Charges	Daily Charges	Period Charges
<b>MA, KEUM JOO (125)</b>										
7/1/2018	3/30/2011		6th Floor 611-B	null	CUSTOM	Ward Custom	Resident	1399.89	46.02	1399.89
							SUBSIDY	448.84	14.76	448.84
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
<b>MOON, NAM KWY (358)</b>										
9/21/2018	9/21/2018		5th Floor 514-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
<b>MUN, HYE SOOK (373)</b>										
5/2/2019	5/2/2019		5th Floor 507-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1789.09
							Resident	792.05	26.04	766.50
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2555.59</b>
							<b>Total Period Charges</b>			<b>2555.59</b>
<b>PACK, YOUNG HI (311)</b>										
7/1/2018	10/14/2014		4th Floor 404-1	null	Regular	Priv-C (After 09/01/14)	Resident	1848.73	60.78	1848.73
							Resident	736.69	24.22	736.69
							<b>Total Charges</b>	<b>2585.42</b>	<b>85.00</b>	<b>2585.42</b>
							<b>Total Period Charges</b>			<b>2585.42</b>
<b>PARK, BO YEOP (316)</b>										
7/1/2018	1/26/2015		6th Floor 616-B	null	CUSTOM	Ward Custom	Resident	1399.89	46.02	1399.89
							SUBSIDY	448.84	14.76	448.84
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>
<b>PARK, KATHERINE J (362)</b>										
12/17/2018	12/17/2018		5th Floor 501-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
<b>PARK, NAM JIN (353)</b>										
7/1/2018	2/14/2018		4th Floor 409-1	null	Regular	Priv-D (After 07/01/15)	Resident	1848.73	60.78	1848.73
							Resident	792.05	26.04	792.05
							<b>Total Charges</b>	<b>2640.78</b>	<b>86.82</b>	<b>2640.78</b>
							<b>Total Period Charges</b>			<b>2640.78</b>
<b>PARK, YOUNG JA (321)</b>										
7/1/2018	5/27/2015		6th Floor 613-1	null	Regular	Priv-C (After 09/01/14)	Resident	1848.73	60.78	1848.73
							Resident	736.69	24.22	736.69
							<b>Total Charges</b>	<b>2585.42</b>	<b>85.00</b>	<b>2585.42</b>
							<b>Total Period Charges</b>			<b>2585.42</b>
<b>SHIN, HYUNG SOO (345)</b>										
7/1/2018	6/23/2017		5th Floor 515-B	null	CUSTOM	Ward Custom	Resident	1001.00	32.91	1001.00
							SUBSIDY	847.73	27.87	847.73
							<b>Total Charges</b>	<b>1848.73</b>	<b>60.78</b>	<b>1848.73</b>
							<b>Total Period Charges</b>			<b>1848.73</b>

Rose of Sharon Korean Long Term Care  
Resident Rent Roll Report  
May 2019

Date: May 7, 2019  
Time: 14:32:31 ET  
User: Ryhan Ahmad

Rate Eff. Date	Adm. Date	Disch. Date	Unit	Unit Description	Rate Schedule	Rate Type	Payer	Monthly Charges	Daily Charges	Period Charges
SON, YOUNG SUN (366) 1/8/2019	1/8/2019		5th Floor 516-A	null	CUSTOM	Ward Custom	Resident SUBSIDY Total Charges Total Period Charges	986.17 862.56 1848.73	32.42 28.36 60.78	986.17 862.56 1848.73
SONG, SHIN AE (195) 7/1/2018	11/12/2012		6th Floor 603-1	null	Regular	Priv-A (After 07/01/12)	Resident Total Charges Total Period Charges	625.67 1848.73 2474.40	20.57 60.78 81.35	625.67 1848.73 2474.40
UM, BOK GIL (138) 7/1/2018	4/18/2011		6th Floor 615-A	null	CUSTOM	Ward Custom	Resident SUBSIDY Total Charges Total Period Charges	1399.89 448.84 1848.73	46.02 14.76 60.78	1399.89 448.84 1848.73
YEUM, BOK DOL (312) 7/1/2018	11/10/2014		5th Floor 510-1	null	Regular	Priv-C(After 09/01/14)	Resident Total Charges Total Period Charges	1848.73 736.69 2585.42	60.78 24.22 85.00	1848.73 736.69 2585.42
YOO, JEONG YUL (335) 7/1/2018	9/23/2016		6th Floor 614-1	null	Regular	Priv-D (After 07/01/15)	Resident Total Charges Total Period Charges	1848.73 792.05 2640.78	60.78 26.04 86.82	1848.73 792.05 2640.78
YOUN, WON-SIL (365) 12/31/2018	12/31/2018		5th Floor 512-1	null	Regular	Priv-D (After 07/01/15)	Resident Total Charges Total Period Charges	1848.73 792.05 2640.78	60.78 26.04 86.82	1848.73 792.05 2640.78

**SCHEDULE 9**  
**EXCLUDED ASSETS [SECTION 1.1]**

See attached

**SCHEDULE 9**  
**EXCLUDED ASSETS**

Floor	Room/Area	Item/description
6	602	Dresser
6	612	Meal Table
6	Nursing Station	Med Cart
6	Nursing Station	Med Cart Non Digital
6	Medical Room	Danby Med Fridge (Small)
6	Lounge/Activity Room	Physio Wheelchair (2)
6	Lounge/Activity Room	Water Cooler
6	Equipment Storage	Potty Chair (3)
6	Equipment Storage	Resident Walker (2)
6	Equipment Storage	Resident Walker Wheels
6	Equipment Storage	Physio Assessment Device (2)
5	502	Floor Mat
5	Soiled Utility	Med Cart Small
5	Nursing Station	Nurse Cart Medium
5	Nursing Station	Vital Air
5	Medication	Danby Fridge
5	Nurse Manager	Vaccine Fridge
5	Lounge	Water Cooler
4	Medication	Fridge Owned By Pharmacy
4	Nursing Station	Biohazard Fridge
4	Nursing Station	Nurse Cart Non Electric
4	Therapy	Microwave
4	Lounge	Piano
4	Lounge	Wheel Chair (2)
4	Lounge	Water Cooler
Ground	CACF	Camera Server
Ground	Reception	Sharp Printer Fax
Ground	Doc Office	Printer Ricoh
Ground	Auditorium And Chapel	Bookshelves (3)
Ground	Auditorium And Chapel	Love Seat
Ground	Auditorium And Chapel	Couch
Ground	Auditorium And Chapel	Coffee Table
Ground	Janitor	Wetvac
Ground	Auditorium And Chapel	Ping Pong Table
Ground	Auditorium And Chapel	Bookshelf
Ground	Storage And Communications	Safe And Paintings
Ground	Program Office	Coffee Pot
Ground	Program Office	Laptop Acer
Ground	Storage	Cleaning Cart

**SCHEDULE 9**  
**EXCLUDED ASSETS**

<b>Floor</b>	<b>Room/Area</b>	<b>Item/description</b>
Ground	Family Dining Room	Dining Table With 6 Chairs
Ground	Family Dining Room	Display Cabinet
Ground	Family Dining Room	Guitar
Ground	Chapel	Pianos (3)
Ground	Chapel	Bench
B2	LTC Storage	Wheelchair (4)
B2	LTC Storage	Med Cart Old
B2	LTC Storage	Outdoor Tents (2)
B2	LTC Storage	Wheelchairs (2)
B2	Staff Room	Water Cooler
B2	Environmental Office And Shop	Microwave Whirlpool
B2	Environmental Office And Shop	Heavy Duty Silverking Fridge
B2	Environmental Office And Shop	Salton Mini Fridge
B2	Environmental Office And Shop	Maintennance Cart (Used To Be Treatment

**SCHEDULE 10**  
**ALLOCATION OF PURCHASE PRICE [SECTION 2.10]**

See attached

**Rose of Sharon****Purchase Price Allocation****May 9, 2019**

	\$
LAND	710,000
BUILDING	5,340,000
LICENCE	600,000
FF&E	450,000
TOTAL	<u><u>7,100,000</u></u>

**SCHEDULE 10  
DUE DILIGENCE MATERIALS [SECTION 2.18]**

See attached

**ROSE OF SHARON  
DUE DILIGENCE LIST**

ITEM	TIME	LTC
<b>Compliance</b>		
MOHLTC Compliance Inspections & Responses to the MOHLTC	36 Months	X
Service Agreements with LHIN's	Current	X
LAPS	Current	X
Copy of MOHLTC License	Current	X
Copy of Accreditation Certificate and Report	Current	X
<b>Payroll/HR</b>		
Payroll Registers	6 months	X
Staffing Schedules	Current	X
Collective Agreements	Current	X
All Letters of Understanding with Unions	Current	X
Union Grievances	24 Months	X
Employee List With Rates, Start Dates & Positions	Current	X
Copy of All Policies that relate to Terms And Conditions of Employment	Current	X
Employee Files - For review	Current	X
Benefit Plan Contract and Employee Handbook	Current	X
Detailed Listing of Accruals for Vacation / Sick / Stat Holiday	Current	X
Details of Any Outstanding Arbitration / Mediation Proceedings	Current	X
<b>Operations</b>		
Monthly Occupancy Reports	2019	X
Annual Occupancy Reports By Room Type	3 Years	
Critical Incident Reports	24 months	X
Floor Plans	Current	X
Building Plans	Current	X
Phase I Environmental Reports	Current	X
Building Condition Reports	Current	X
Public Health Inspection Reports	Current	X
Copy of Any Municipal License (if applicable)	Current	X
Copy of All Supplier Contracts	Current	X
List of All Chattels	Current	X
List of All Computer Equipment & Software with Ages	Current	X
Annual Fire System certification -- from certified contractor	Current	X
Local Fire Department inspection report	Current	X
Elevator Licenses	Current	X
T.S.S.A. Elevator Inspection Report	Current	X
T.S.S.A. Pressure Vessel (Boilers) Inspection Report (If Any)	Current	X
Insurance Company Inspection Reports (If Any)	Current	X
E.S.A. (Electrical Safety Authority) Inspection Reports and/or Outstanding Permits (If Any)	Current	X
Local Planning Department Inspections and/or Outstanding Building Permits (If Any)	Current	X
Details of Any Construction Contemplated Prior To Closing	Current	X
<b>Marketing</b>		
Marketing Brochures & Materials	Current	X
Admission Packages	Current	X
<b>Finance</b>		
Monthly Financial Statements	2018 and 2019 YTD	X
Annual Statements	2 Years	X
List of Capital Expenditures	36 months	X
ARR's	36 months	X
Most Recent Comprehensive Business Plan	Current	X
Utility Bills	36 months	X
Property Tax Bills	2 years	X
Rent Roll	Current	X
List of Capital Expenditures	36 months	X
WSIB Claims Summary and NEER Statements	36 months	X
MOHLTC Funding Statements	24 months	X
Pay Equity Documentation	Current	X
Detailed Reconciliation of Amounts Owed to MOHLTC	Current	X

Resident Trust Audit Reports	2 years	X
Budgets	2 years	X
Monthly Accounts Receivable Listing by Resident	24 months	X

**SCHEDULE 12**  
**TRANSITION AGREEMENT [SECTION 5.7]**

See attached

## TRANSITION AGREEMENT

**THIS AGREEMENT MADE AS OF THE ● DAY OF ●, ● [DD WAIVER DATE]**

**BETWEEN:**

**DELOITTE RESTRUCTURING INC.**, solely in its capacity as court-appointed receiver and manager of ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY and not in its personal or corporate capacity

(the "**Vendor**")

- and -

**RYKKA CARE CENTRES LP**

(the "**Purchaser**")

**WHEREAS** the Vendor and the Purchaser have entered into an agreement of purchase and sale made as of ● [as amended, supplemented or restated] (the "**Purchase Agreement**") by which the Vendor has agreed to sell, transfer and assign to the Purchaser, and the Purchaser has agreed to purchase, assume and acquire from the Vendor, the Vendor's right, title and interest, if any, in and to the Assets (as defined in the Purchase Agreement);

**AND WHEREAS** the Assets and the Business collectively make up the Rose of Sharon long-term care facility (the "**Facility**");

**AND WHEREAS** Section 5.7 of the Purchase Agreement contemplates the Vendor and the Purchaser entering into this agreement (the "**Agreement**") providing for certain transition and other matters during the period from the date of this Agreement until the Closing Date (as defined in the Purchase Agreement).

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and the mutual covenants and agreements hereinafter contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party hereto), the parties hereto covenant and agree as follows:

### ARTICLE 1 INTERPRETATION

#### **Section 1.1 Definitions**

Capitalized terms in this Agreement that are not otherwise defined in this Agreement shall have, for all purposes of this Agreement, the meanings ascribed to them in the Purchase Agreement, unless the context expressly or by necessary implication otherwise requires.

**ARTICLE 2**  
**GENERAL TRANSITIONAL MATTERS**

**Section 2.1 General Transitional Matters**

Subject to the terms of this Agreement and to the extent applicable, the Purchase Agreement, from and after the date of this Agreement (the "**Transition Effective Date**") until the Closing Date (the "**Transition Period**"), the Vendor shall continue to operate the Business in accordance with its past management practices applicable to such Business. Without limiting the foregoing, the Vendor shall have complete and total discretion to:

- (a) manage human resources including without limitation, hire, terminate and discipline the Employees;
- (b) manage labour relations including (if required by law) negotiate the Union and settle any labour grievances and arbitrations;
- (c) settle any litigation or claims concerning the Facility and/or the Business;
- (d) effect maintenance and non-capital repairs to the Facility and/or the Assets; and
- (e) enter into, amend, supplement or terminate any agreement with any Resident,

provided that in each case, the Vendor shall do so in a manner consistent with the Vendor's past management practices applicable to the Business.

Notwithstanding the foregoing, during the Transition period, the Vendor shall:

- (i) not, without the Purchaser's prior written consent, not to be unreasonably withheld, promise or offer any new bonus or deferred compensation to any Employee for which the Purchaser would be liable;
- (ii) consult with the Purchaser in connection with any agreement with the MOH or LHIN the term or effect of which may reasonably be expected to extend beyond the Closing Date;
- (iii) provide the Purchaser with the monthly management reports in the form presently prepared for the Vendor by the Manager within five (5) Business Days of their completion, which reports shall provide the current financial results of the Business and any other relevant updates concerning compliance issues raised in any report from the MOH or LHIN, any remediation plans to address such issues and any existing compliance issues, preparation of the Facility for certification by the appropriate accreditation agency, and any capital improvements regarding the Facility;
- (iv) without the Purchaser's prior written consent, not admit any resident at the Facility into a private or semi-private room at a rate that is less than the then MOH approved rates therefor; and

- (v) deliver to the Purchaser within 30 days of the date hereof curriculum vitae of the administrator of the Facility and those directly responsible to to such person.

**ARTICLE 3**  
**ACCESS AND INFORMATION DURING TRANSITION PERIOD**

**Section 3.1 Access and Information During Transition Period**

- (a) From and after the Transition Effective Date, the Purchaser shall have access to:
  - (i) the information detailed in Section 5.7 of the Purchase Agreement and the information that was otherwise provided to the Purchaser during the Due Diligence Period, but only to the extent that any such item is a new item or has been updated, amended, restated, replaced or supplemented;
  - (ii) the Assets; and
  - (iii) such existing documentation and information as may be reasonably required by the MOH or LHIN or any financial institution for the purposes of arranging financing;

in each case, at the Purchaser's sole risk and expense solely for the purposes of monitoring, but not interfering with, participating in or commenting upon, the operating procedures of the Business to facilitate the orderly transition of the Facility and the Business to the Purchaser on the Closing Date. In addition, the Vendor acknowledges that, subject to the provisions of Sections 5.6 and 5.7 of the Purchase Agreement, the Purchaser intends to be present at the Facility frequently throughout the Transition Period in order to prepare for a seamless turnover of the Facility on Closing.

- (b) The foregoing right of access shall be subject to the following additional provisions:
  - (i) any observations by the Purchaser shall be conducted in a manner which does not interfere with the use, care or control of the Assets by the Vendor and does not contravene any Contract(s) or interfere with any of the Residents and/or the Employees;
  - (ii) the Purchaser shall not have any contact or any communication with the Residents or the Residents counsel and/or, except in the presence of the Vendor; and
  - (iii) while attending at any Property, the Purchaser shall be accompanied, at the Vendor's option, by an agent or employee of the Vendor at all times, and the Purchaser shall give the Vendor at least two (2) Business Days prior written notice of attendance at any Property to allow the Vendor to make arrangements in this regard.

- (c) During the Transition Period, should the Purchaser request further information concerning transitional or operational issues relating to the Assets or the Business, the Purchaser shall submit those inquiries in writing to the Vendor, who will respond either in writing and/or by convening a meeting or conference call between the parties, including the Manager, at a mutually convenient time and location.
- (d) The Purchaser hereby indemnifies and saves harmless the Vendor and Rose of Sharon (Ontario) Retirement Community from and against all liabilities, costs, actions, losses, claims, causes of action, demands and damages of any nature whatsoever, whether at law or in equity arising out of or related to the access provided to the Purchaser pursuant to this Agreement.

#### **ARTICLE 4 CAPITAL REPAIRS AND REPLACEMENTS**

##### **Section 4.1 Capital Repairs and Replacements**

From and after the Transition Effective Date of this Agreement, the Vendor shall not carry out or incur any obligation to carry out any improvements, repairs, replacements or additions of a capital nature determined in accordance with generally accepted accounting principles ("**Capital Improvements**") to the Assets except for the following, which the Vendor will carry out during the Transition Period, being those capital improvements required: (a) to be made under Applicable Laws and (b) which are required for normal maintenance of the Facility. All contracts for Capital Improvements shall be completed and paid for in full by the Vendor on or before the Closing Date except as otherwise agreed upon between the Vendor and the Purchaser, each acting reasonably. The Vendor shall provide the Purchaser with copies of all such contracts and any other information related thereto as may be requested by the Purchaser from time to time.

#### **ARTICLE 5 GENERAL**

##### **Section 5.1 Applicable Law**

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and shall be treated in all respects as an Ontario contract.

##### **Section 5.2 Invalidity**

If any covenant, obligation, agreement or part thereof or the application thereof to any Person or circumstance, to any extent, shall be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement or part thereof to any Person, party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

**Section 5.3 Amendment of Agreement**

No supplement, modification, waiver or termination (other than a termination pursuant to the terms of this Agreement) of this Agreement shall be binding unless executed in writing by the parties hereto in the same manner as the execution of this Agreement.

**Section 5.4 Further Assurances**

Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

**Section 5.5 Successors and Assigns**

All of the covenants and agreements in this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

**Section 5.6 Assignment**

The Purchaser shall not assign its rights and/or obligations hereunder and/or its interest herein in whole or in part (or agree to do so) without the prior written consent of the Vendor, which consent may be withheld by the Vendor in its sole and absolute discretion. The Purchaser shall provide the Vendor with all information about any proposed assignee or assignment that the Vendor requires.

**Section 5.7 Notice**

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication to be given under or in connection with this Agreement shall be given in accordance with the provisions of the Purchase Agreement.

**Section 5.8 Counterparts and Facsimile**

This Agreement may be executed in several counterparts and/or by facsimile transmission of an originally executed document, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

**[Signature page follows]**

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their properly authorized officers in that behalf as of the day and year first above written.

**DELOITTE RESTRUCTURING INC.,  
solely in its capacity as Court-appointed  
receiver and manager of ROSE OF  
SHARON (ONTARIO) RETIREMENT  
COMMUNITY and not in its personal or  
corporate capacity**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**RYKKA CARE CENTRES LP, by its general  
partner, RYKKA CARE CENTRES GP INC.**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**FORM OF APPROVAL AND VESTING ORDER**

**[SECTION 4.3]**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) DAY, THE  
JUSTICE )  
) DAY OF APRIL, 2019

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 section 101 of the *Courts of Justice Act*, as amended**

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Rose of Sharon (Ontario) Retirement Community (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and RYKKA Care Centres LP (the “**Purchaser**”) dated [Date] May 2019 and appended to the Report of the Receiver dated [DATE] (the “**Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list:

1. **THIS COURT ORDERS** that all capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Sale Agreement, unless indicated otherwise.
2. **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.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement, including the property identified on **Schedule B** hereto shall vest absolutely in the Purchaser, as beneficial owner (with registered title to be in the name of a transferee, as nominee for the Purchaser, specified in the transfer to be delivered by the Receiver hereunder), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order dated 27 September 2011; (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, including those listed on Schedule " " hereto; and (iii) encumbrances, including the encumbrances listed on **Schedule C** hereto and such further Claims and encumbrances as may arise and/or be registered against the title to the Purchased Assets up to and including the time of the closing of the Transaction (all of which are collectively referred to as the "Encumbrances",

which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the **Land Titles Division of Metropolitan Toronto (No. 66) of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver (or deemed to be executed through electronic signature) (the “Transfer”)** the Land Registrar is hereby directed to enter the transferee identified in the Transfer as the owner of the subject real property identified in **Schedule D** 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 B hereto.

5. **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.

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

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to advise in writing each bank branch at which a Resident Trust Funds bank account is maintained that, effective as at the close of business on the Closing Date, such bank account be closed and the proceeds thereof transferred to the Purchaser, in trust into a new bank account and the Purchaser shall thereafter maintain and operate such new bank account.

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted

to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees and the information contained in the resident records in connection with the Purchased Assets. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

9. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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

10. **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-11-9399-00CL

**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 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c B-3,  
as amended, and section 101 of the *Courts of Justice Act*, as amended**

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Ontario Superior Court of Justice (the “**Court**”) dated 27 September 2011, Deloitte Restructuring Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of Rose of Sharon (Ontario) Retirement Community (the “**Debtor**”).

B. Pursuant to an Order of the Court dated [DATE] 2019, the Court approved the agreement of purchase and sale made as of [DATE] May 2019 (the “**Sale Agreement**”) between the Receiver and RYKKA Care Centres LP (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, 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 section [Number] of the

Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed in accordance with the Sale Agreement to the satisfaction of the Receiver.

C. 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 section [Number] of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**DELOITTE RESTRUCTURING INC., in its capacity as Receiver of the undertaking, property and assets of Rose of Sharon (Ontario) Retirement Community, and not in its personal capacity**

Per: \_\_\_\_\_

Name:

Title:

**Schedule B – Real Property**

**Schedule C - Claims to be deleted and expunged from title to Real Property**

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(Unaffected by the Vesting Order)**

**EXHIBIT B**

**FORM OF BILL OF SALE AND ASSIGNMENT  
[SECTION 5.**

**EXHIBIT B****FORM OF BILL OF SALE AND ASSIGNMENT  
[SECTION 5.2]****BILL OF SALE AND ASSIGNMENT**

**THIS AGREEMENT** dated as of the \_\_\_\_ day of \_\_\_\_\_, 201•

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

**DELOITTE RESTRUCTURING INC.**, solely in its capacity as court-appointed receiver and manager of Rose Of Sharon (Ontario) Retirement Community as specifically set out in the Appointment Order issued by the Ontario Superior Court of Justice (Commercial List) dated September 27, 2011, and not in its personal capacity

(the "**Receiver**")

- and -

**RYKKA CARE CENTRES LP**, by its general partner, **RYKKA CARE CENTRES GP INC.**, a corporation existing under the laws of Ontario

(the "**Purchaser**")

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**, a corporation existing under the laws of Ontario

(the "**Debtor**")

**CONTEXT:**

- A. By an Appointment Order issued by the Ontario Superior Court of Justice (Commercial List) dated September 27, 2011 (the "**Appointment Order**"), Deloitte Restructuring Inc. was appointed receiver and manager (in such capacity, the "**Receiver**") of Rose Of Sharon (Ontario) Retirement Community (the "**Debtor**") as specifically set out in the Appointment Order, pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended (the "**BIA**").
- B. The Purchaser, the Debtor and the Receiver have entered into an Agreement of Purchase and Sale made as of April \_\_\_\_, 2019 (the "**Purchase Agreement**"), pursuant to which the Receiver has agreed to sell the Assets and assign the Assumed Contracts to the Purchaser and the Purchaser has agreed to purchase the rights, benefits, and interests of the Debtor, and the Receiver, if any, in and to the Assets and the Assumed Contracts and to assume the Assumed Obligations.
- C. Capitalized terms used herein not otherwise defined herein will have the meanings set out in the Purchase Agreement.

**FOR VALUE RECEIVED**, the parties agree as follows:

## **1. SALE OF ASSETS**

### **Sale of Assets**

The Receiver, exercising the powers granted pursuant to the Appointment Order and the Approval and Vesting Order, effective as of the date hereof, hereby sells, transfers, conveys, assigns and sets over to the Purchaser, pursuant to the terms of the Purchase Agreement, all of the rights, title, benefits and interests of the Debtor, and the Receiver, if any, in and to the Assets as described in the Purchase Agreement.

### **Assignment of Contracts**

Effective as of the date hereof, on the terms and subject to the conditions set forth in the Purchase Agreement and the Approval and Vesting Order, the Receiver hereby assigns to the Purchaser all of the Debtor's and the Receiver's rights, benefits and interests, if any, in, to and under the Contracts listed in Schedule "A" hereto and the Purchaser accepts such assignment effective as of the date hereof.

### **Release**

The Receiver hereby remises, releases, and forever discharges to the Purchaser all of its interests, claims, and demands whatsoever to and under the Assets.

## **2. MISCELLANEOUS**

### **Benefit of Agreement**

This Indenture and all of its provisions will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

### **Governing Law**

This Indenture will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### **Counterparts**

This Indenture may be executed in any number of counterparts, each of which will be deemed to be an original and all of which will constitute one and the same agreement. Transmission by facsimile of an executed counterpart of this Agreement will be deemed to constitute due and sufficient delivery of such counterpart.

### **"As-Is, Where-Is"**

This Agreement and the Purchase Agreement constitute the entire agreement between the parties with respect to the Assets and the subject matter of this Agreement and there are no representations, warranties, agreements, covenants, obligations, promises or undertakings, whether oral or written, in connection with the Assets and the transfer thereof by the Receiver, as court-appointed receiver and manager of the Debtor, to the Purchaser save and except as specifically set forth in this Agreement and the Purchase Agreement. The Purchaser acknowledges, agrees and confirms that the provisions contained

in Section 2.3 of the Purchase Agreement shall survive and not merge on Closing and that the transfer of the Assets by the Receiver, as court-appointed receiver and manager of the Debtor, to the Purchaser is subject to the provisions contained in Section 2.3 of the Purchase Agreement.

*[Signature page to follow.]*

The parties have executed this Indenture.

**DELOITTE RESTRUCTURING INC., solely in its capacity as court-appointed receiver and manager of, ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY, and not in its personal or corporate capacity**

Per: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the Corporation

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

Per: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the Corporation

**RYKKA CARE CENTRES LP, by its general partner, RYKKA CARE CENTRES GP INC.**

Per: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the Corporation

**SCHEDULE "A"**  
**CONTRACTS**

**WAIVER AND AMENDING AGREEMENT TO AGREEMENT OF PURCHASE AND SALE**

This Agreement dated as of July 25, 2019:

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

**RYKKA CARE CENTRES LP,**  
a limited partnership existing under the laws of Ontario

(hereinafter called the "**Purchaser**")

- and -

**DELOITTE RESTRUCTURING INC.,**  
solely in its capacity as court-appointed receiver and manager of  
Rose Of Sharon (Ontario) Retirement Community  
and not in its personal or corporate capacity,

(hereinafter called the "**Vendor**")

**WHEREAS** the Purchaser and the Vendor entered into an agreement of purchase and sale dated May 13, 2019, as amended by an amending agreement to agreement of purchase and sale dated June 28, 2019 (the "**Purchase Agreement**") in connection with the sale of the Assets of Rose of Sharon Korean Long Term Care;

**AND WHEREAS** the Purchaser and the Vendor have agreed to further amend the terms of the Purchase Agreement in accordance with the terms set out herein;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises and the mutual covenants and agreements hereinafter contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party hereto), the parties hereto covenant and agree as follows:

1. The definition of Owned Real Property set out in Section 1.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"**Owned Real Property**" means portion of the Lands more particularly described as Parts 3, 8, 10, 13, 14, 15 and 16 on Plan 66R-30578."

2. Section 1.1 of the Purchase Agreement is hereby amended to add the following definitions in correct alphabetical order:

"**Closing Date**" means the date which is fifteen (15) days immediately following the later of written confirmation from the Vendor to the Purchaser that: (a) the Approval and Vesting Order has been granted, and (b) the MOH has approved the purchase by the Purchaser contemplated under this Agreement and the MOH has issued or approved the Purchaser for transfer of the Licence(s) or for issue of licences similar to the Licence(s) to the Purchaser; or such earlier date as agreed by the parties, but in no event will the Closing Date be later than September 1, 2020."

**"Lands"** means LOTS 25, 26 AND PART OF LOT 24, BLOCK F, PLAN 875 DESIGNATED AS PARTS 1 AND 2 ON PLAN 66R-22215. CITY OF TORONTO (FORMERLY CITY OF YORK). S/T A RIGHT OF WAY OVER PART 2 ON PL 66R-22215 AS IN TB374581 IN FAVOUR OF PT LTS 23 AND 24 BLOCK F PL 875. S/T A RIGHT AS IN CA439308 OVER PART 2 PL 66R-22215 IN FAVOUR OF PT LTS 23 AND 24 BLOCK F, PL 875 (PIN 104680-0554).

**"Residential Component"** means the Lands other than the Owned Real Property.

**"Shared Facilities Agreement"** means a mutual easement and cost sharing agreement between the owner of the Owned Real Property and the owner of the Residential Component to be assumed or entered into between the Purchaser and the owner of the Residential Component governing the use and sharing of costs of certain services and facilities."

3. Section 2.7(b) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"(b-1) by the Purchaser delivering to the Vendor's Solicitors, in trust, the further sum of \$150,000.00 Dollars within three (3) Business Days following waiver of the Due Diligence Condition (the **"Second Deposit"**), which sum shall be held by the Vendor's Solicitors, in trust, as a deposit pending Closing or termination of this Agreement; and

(b-2) by the Purchaser delivering to the Vendor's Solicitors, in trust, the further sum of \$150,000.00 Dollars within three (3) Business Days following waiver of the Further Due Diligence Condition (the **"Third Deposit"**), which sum shall be held by the Vendor's Solicitors, in trust, as a deposit pending Closing or termination of this Agreement (the First Deposit, the Second Deposit and the Third Deposit are collectively referred to as the **"Deposits"**); and

4. Section 4.1(a) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"(a-1). the inspections and investigations contemplated in Section 5.6, the investigation of title to the Owned Real Property (other than as set out in Section 4.1(a-2) hereof and the restrictions on its use and any Work Orders and other due diligence by the Purchaser of the Assets and Business (other than as set out in Section 4.1(a-2) hereof (as determined by the Purchaser in its sole and unfettered discretion) shall have been completed and the Purchaser shall be satisfied (in its sole and unfettered discretion) with the results of those inspections, investigations and (collectively, the **"Due Diligence"**) and prior to expiration of the Due Diligence Period (the **"Due Diligence Condition"**);

(a-2). the Purchaser shall be satisfied, acting reasonably, with the registration of the documents (the **"Condominium Documents"**) entered into by the owner of the Residential Component pursuant to the provisions of the *Condominium Act*, 1998, S.O. 1998, c. 19 with respect to the Residential Component (the **"Further Due Diligence Condition"**) on or prior to January 31, 2020 (the **"Further Due Diligence Date"**);"

5. Section 4.3 of the Purchase Agreement shall be amended to include Subsection (d) as follows:

"(d) on or prior to September 15, 2019, the parties shall have agreed on the form and content of the Shared Facilities Agreement, each party acting reasonably, subject only to the

Condominium Documents being registered in the form that have been made available to the Purchaser on or prior to such date.”

6. Section 4.5(b) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“(b-1). In connection with the Due Diligence Condition in Section 4.1(a-1), on or before July 18, 2019, the Purchaser shall, if satisfied, in its sole, absolute and unfettered discretion, with the results of the Due Diligence, deliver a Notice of Satisfaction to the Vendor with respect thereto. Failure to deliver a Notice of Satisfaction will terminate the Purchaser’s obligation to complete the purchase of the Assets as set forth herein whereupon all the obligations of the Parties provided for herein (except those which are expressly stated to survive the termination of this Agreement) will cease, and the First Deposit, including any interest accrued thereon, shall forthwith be returned to the Purchaser, without any deduction or set-off, the whole without any recourse by either Party against the other.

(b-2). In connection with the Further Due Diligence Condition in Section 4.1(a-2), on or before the expiry of the Further Due Diligence Period, the Purchaser shall, if satisfied, acting reasonably, with the results of the Further Due Diligence, deliver a Notice of Satisfaction to the Vendor, and the Purchaser will be deemed to have agreed to proceed with the purchase of the Purchased Assets in accordance with the terms hereof. Failure to deliver a Notice of Satisfaction will terminate the Purchaser’s obligation to complete the purchase of the Assets as set forth herein whereupon all the obligations of the Parties provided for herein (except those which are expressly stated to survive the termination of this Agreement) will cease, and the First Deposit, including any interest accrued thereon, shall forthwith be returned to the Purchaser, without any deduction or set-off, the whole without any recourse by either Party against the other.”

7. The Purchaser hereby waives the conditions set out in Section 4.1(a-1) of the Purchase Agreement.
8. All other terms and conditions of the Purchase Agreement shall remain the same and time shall remain of the essence. Capitalized terms not herein defined shall have the same meaning as set out under the Purchase Agreement.
9. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. This Agreement may be executed via facsimile, which shall have the same force and effect as if this Agreement had been originally executed by each of the parties.

***[Signature page to follow.]***

IN WITNESS WHEREOF the parties hereto have agreed to this Agreement on the date first mentioned above.

DELOITTE RESTRUCTURING INC., solely in its capacity as Court-appointed receiver and manager of ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY and not in its personal or corporate capacity

Per:



Name:

HARTLEY BRICKS

Title:

SENIOR VICE-PRESIDENT

RYKKA CARE CENTRES LP, by its general partner, RYKKA CARE CENTRES GP INC.

Per:



Name: Ben Friedman

Title: ASO

# APPENDIX “I”



**Michael Mizzi**  
Director, Zoning and Secretary-Treasurer  
Committee of Adjustment  
City Planning Division

Anita MacLeod  
Manager and Deputy Secretary-Treasurer  
416-392-7565  
coa.tey@toronto.ca

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY  
C/O STERLING KARAMAR PROPERTY MGMT  
53 THE LINKS RD  
TORONTO ON M2P 1T7

Thursday, December 31, 2020

Dear: STERLING KARAMAR PROPERTY MGMT

Subject: Final and Binding Decision for: 165 VAUGHAN RD  
Committee of Adjustment Minor Variance File No.: A0457/20TEY

This is to confirm that no appeal was filed, and the Decision of the Committee of Adjustment was Final and Binding on December 31, 2020.

Building permits are required if construction is to take place. Plans submitted to the Buildings Division should reflect any conditions imposed by the Committee of Adjustment.

When you apply for a Building Permit, please take a photocopy of this Final and Binding letter and a copy of the Decision with you.

Yours truly,

A handwritten signature in blue ink, appearing to read "Anita MacLeod". The signature is fluid and cursive, with a large loop at the end.

**Anita MacLeod**  
Manager and Deputy Secretary-Treasurer



**Michael Mizzi**  
Director, Zoning and Secretary-Treasurer  
Committee of Adjustment  
City Planning Division

Anita MacLeod  
Manager and Deputy Secretary-Treasurer  
416-392-7565  
coa.tey@toronto.ca

BRIAN PARKER  
GOWLINGS  
1 FIRST CANADIAN PLACE  
100 KING ST SUITE W SUITE 1500  
TORONTO ON M5X 1G5

Thursday, December 31, 2020

Dear: BRIAN PARKER

Subject: Final and Binding Decision for: 165 VAUGHAN RD  
Committee of Adjustment Minor Variance File No.: A0457/20TEY

This is to confirm that no appeal was filed, and the Decision of the Committee of Adjustment was Final and Binding on December 31, 2020.

Building permits are required if construction is to take place. Plans submitted to the Buildings Division should reflect any conditions imposed by the Committee of Adjustment.

When you apply for a Building Permit, please take a photocopy of this Final and Binding letter and a copy of the Decision with you.

Yours truly,

A handwritten signature in blue ink, appearing to read "Anita MacLeod".

**Anita MacLeod**  
Manager and Deputy Secretary-Treasurer

# APPENDIX “J”



**Gregg Lintern, MCIP, RPP**  
Chief Planner & Executive Director  
City Planning Division

**Toronto and East York District**  
18th Floor East Tower, City Hall  
100 Queen Street West  
Toronto ON M5H 2N2

**Lynda H. Macdonald, MCIP, RPP, OALA, FCSLA**  
Director, Community Planning

**Tel:** (416) 392-0427  
**Fax:** (416) 392-1330  
**Refer to:** Catherine Jung  
**E-Mail:** Catherine.Jung@toronto.ca  
www.toronto.ca/planning

Brian Parker  
Gowling WLP LLP  
100 King Street West, Suite 1600  
Toronto, ON M5X 1G5

Re: **Revised Notice of Decision Under S.51 (45) of The *Planning Act***  
Draft Plan of Standard Condominium  
Condominium Approval 15 268792 STE 21 CD  
165 -171 Vaughan Road (17 Maplewood Avenue)  
PLAN 875 BLK F PT LOTS 24 and 25  
Ward 12 - Toronto-St. Paul's

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The approval of the above draft plan of standard condominium has been revised and is subject to the attached revised conditions and a 20-day appeal period from the date of this letter. This revised approval applies to the Draft Plan of owner Condominium of Part of Lots 24, 25 and 26, Block F, Registered Plan 875 (York), (formerly in the City of York), City of Toronto, Sheets 1 to 3, prepared by D. Miret, R. Avis Surveying Inc., Ontario Land Surveyor, Project No.: 2166-0, dated February 4, 2019. A copy of the plan, endorsed to this effect, is enclosed.

The applicant, a public body or a person listed in subsection 51(48.3) of the *Planning Act* that made oral or written submissions to the City before a decision was made, and the Minister of Municipal Affairs and Housing may appeal the decision within the 20-day appeal period. In addition, the applicant, any public body or person listed in subsection 51(48.3) of the *Planning Act* that made oral or written submission to the City before the decision was made, and the Minister of Municipal Affairs and Housing may appeal any of the conditions at any time before the approval of the final plan of standard condominium. A notice of appeal must be made to the Local Planning Appeal Tribunal setting out the reasons for the appeal, accompanied by the fee prescribed under the *Local Planning Appeal Tribunal Act* in the amount of \$1,100.00 payable by cheque to the Minister of Finance, Province of Ontario. The notice of appeal is to be filed with the City Clerk, Toronto and East York District, 2<sup>nd</sup> Floor, West Tower, City Hall, 100 Queen Street West, Toronto, ON M5H 2N2.

Any person will be entitled to receive notice of changes to the conditions of approval of the proposed plan of condominium if they have made a written request to be notified of changes to the conditions of approval of the proposed plan of condominium.

No person or public body shall be added as a party to the hearing of an appeal regarding any changes to the conditions of approval unless the person or public body before the approval authority made its decision, made oral submissions at the public meeting or written submissions to the approval authority or made a written request to be notified of the changes to the

conditions.

Only individuals, corporations or public bodies may appeal decisions in respect of a proposed plan of condominium to the Local Planning Appeal Tribunal. A notice of appeal may not be filed by an unincorporated association or group. However, a notice of appeal may be filed in the name of an individual who is a member of the association or group on its behalf. No person or public body shall be added as a party to the hearing of the appeal of the decision of the approval authority, including the lapsing provisions or the conditions, unless the person or public body, before the decision of the approval authority, made oral submissions at a public meeting or written submissions to the council or, in the Local Planning Appeal Tribunal's opinion, there are reasonable grounds to add the person or public body as a party.

If there is an appeal, you will be notified. If no appeal is filed, the draft plan of standard condominium is approved, subject to the attached revised conditions, after the 20<sup>th</sup> day from the date of this letter.

When the final plan is prepared, a complete electronic resubmission package must be submitted to the attention of Lynda H. Macdonald, Director, Community Planning, Toronto and East York District, through Toronto Building customer service. Please contact Greg Whitfield, Planning Consultant, Toronto Building, Toronto and East York District by email at [Greg.Whitfield@toronto.ca](mailto:Greg.Whitfield@toronto.ca) to complete the submission.

Please contact Catherine Jung, Assistant Planner, Community Planning, Toronto and East York District, by email at [Catherine.Jung@toronto.ca](mailto:Catherine.Jung@toronto.ca), to arrange for delivery of the hard copy of the final plans. The following must be received:

1. the original set of mylars
2. one (1) mylar print
3. four (4) paper prints
4. documentation that confirms the conditions have been met

If the draft plan complies with the terms of approval and all revised conditions have been satisfied or secured, final approval will be given to the plan of condominium. Upon approval, a paper print is retained for our files and the remaining copies are forwarded to the Ontario Land Registry Office, which is responsible for registering the plan.

Please contact Catherine Jung, Assistant Planner at [Catherine.Jung@toronto.ca](mailto:Catherine.Jung@toronto.ca) if you have any questions.

Yours truly,



Gregg Lintern, MCIP, RPP  
Chief Planner and Executive Director  
City Planning Division

January 13, 2021

---

Date

Attachment  
Enclosure

cc: Rose Of Sharon (Ontario) Retirement Community, 53 The Links Road, Toronto, ON  
M2P 1T7  
Administrator, City Clerk's Office, Toronto and East York District (no enclosures)  
Director, Planning and Development Law, Legal Services (1 plan enclosed)  
Manager, Engineering and Construction Services, Toronto and East York District (1  
plan enclosed)  
R. Avis Surveying Inc., 235 Yorkland Blvd, Ste 203 Toronto ON M2J 4Y8 (1 plan  
enclosed)  
Josh Matlow, Councillor (no enclosures)

**Attachment: 1**

City File No. : 15 268792 STE 21 CD

**REVISED CONDITIONS**

This approval applies to the Draft Plan of Standard Condominium of Part of Lots 24, 25 and 26, Block F, Registered Plan 875 (York), (formerly in the City of York), City of Toronto, Sheets 1 to 3, prepared by D. Miret, R. Avis Surveying Inc., Ontario Land Surveyor, Project No.: 2166-0, dated February 4, 2019. A copy of the plan, endorsed to this effect, is enclosed.

- (1) **The plans submitted for final approval and registration must be substantially in accordance with the approved draft plans specified above, in this Revised Notice of Decision. Any revisions to these plans must be approved by the Chief Planner's designate, the Director of Community Planning, Toronto and East York District.**  
(REVISED CONDITION)
- (2) The owner shall provide to the Director of Community Planning, Toronto and East York District, confirmation that the taxes have been paid in full (Statement of Account or Tax Clearance Certificate) and that there are no outstanding City initiated assessment or tax appeals made pursuant to Section 40 of the *Assessment Act* or the provisions of the *City of Toronto Act, 2006*. In the event that there is an outstanding City initiated assessment or tax appeal, the owner shall enter into a financially secured agreement with the City satisfactory to the City Solicitor to secure payment of property taxes in the event the City is successful with the appeal.
- (3) The owner shall file with the Director of Community Planning, Toronto and East York District, a complete copy of the final version of the Declaration and Description to be registered, which includes the following schedules:
  - a) Schedule "A" containing statement from the declarant's solicitor that in his or her opinion, based on the parcel register or abstract index and the plans and drawings recorded in them, the legal description is correct and the easements mentioned in the schedule will exist in law upon the registration of the Declaration and Description; and
  - b) Schedule "G" being the certification of the project engineer and/or architect that all buildings have been constructed in accordance with the regulations made under the *Condominium Act*.

When the owner files a copy of the Declaration with the City of Toronto, it shall be accompanied with a letter of undertaking, stating that, "This is our undertaking to register the Declaration in the same form and content as was provided to you, subject to any changes the Land Registrar may require. This is also our undertaking to provide you with a registered copy of the Declaration once it is registered. If the Land Registrar requires any amendments to the Declaration, we will advise you."

(4) ~~Visitors parking spaces will be clearly delineated on the condominium plan to be registered and the Declaration shall contain a clause clearly specifying visitors parking shall form part of the common elements and neither be used by or sold to unit owners or be considered part of the exclusive use portions of the common elements. (DELETED CONDITION)~~

(5) The owner shall file with the Director of Community Planning, Toronto and East York District, a copy of the final Declaration and Description which contains a provision satisfactory to the Chief Planner or his/her designate whereby non-disabled owners and/or occupants of non-visitor handicapped parking units shall be obligated, upon notification by the condominium corporation, to exchange, at no cost to the disabled driver, the use of the handicapped parking unit with a disabled driver's non-handicapped parking unit.

Alternatively, non-visitor handicapped parking spaces can be made common element, however all condominium documents including the Declaration and Description must state that the condominium corporation will retain control over the spaces and that they cannot be made exclusive use portions of the common element. All non-visitor handicapped parking spaces must conform to one of the alternatives identified above.

(6) The owner shall file with the Director of Community Planning, Toronto and East York District, fully executed copies of the following certificates satisfactory to the said Director:

- a) certification from the applicant's solicitor with respect to the creation of necessary easements;
- b) certification from the applicant's surveyor with respect to the identification of necessary easements; and
- c) certification from the applicant's engineer with respect to the identification of necessary easements.

(7) The owner must submit a copy/copies of the declaration/condominium documentation that contains the necessary wording respecting reciprocal rights-of-way/easements between the owners of the condominium to be established and the freehold lands, for vehicular access to and use of the underground garage, parking spaces, loading area, and garbage/recycling storage room.

**(8) The owner shall ensure that there are separate water meters for the freehold component (non-condominium lands), or shall include wording in the Declaration that the services are to be shared and will designate who will be responsible to the local water authority (not to the City of Toronto in case of a change in the future) for payment in full of the water bill. A copy of the Declaration must be provided to the Executive Director, Engineering and Construction Services when the services are being shared. (REVISED CONDITION)**

- (9) The owner shall file with the Director of Community Planning, Toronto and East York District, a fully executed copy of Certificate from the applicant's solicitor that:
- a) The Parties have entered into a Cost Sharing Agreement with respect to the shared services and/or any other shared facilities; and,
  - b) The Cost Sharing Agreement designates an owner who will be the person responsible in the case of any issues regarding the shared services, including but not limited to issues arising with respect to the City of Toronto Municipal Code Chapters 681 and 851 (the "Person of Responsibility"). The Certification shall indicate:
    - i. Who the Person of Responsibility is;
    - ii. The contact information for the Person of Responsibility; and,
    - iii. That the Cost Sharing Agreement contains a clause requiring the Person of Responsibility to maintain up-to-date contact information with the General Manager, Toronto Water.
- (10) Prior to registration, the owner shall prepare all documents and convey to the City, at nominal cost, a 2.2 metre strip of land, in perpendicular width across the entire Vaughan Road frontage. Such lands to be free and clear of all encumbrances and subject to a right-of-way for access purposes in favour of the Grantor, until such time as said lands have been laid out and dedicated for public highway purposes, as contemplated by Condition No. 5 in the Site Plan Agreement registered on December 31, 1997 as Instrument No. CA 517084.
- (11) **If the condominium is not registered within 5 years of the date of revised draft plan approval, then this approval shall be null and void, and a new application must be resubmitted to the City of Toronto for approval. (REVISED CONDITION)**
- (12) **The owner shall forthwith contact each of the life lease purchasers that have entered into Court approved Settlement Agreements for the purchase of their unit and provide to each the following direction:**
- To any life lease purchaser who may be sub-leasing its unit currently, you shall take immediate steps to notify your tenant of the pending condominium registration and your purchase of the unit and the potential therefore, of your tenant having to provide vacant possession. (NEW CONDITION)*

**Attachment: 2****City File No. : 15 268792 STE 21 CD****ADVISORY NOTES**

This approval applies to the Draft Plan of Standard Condominium of Part of Lots 24, 25 and 26, Block F, Registered Plan 875 (York), (formerly in the City of York), City of Toronto, Sheets 1 to 3, prepared by D. Miret, R. Avis Surveying Inc., Ontario Land Surveyor, Project No.: 2166-0, dated February 4, 2019. A copy of the plan, endorsed to this effect, is enclosed.

- (1) The following certificates from the Consulting Engineering and/or Landscape consultant, as required in respect of the completion of the works contemplated in the various conditions in the Site Plan Agreement registered on title on December 31, 2007 as Instrument No. CA 517084 and its amendment File No. 10/5/285 dated December 10, 2013, have not been submitted:
  - a) Site Plan Agreement registered on title on December 31, 1997, as Instrument No. CA 517084
    - i. Condition Nos. 3, 4, 6, 7, 11, 12 and 37; and,
    - ii. Condition No. 13 (lay-by on Maplewood Avenue Road) along with the as-built drawings.
  - b) Amending (Minor Variations) Site Plan Agreement File No. 10/5/285, dated December 10, 2013
    - i. Condition No. 1(e), respecting site servicing, grading and stormwater management.
- (2) There is no record of the required streetscaping permit (Application No. 472279) for the works that were carried out within the public rights-of-way for Vaughan Road and Maplewood Avenue being issued or the required securities and payments in that respect submitted, as outlined in the letter dated March 22, 2010 from the General Manager of Transportation Services to Mr. John Yoon of Rose of Sharon Retirement Community.

# APPENDIX “K”



10468-0554 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION:

LOTS 25, 26 AND PART OF LOT 24, BLOCK F, PLAN 875 DESIGNATED AS PARTS 1 AND 2 ON PLAN 66R-22215, CITY OF TORONTO (FORMERLY CITY OF YORK). S/T A RIGHT OF WAY OVER PART 2 ON PL 66R-22215 AS IN TB374581 IN FAVOUR OF PT LTS 23 AND 24 BLOCK F PL 875. S/T A RIGHT AS IN CA439308 OVER PART 2 PL 66R-22215 IN FAVOUR OF PT LTS 23 AND 24 BLOCK F, PL 875.

PROPERTY REMARKS:

FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2005/12/30.

ESTATE/QUALIFIER:

RECENTLY:  
RE-ENTRY FROM 10468-0424

PIN CREATION DATE:  
2005/12/30

FEE SIMPLE  
LT ABSOLUTE PLUS

OWNERS' NAMES

CAPACITY SHARE

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY

BENO

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT		INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **				
**SUBJECT TO SUBSECTION		44 (1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *				
**		PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **				
**		TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **				
NOTE: THIS		PROPERTY WAS				
CA439307	1996/11/25	TRANSFER	\$135,000	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	C
CA439308	1996/11/25	TRANSFER	\$315,000	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	C
CA517084	1997/12/31	AGREEMENT		CITY OF YORK	CITY OF YORK	C
CA600752	1999/05/14	CHARGE	\$100,000	MIKAL CONSTRUCTION INC.	MIKAL CONSTRUCTION INC.	C
		CORRECTIONS: 'CHARGE' CHANGED FROM 'MIKAL CONSTRUCTION INC' TO 'MIKAL CONSTRUCTION INC.' ON 2006/01/19 BY TONY RAULINO.				
E579089	2002/08/02	CHARGE	\$590,000	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	TUREFPRO INVESTMENTS INC.	C
66R22215	2005/12/30	PLAN REFERENCE				C
AT1023194	2005/12/30	APL ABSOLUTE TITLE		ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	C
		REMARKS: AT948243				
AT1040316	2006/01/19	APL (GENERAL)		MIKAL CONSTRUCTION INC.	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	C
		REMARKS: CA600752				
AT1040360	2006/01/19	TRANSFER OF CHARGE		MIKAL CONSTRUCTION INC.	TUREFPRO INVESTMENTS INC.	C
		REMARKS: CA600752				
AT1040424	2006/01/19	CHARGE	\$150,000	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	MIJO HOLDINGS INC.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



10468-0554 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT1450426	2007/05/18	CHARGE	\$17,300,162	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	PEOPLES TRUST COMPANY	C
AT1450427	2007/05/18	NO ASSGN RENT GEN REMARKS: RENTS RE,AT1450426		ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	PEOPLES TRUST COMPANY	C
AT1450457	2007/05/18	POSTPONEMENT REMARKS: CA600752, AT1040360 POSTPONED TO AT1450426		TURFPRO INVESTMENTS INC.	PEOPLES TRUST COMPANY	C
AT1450458	2007/05/18	POSTPONEMENT REMARKS: E579089 POSTPONED TO AT1450426		TURFPRO INVESTMENTS INC.	PEOPLES TRUST COMPANY	C
AT1450459	2007/05/18	POSTPONEMENT REMARKS: AT1040424 POSTPONED TO AT1450426		MLJO HOLDINGS INC.	PEOPLES TRUST COMPANY	C
AT1450745	2007/05/18	TRANSFER OF CHARGE REMARKS: AT1040424		MIJO HOLDINGS INC.	UNIMAC GROUP LTD.	C
66R23529	2008/01/24	PLAN REFERENCE				C
AT1949790	2008/11/14	CHARGE	\$700,000	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	IWOK CORPORATION	C
AT1949960	2008/11/14	POSTPONEMENT REMARKS: CA600752, AT1040360 TO AT1949790		TURFPRO INVESTMENTS INC.	IWOK CORPORATION	C
AT1949961	2008/11/14	POSTPONEMENT REMARKS: E579089 TO AT1949790		TURFPRO INVESTMENTS INC.	IWOK CORPORATION	C
AT1950125	2008/11/14	POSTPONEMENT REMARKS: AT1040424, AT1450745, AT1949790		UNIMAC GROUP LTD.	IWOK CORPORATION	C
AT2318865	2010/03/02	TRANSFER OF CHARGE REMARKS: AT1450745.		UNIMAC GROUP LTD.	IWOK CORPORATION	C
AT2547993	2010/11/09	NOTICE OF LEASE		ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	YORK HEALTH CARE DEVELOPMENTS INC.	C
AT2579872	2010/12/16	NOTICE OF LEASE		ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	BERG, ROBERT	C
AT2601817	2011/01/19	NOTICE OF LEASE		ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	YOON, ALBERT	C
AT2905656	2011/12/23	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST	DELOITTE & TOUCHE INC., IN ITS CAPACITY AS RECEIVER AND MANAGER OF ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY	C
AT2908311	2011/12/30	TRANSFER OF CHARGE		IWOK CORPORATION	MORRISON FINANCIAL SERVICES LIMITED	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



10468-0554 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT3416400	2013/09/26	TRANSFER OF CHARGE REMARKS: AT2908311. AT1949790		MORRISON FINANCIAL SERVICES LIMITED	2383431 ONTARIO INC	C
AT3461665	2013/11/25	TRANSFER OF CHARGE REMARKS: AT2318865.		IWOK CORPORATION	2381682 ONTARIO INC.	C
66R30578	2019/02/25	PLAN REFERENCE				C
AT5176027	2019/07/03	APL VESTING ORDER	\$2	ONTARIO SUPERIOR COURT OF JUSTICE	CITY OF TORONTO	C

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# APPENDIX “L”

CITATION: Deloitte Restructuring Inc. v. United Food and Commercial Workers Int'l Union  
 Loc. 175, 2021 ONSC 1260  
 COURT FILE NO.: DC 238/18  
 DATE: 20210331

ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 DIVISIONAL COURT

D.L. Corbett, Ducharme and Gomery JJ.

BETWEEN:	)	
	)	
DELOITTE RESTRUCTURING INC.	)	<i>E. Patrick Shea and Christopher Stanek</i>
	)	for the Applicant
Applicant	)	
	)	
- and -	)	
	)	
UNITED FOOD AND COMMERCIAL	)	<i>Douglas J. Wray and J. Kugler</i> for the
WORKERS INTERNATIONAL UNION	)	Respondent UFCW
LOCAL 175 and ONTARIO LABOUR	)	
RELATIONS BOARD	)	<i>Aaron Hart and Andrea Bowker</i> for the OLRB
	)	
Respondents	)	
	)	<b>Heard at Toronto: November 18, 2019<sup>1</sup></b>

REASONS FOR DECISION

D.L. Corbett J.:

[1] This application requires the court to consider the successor and related employer provisions of the *Labour Relations Act, 1995* (the “Act” or the “LRA”) to decide whether a receiver carrying on an employer’s business during a receivership is a “successor employer” under the *Act*. Related issues arose in another application reserved in this court.<sup>2</sup> In *Enercare v. UNIFOR, Local 975* (“*Enercare*”), the court reviews the legislative and jurisprudential history of the “related” employer provisions of the *Act*. In this application, I review the legislative and jurisprudential history of the “successor” employer provisions of the *Act* to decide whether a

<sup>1</sup> Release of this decision was delayed in order to receive submissions respecting the decision of the Supreme Court of Canada in *Vavilov*, and as a result of the COVID-19 pandemic.

<sup>2</sup> *Enercare v. UNIFOR, Local 975*, 2021 ONSC 606.

receiver carrying on an employer's business during a receivership under the *Bankruptcy and Insolvency Act* is a "successor employer" under the *LRA*.

### Summary and Disposition

[2] The applicant (the "Receiver") has been operating the insolvent debtor's retirement home business as Receiver for several years. The Board found that, in so doing, the Receiver is a "successor employer" within the meaning of the *LRA*. The Board's decision on this point is reasonable: it accords with the language of the *LRA* and a long line of consistent authority.

[3] The Board then examined the relevant provisions of the *BIA* to decide whether those provisions preclude a finding that the Receiver is a "successor employer" under the *BIA*. The history and jurisprudence respecting these provisions are clear: receivers are not liable for pre-appointment liabilities or post-appointment liabilities that accrued pre-receivership. But a receiver who operates an insolvent business may be found to be a successor employer under the *BIA*, and thereby be subject to the collective bargaining rights of the employees prospectively. The Board correctly found that the *BIA* does not preclude the requested declaration that the Receiver is a "successor employer".

[4] On the basis of these findings, the Board made the requested declaration, a finding that is reasonable. Therefore, for the reasons that follow, I would dismiss the application.

### Jurisdiction and Standard of Review

[5] This court has jurisdiction to conduct this judicial review pursuant to ss. 2 and 6 of the *Judicial Review Procedure Act*.<sup>3</sup> The parties correctly agree that the standard of review of the Vice Chair's decision is reasonableness. The decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov* confirms this standard of review.<sup>4</sup>

### Successor Employers

#### (a) Legislative Purpose and Context

[6] Following a series of labour disruptions in Toronto between 1957 and 1961, blamed by unions on the "exploitation of labour", and by employers on "agitation by trade union leaders", Ontario established a Royal Commission led by H. Carl Goldenberg to study the issue. Commissioner Goldberg had "no hesitation in finding that there had been exploitation of workers

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<sup>3</sup> *Judicial Review Procedure Act*, RSO 1990, c. J.1, ss. 2 and 6.

<sup>4</sup> *Vavilov*, para. 23.

in house and apartment building by some contractors and that the abuses were an underlying factor in recent labour disruptions.”<sup>5</sup>

[7] Among Commissioner Goldenberg’s recommendations were remedial measures to address the problem of successor employers: “any change in the legal entity constituting the employer destroys subsisting bargaining rights, whether they flow from certification or derive from a collective agreement with the predecessor employer.”<sup>6</sup> Commissioner Goldenberg accepted the concerns as stated by one union representative:

Unions and employees have time and again experienced frustration and loss of rights due to a change in the legal entity of an employer. An unincorporated firm is incorporated, or a holding company takes over the actual operation of a business, or some similar purely technical rearrangement and change of legal entity has resulted in loss of bargaining rights, seniority rights, and the like. The employees continue to work for essentially the same people, under the same supervision, have precisely the same work in the same place under the same conditions. Yet they find themselves suddenly without a union and without a collective agreement which they had had the day before.<sup>7</sup>

[8] Commissioner Goldenberg noted that six Canadian provinces and the U.S. National Labor Relations Board had adopted successor rights provisions, and the Ontario Select Committee on Labour Relations had recommended such a provision during the 1957-58 term of the Legislature. Taking all of this into account, Commissioner Goldenberg recommended:

The Act should provide that where a business or a part thereof is sold, leased or transferred, the purchaser, lessee or transferee shall be bound by all the proceedings before the date of sale, lease or transfer and shall become *ipso facto* a party thereto, and that the proceedings shall continue as if no such change has occurred, and that if a bargaining agent was certified the certification shall remain in effect, and if a collective agreement was in force that agreement shall continue to bind the purchaser, lessee or transferee to the same extent as if it had been signed by him.<sup>8</sup>

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<sup>5</sup> *Report of the Royal Commission on Labour-Management Relations in the Construction Industry*, (Commissioner H. Carl Goldenberg, Ontario, 1962) (the “Goldenberg Report”), p.18.

<sup>6</sup> *Goldenberg Report*, p.44.

<sup>7</sup> *Goldenberg Report*, p.45.

<sup>8</sup> *Goldenberg Report*, p.73.

[9] Following this recommendation, the Ontario legislature amended the *Act* in 1962 to include successor employer provisions for the first time.<sup>9</sup> The provisions were amended on re-enactment in 1962-63, and then amended again in 1970.<sup>10</sup> The current provisions in the *Act* have continued in substance since 1970 in terms now set out in s.69 of the *Act*, the full text of which is set out in Appendix "A" to this decision.

## (b) Jurisprudential History

### a. General Interpretive Principles

[10] The "starting point" of Ontario jurisprudence on successor employers under s.69 of the *Act* is *Thorco Manufacturing*,<sup>11</sup> in which the OLRB found that a "large and liberal rather than a narrow or restrictive construction" should be placed on the provision, in order to attain its objects. The Board examines the substance rather than the form or "appearance" of a transaction to determine whether successor employer obligations have been engaged.<sup>12</sup> In substance, the successor employer provisions:

transform... the institutional rights of the union and the collectively bargained rights of the employees into a form of 'vested interest' which becomes rooted in the business entity, and like a charge on property, 'runs with the business'.<sup>13</sup>

The effect is to "provid[e] some permanence to collective bargaining rights" where legal forms taken by the employer may be transitory.<sup>14</sup>

### b. Development of the Test

[11] In *Tatham Co.*, in 1980, the OLRB found that there are two steps to determining whether an employer is a successor employer:

- (a) "Has there been a sale?" within the statutory definition of that term? and

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<sup>9</sup> *An Act to Amend the Labour Relations Act*, SO 1961-62, c.68, s.4. See remarks of the Minister of Labour, the Hon. Bill Wallender, Ontario Legislative Assembly, *Official Report of Debates (Hansard)*, 26<sup>th</sup> Leg., 3<sup>rd</sup> Sess., No. 69 (April 13, 1962), pp. 2349-2350.

<sup>10</sup> *An Act to amend the Labour Relations Act*, SO 1962-63, c.70, s.1; *An Act to amend the Labour Relations Act*, SO 1970, c.85, s.22(1).

<sup>11</sup> *U.S.W.A. v. Thorco Manufacturing* (1965), 65 CLLC 16. See G.W. Adams, Q.C., *Canadian Labour Law*, loose-leaf (2019-Rel.75), 2<sup>nd</sup> ed. (Toronto: Thomson Reuters Canada Ltd., 2019), para. 8.160 ("Adams, *Canadian Labour Law*").

<sup>12</sup> *Canada Retail Employees Union, Local 1000A v. More Groceteria Ltd.*, [1980] OLRB Rep. 486 at 492.

<sup>13</sup> *International Union of Operating Engineers, Local 793 v. Magnus Construction Limited et al.*, [1980] O.L.R.B. No. 7, ("*Tatham Co.*") para. 21.

<sup>14</sup> *Canada Retail Employees Union, Local 1000A v. More Groceteria Ltd.*, [1980] OLRB Rep. 486 at 492.

- (b) “Does what has been ‘sold’, ‘transferred’ or ‘disposed of’ constitute a ‘business’ or ‘part of a business’?”<sup>15</sup>

The OLRB found that “there is seldom any problem with respect to the first question”,<sup>16</sup> but distinguishing between the sale of a “business” or “part of a business” and a “bare” asset sale had proved to be more difficult.<sup>17</sup>

[12] A year earlier, in *Metro-Parking*, the OLRB adopted an “instrumental approach”<sup>18</sup> to distinguish between an asset sale and the sale of a business or part of a business:

A business is a combination of physical assets and human initiative. In a sense, it is more than the sum of its parts. It is a dynamic activity, a “going concern”, something which is “carried on”. A business is an organization about which one has a sense of life, movement and vigour. It is for this reason that one can meaningfully ascribe organic qualities to it. However intangible this dynamic quality, it is what distinguishes a “business” from an idle collection of assets.<sup>19</sup>

This characterization can be contrasted with a competing line of authority from Quebec, the “functional approach”, which focused on whether employees were doing the same things at the new employer that they had been doing at their former employer.<sup>20</sup> Since *Metro-Parking*, the OLRB has focused analysis on what has been transferred between employers, and not what work is done by employees, although the transfer of a workforce, or part of a workforce, may be part of the “instrumental approach”.

[13] The “instrumental approach” was applied by the OLRB in *Canada Safeway* in 1986, when it found that there had not been the sale of a business in a transaction involving the sale of three “dark” retail stores which had been closed for over a year, had no inventory and no employees, and were undergoing significant renovations before being reopened by the purchasing entity. The Board found the “the totality of the circumstances indicate that it is not a ‘business’ but merely its physical shell which is being purchased”. These circumstances provided “no basis” for invoking the successor rights provisions in the *Act*.<sup>21</sup> The underlying

<sup>15</sup> *International Union of Operating Engineers, Local 793 v. Tatham Co.*, 1980 CanLII 859 (ON LRB), para. 23.

<sup>16</sup> Though the first question may not often be problematic, there must be at least some evidence of a disposition by the first entity to the second entity, directly or indirectly: *Lester (W.W.) (1978) Ltd. v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 740*, [1990] 3 SCR 644 at 681.

<sup>17</sup> *International Union of Operating Engineers, Local 793 v. Tatham Co.*, 1980 CanLII 859 (ON LRB), para. 23.

<sup>18</sup> Adams, *Canadian Labour Law*, para. 8.190.

<sup>19</sup> *Canadian Union of Public Employees v. Metropolitan Parking Inc.*, [1980] C.L.R.B.R. 197, para. 29.

<sup>20</sup> See Pascal McDougall, “Leaving Labour Law’s Pragmatic and Purposive Fortress Behind: Canadian Successor Rights Law as a Case Study” (2016) 54:1 Osgoode Hall LJ 253.

<sup>21</sup> *United Food and Commercial Workers, Local 206 v. Canada Safeway Ltd.*, [1986] O.L.R.B. Rep. 305, para. 11.

principle, that there must be a transfer of a “functional economic vehicle” for successor employment rights to arise, was applied subsequently by the Supreme Court of Canada.<sup>22</sup>

[14] The primacy of substance over form is illustrated by the Court of Appeal decision concerning transit workers in the Town of Ajax.<sup>23</sup> The Town owned transit vehicles and other physical assets for its transit system. It contracted out transit services to a unionized employer, Charterways, which was responsible for hiring, training, paying and supervising the workforce. The Town cancelled its contract with Charterways and all of Charterways’ employees were laid off. Soon afterwards, most of these employees were re-hired by the Town, which began to operate the transit service “in-house”. The union applied for a successor employer declaration, which the OLRB granted. This court reversed that decision, but was itself reversed by the Court of Appeal, which reinstated the OLRB’s decision.

[15] Goudge J.A., writing for the court, found that “[b]ecause of the remedial purpose of s.[69], namely the preservation of bargaining rights, [the definition of ‘transfers’] is to be given a broad and liberal interpretation.”<sup>24</sup> The court found further that:

what was transferred was not just the work formerly done by the Charterways employees nor the employees themselves. There was the added value that came with the continuity, experience and stability of this work force.<sup>25</sup>

[16] In summary, successorship is assessed through an “instrumental approach” to determine whether a “functional economic vehicle” or a “going concern” has been transferred. This inquiry is to be undertaken through the lens of a large and liberal interpretation of the provision, to protect against the loss of bargaining rights through re-arrangement of business structures, while at the same time enabling businesses to sell their assets and arrange their affairs.

#### **Receivers and Trustees in Bankruptcy as Successor Employers Under the LRA**

[17] An assignment or petition into bankruptcy terminates the employment of the bankrupt’s employees.<sup>26</sup> This termination applies to unionized employees as well as non-unionized employees.

[18] Termination of the employment of all unionized employees, because of bankruptcy, does not, however, terminate a collective agreement or bargaining rights:

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<sup>22</sup> *Lester (W.W.)(1978) Ltd. v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 740*, [1990] 3 SCR 644 at 677, per McLachlin J. (as she then was).

<sup>23</sup> *Ajax (Town of) v. National Automobile, Aerospace and Agricultural Implement Workers of Canada* (1998), 41 OR (3d) 426 (CA).

<sup>24</sup> *ibid.*, para. 24.

<sup>25</sup> *ibid.*, para. 38.

<sup>26</sup> *Rizzo & Rizzo Stores Ltd. (Re)*, [1988] 1 SCR 27

To the extent that an employee's contract of employment with a bankrupt employer is contained in a collective agreement, the employee's contract is terminated on bankruptcy. This does not mean, however, that a collective agreement is terminated for all purposes upon bankruptcy.<sup>27</sup>

[19] In a 1994 decision, the Ontario Court of Appeal found a trustee in bankruptcy liable as an employer for underfunded pension obligations pursuant to the *Pension Benefits Act*.<sup>28</sup> This decision was subsequently modified legislatively, in part, by what is now s.14.06(1.2) of the *BIA*, which reads as follows:

Despite anything in federal or provincial law, if a trustee, in that position, carries on the business of a debtor or continues the employment of a debtor's employees, the trustee is not by reason of that fact personally liable in respect of a liability, including one as a successor employer,

- (a) that is in respect of the employees or former employees of the debtor or a predecessor of the debtor or in respect of a pension plan for the benefit of those employees; and
- (b) that exists before the trustee is appointed or that is calculated by reference to a period before the appointment.

Section 14.06(1.2) of the *BIA* insulates trustees from pre-bankruptcy claims and accruals. It does not insulate trustees from post-bankruptcy claims and accruals. As stated by Farley J. in *Royal Crest Lifecare Group Inc.*, "[w]hile that section is of assistance to trustees as to 'past' exposure, it would not provide adequate protection, in fact, it seems no protection from ongoing exposure."<sup>29</sup>

[20] Since s.14.06(1.2) does not insulate trustees from post-appointment liabilities, a practice developed of asking the court for this protection in the initial order appointing the trustee.<sup>30</sup> This practice was disapproved by the Supreme Court of Canada in *TCT Logistics*. The SCC found that the bankruptcy court had no jurisdiction to decide whether a trustee is a successor employer within the meaning of the *LRA*: that determination is in the exclusive jurisdiction of the Labour

<sup>27</sup> *GMAC Commercial Credit Corp. – Canada v. TCT Logistics* (2004), 70 OR 321 (Ont. CA), para. 49, rev'd on other grounds [2006] SCR 123.

<sup>28</sup> *St. Mary's Paper Inc., Re* (1994), 19 OR (3d) 163, aff'g (1993), 15 OR (3d) 359 (Gen. Div.). The problem in *St. Mary's* was that the *Pension Benefits Act* created a current and ongoing obligation for employers to meet pension underfunding. This had the effect of creating a prospective obligation to fund historic underpayments, effectively making the trustee in bankruptcy liable for pre-bankruptcy events.

<sup>29</sup> *Royal Crest Lifecare Group Inc.* (2003), 40 CBR (4<sup>th</sup>) 146, para. 28, (Ont. SCJ).

<sup>30</sup> See Ronald B. Davis, "From *St. Mary's Paper* to *TCT Logistics*: Receiver-Managers of Insolvent Companies in a Constitutional Battlefield," 42 *Canadian Business LJ*, No. 1, p.12.

Board. While s.47(2) provides broad power to the bankruptcy court to provide direction to and for the trustee in bankruptcy, this authority must be read in conjunction with s.72(1) of the *BIA*, which states that “[t]he provisions of this Act shall not be deemed to abrogate or supersede the substantive provisions of any other law or statute relating to property and civil rights that are not in conflict with this Act.”<sup>31</sup> The court went on to find that “[e]xplicit language” would be required to extinguish all employment rights in the face of preservation of provincially created civil rights pursuant to s.72.<sup>32</sup> Such “explicit language” is not found in s.14.06(2.1) of the *BIA*, and the general grant of authority in s.47(2) does not permit the bankruptcy court to terminate the collective bargaining rights of employees: “[t]o the extent that any provision of the [appointment] order [purports to immunize the trustee/receiver from potential successor employer liability]... it “should be set aside”.<sup>33</sup>

### The Board's Decision

#### (a) Facts Found by the Board

[21] The Board found the following facts, which are not disputed on this application:

(a) Rose of Sharon (Ontario) Community c.o.b. as Rose of Sharon Korean Long-Term Care Home (“Rose of Sharon”) operated a 60-bed long-term care facility on Maplewood Avenue in Toronto.

(b) The respondent United Food and Commercial Workers International Union, Local 175 (the “Union”) was certified as bargaining agent for certain employees of Rose of Sharon on September 22, 2011.

(c) By order dated September 27, 2011 made pursuant to the *Courts of Justice Act* and the *BIA*, the applicant (the “Receiver”) was appointed as receiver and manager of all the assets, property and undertaking of Rose of Sharon.<sup>34</sup>

[22] Rose of Sharon had not entered into a collective agreement with the Union at the time the Receiver was appointed. The Receiver refused to recognize the Union as the bargaining agent of the employees it assumed control over and refused to engage in collective bargaining with the Union.

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<sup>31</sup> *GMAC Commercial Credit Corporation - Canada v. T.C.T. Logistics Inc.*, [2006] 2 SCR 123, paras. 45-46.

<sup>32</sup> *ibid.*, para. 51.

<sup>33</sup> *ibid.*, para. 52.

<sup>34</sup> The legal name of the Receiver changed to its current form on July 1, 2013.

[23] Pursuant to a consent order made February 21, 2017, the stay of proceedings consequent on the Receiver's appointment was lifted to permit the Union to initiate an application before the Board for a related or a successor employer declaration against the Receiver.

**(b) The Issue As Stated by the Board**

[24] The Board found that the facts summarized above "support a finding that the receiver is a successor employer". It then found that the issue before it, in light of this finding, is as follows:

... whether section 14.06(1.2) of the *BIA* prohibits or precludes the Board from making a declaration that the receiver is a successor employer pursuant to s.69 [of the *LRA*]."<sup>35</sup>

[25] As already noted above, subsection 14.06(1.2) of the *BIA* provides:

Despite anything in federal or provincial law, if a trustee, in that position, carries on the business of a debtor or continues the employment of a debtor's employees, the trustee is not by reason of that fact personally liable in respect of a liability, including one as a successor employer,

(a) that is in respect of the employees or former employees of the debtor...; and

(b) that exists before the trustee is appointed or that is calculated by reference to a period before the appointment.

[26] Thus the Board concluded that contentious issue before it was whether s.14.06(1.2) of the *BIA* precludes the Board from declaring the receiver to be a "successor employer" to Rose of Sharon in respect to the employees for whom the Union has been certified to represent in collective bargaining.

**The Board's Analysis of the Issue**

[27] The Board correctly found that the Receiver is a "trustee" within the meaning of s.14.06(1.2) and noted that this issue was not disputed by the parties (Decision, para. 55).

[28] The Board correctly found that "explicit statutory language" would be required to immunize the Receiver from successor employer liability (Decision, para. 57).<sup>36</sup>

<sup>35</sup> Decision, para. 28.

<sup>36</sup> See *GMAC Commercial Credit Corp. – Canada v. T.C.T. Logistics Inc.*, [2006] 2 SCR 123, para. 51, per Abella J.; *Crystalline Investments Ltd. v. Domgroup Ltd.*, [2004] 1 SCR 60, para. 43, per Major J.

[29] The Board then found that s.14.06(1.2) does not contain "explicit statutory language" precluding a Board declaration that the Receiver is a successor employer to Rose of Sharon for the following reasons:

- a. Bargaining rights granted to a trade union are not "liabilities" but rather are a "vested right" to bargain on behalf of represented employees.
- b. Indefinite suspension of bargaining rights pending completion of a sale of the business would be unduly prejudicial to the union and the employees.
- c. The text of s.14.06(1.2) presumes that a trustee may be a successor employer and immunizes the trustee, as a successor employer, from pre-appointment liabilities.
- d. A subsequent "successor employer" such as a purchaser of the business does not have the benefit of s.14.06(1.2) and may be liable for pre-insolvency obligations of the employer.
- e. The only claim sought to be asserted by the union against the Receiver, as successor employer, in this application, is recognition of accrued bargaining rights and negotiation of a collective agreement, as prescribed by the *BIA*. These are not "liabilities" within the meaning of s.14.06(1.2).

[30] On this basis the Board granted the requested successor employer declaration.

#### Analysis

[31] The Board did not find it necessary to analyse in detail why it found that the Receiver meets the test for a "successor employer" under the *LRA*, apparently because the focus of argument before the Board was on *BIA*, s.14.06(1.2).

[32] At the time of the hearing before the Board, the Receiver had been operating the business of Rose of Sharon for more than six years. Applying the "functional approach" to determining whether the Receiver meets the test of "successor employer", it is obvious that it does. The Board's conclusion on this issue, set out at para. 27 of the Decision, is, accordingly, reasonable:

Having regard to the Board's prior jurisprudence, the facts as outlined above support a finding that the Receiver is a successor employer.

[33] In respect to the effect of s.14.06(2.1), the Board's decision concerns an extricable question of law: whether this provision precludes the Board from making a "successor employer" declaration respecting a "trustee" that would otherwise meet the test for such a declaration. I conclude that this issue is reviewable in this court on a standard of reasonableness, however I acknowledge that there is an argument that s.14.06(2.1), as a provision of general application in a federal statute respecting insolvency and bankruptcy, is a matter to be reviewed on a correctness standard, to ensure consistency of application.

[34] With the greatest of respect to the applicant, it is obvious that the Board's decision on this point is both reasonable and correct:

(a) the subsection expressly refers to the trustee "as a successor trustee". This language describes a state of being. It then goes on to immunize a trustee in that state of being from certain "liabilities" it might otherwise be liable for, in its capacity "as a successor employer". As a matter of grammar and logic, the language acknowledges that a trustee may be a "successor employer" and then accords the trustee limited immunization in that capacity.

(b) the jurisprudential and legislative history of s.14.06(2.1), described above, supports the Board's interpretation. In the words of Farley J. in *Royal Crest Lifecare Group Inc.*, the provision provides protection for "past accruals" but not "ongoing exposure" as a successor employer.

(c) collective bargaining rights are not "liabilities" within the meaning of s.14.06(2.1), and may be properly understood, as found by the Board, as "vested rights". To conclude otherwise would necessarily be to find that all accrued collective bargaining rights are suspended by the appointment of a trustee, a result that flies in the face of the established jurisprudence from the Supreme Court of Canada.

(d) no distinction was drawn in argument between collective bargaining rights reflected in certification of a union and collective bargaining rights reflected in a collective agreement. The facts of this case illustrate why such a distinction is not tenable: the Receiver had been operating the business for more than six years by the time of the Board's decision, longer than the duration of most collective agreements. As a successor employer, a trustee is generally going to be bound by an existing collective agreement and will have continuing obligations arising from certification if the collective agreement expires. By the same logic, a trustee, as a successor employer, is bound by the union's certification and thus obliged to negotiate an initial collective agreement in good faith or to negotiate a new agreement if a collective agreement expires while the trustee is operating the business.

(e) a purchaser from the trustee of the business as a going concern will likewise face obligations as a possible "successor employer" and it is difficult to see how a lacuna in the operation of collective bargaining rights would enhance the ability of the trustee, on behalf of the creditors, to realize value from the business as a going concern.

[35] The Receiver argues that it is placed in a position of conflict if it is required to negotiate a collective agreement. I see no conflict. A trustee who continues to operate a business must make all sorts of arrangements, from purchasing supplies, paying rent, negotiating the prices of goods and services bought and sold – in short, all manner of decisions that must be made in order

Page: 12

to stay in business. Terms of a collective agreement are in no different category in the sense that there is no conflict of interest in the trustee making appropriate arrangements with unionized employees to operate the business.

[36] Put another way, the ongoing business is subject to the collective bargaining rights of employees. Those rights are inherent in the business as a going concern. If the business is worth more as a collection of assets than as a going concern, then it may be sold as such. Its value, as a going concern, may be affected by the collective bargaining rights of employees, but that is no reason to abrogate those collective bargaining rights.

[37] The Board's decision is reasonable on the facts and the law and correct in its interpretation and application of s. 14.06(2.1) of the *BIA*. For these reasons the application is dismissed. The parties have agreed as to costs.

D.L. Corbett J.

I agree: \_\_\_\_\_

Ducharme J.

I agree: \_\_\_\_\_

Gomery J.

**Date of Release: March 31, 2021**

**CITATION:** Deloitte Restructuring Inc. v. United Food and Commercial Workers Int'l Union  
Loc. 175, 2020 ONSC 1260  
**COURT FILE NO.:** DC 238/18  
**DATE:** 20210331

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT**

**D.L. Corbett, Ducharme and Gomery JJ.**

**BETWEEN:**

Deloitte Restructuring Inc.

Applicant

– and –

United Food and Commercial Workers Int'l  
Union Loc. 175

Respondent

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**REASONS FOR DECISION**

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**D.L. Corbett J.**

**Date of Release:** March 31, 2021

# APPENDIX “M”

C13-10269-0002

Court File No.:

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

**BETWEEN :**

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY  
by DELOITTE RESTRUCTURING INC.,  
solely in its capacity as court-appointed Receiver and Manager  
and not in its personal capacity**

Plaintiff

– and –



**JOHN YOON and SDM DESIGN CONSULTING INC.**

Defendants

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**IF YOU PAY THE PLAINTIFF'S CLAIM**, and \$10,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

**Date:** September 27, 2013

**Issued by:** \_\_\_\_\_

Local Registrar

*Address of Court Office:*

A. Anissimova  
Registrar

330 University Avenue, 7<sup>th</sup> Floor  
Toronto, ON M5G 1R7

**TO: JOHN YOON**  
20 Dukinfield Crescent  
Toronto, ON M3A 2S1

**AND**  
**TO: SDM DESIGN CONSULTING INC.**  
20 Dukinfield Crescent  
Toronto, ON M3A 2S1

**CLAIM**

1. The plaintiff, Deloitte Restructuring Inc. (formerly known as Deloitte & Touche Inc.), in its capacity as court-appointed Receiver and Manager (the “**Receiver**”) of Rose of Sharon (Ontario) Retirement Community (“**Rose of Sharon**”) claims:

- (a) As against the defendant John Yoon (“**Mr. Yoon**”):
  - (i) an order for disgorgement or damages in the amount of \$204,675 for breach of fiduciary duty on account of Mr. Yoon having failed to disclose a conflict of interest as required by s. 132 of the Ontario Business Corporations Act, R.S.O. 1990, c. C-16, as amended (the “**OBCA**”) and a failure to exercise his powers and discharge his duties to the standard of care required by s. 134 of the OBCA in relation to the purchase and subsequent sale of Unit #1009 in the residential development owned by Rose of Sharon to Morgiana Lee;
  - (ii) in the alternative, general damages in the amount of \$204,675 on the basis that John Yoon as unjustly enriched through the purchase and sale of Unit #1009 as more particularly set out below;
- (b) As against the defendants Mr. Yoon and SDM Design Consulting Inc. (“**SDM**”):
  - (i) an order for disgorgement or damages in the amount of \$166,459 for breach of fiduciary duty, the illegal receipt of secret commissions on account of the defendants having failed to disclose a conflict of interest as required by s. 132 of the OBCA and a failure to exercise Mr. Yoon’s

powers and discharge his duties to the standard of care required by s. 134 of the OBCA in relation to the authorization and payment of a “finder’s fee” and “Development Consulting fees” by Rose of Sharon to SDM (together, the “**Unauthorized Payments**”);

- (ii) in the alternative, general damages in the amount of \$166,459 on the basis that Mr. Yoon and SDM were unjustly enriched through the Unauthorized Payments as more particularly set out below;
- (iii) prejudgment interest thereupon pursuant to s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (iv) its costs of this action on a substantial indemnity basis; and,
- (v) all additional just relief.

## **Parties**

2. Pursuant to an Order of Justice Campbell of the Ontario Superior Court of Justice (Commercial List) dated September 27, 2011 (the “**Appointment Order**”), the plaintiff, Deloitte Restructuring Inc., was appointed as receiver and manager of all of the current and future assets, undertakings and properties of the plaintiff, Rose of Sharon.

3. Rose of Sharon is a not-for-profit Ontario corporation incorporated pursuant to the laws of the Province of Ontario that was created to develop and provide seniors-type housing for people of Korean heritage (the “**Property**”).

4. The Property is a 12 storey building containing a 60 bed licensed long-term care facility (the “**Nursing Home**”) and 90 individual units which have been marketed to members of the public on a life-lease basis (the “**Units**”).

5. The defendant Mr. Yoon was the chief executive officer, a director and, at all relevant times, the controlling mind behind Rose of Sharon.

6. Although Rose of Sharon had other directors on its board at some times, to Mr. Yoon’s knowledge, they were not sufficiently independent or qualified to properly consider his self-dealing with Rose of Sharon.

7. SDM is a company incorporated in Ontario of which Mr. Yoon is the sole owner, officer and director.

#### **Units #1009 and #1011**

8. In 2000, Mr. Yoon purchased a life lease interest in a 1,009 square foot unit in Rose of Sharon for \$139,500 or \$138 per square foot – approximately 60% below market value at that time.

9. The unit was later divided into two units, a larger 607 square foot unit which Mr. Yoon still holds (“**Unit #1011**”), and a smaller, 402 square foot unit (“**Unit #1009**”). The current market value of Unit #1011 is \$227,625.00.

10. In or about June 14, 2011, Mr. Yoon negotiated for the sale of a life lease interest in Unit #1009 to Morgiana Lee (“**Ms. Lee**”). The terms of the agreement were as follows:

- (a) Ms. Lee agreed to pay Rose of Sharon \$165,000 for the life lease interest in Unit #1009;
- (b) Ms. Lee paid Rose of Sharon a deposit of \$65,000 with the balance still owing; and
- (c) Mr. Yoon then caused Rose of Sharon to pay him \$116,550.

11. Mr. Yoon sold Unit #1009 rather than arranging for the sale of an unsold/vacant unit to Ms. Lee by Rose of Sharon. This occurred at a time when Rose of Sharon was seriously short of funds and unable to make interest payments on a construction loan to Peoples Trust Company.

12. Mr. Yoon's sale of the life-lease interest to Ms. Lee of Unit #1009 constituted a breach of fiduciary and statutory duties under ss. 132 and 134 of the OBCA because his actions preferred his interests over those of Rose of Sharon. As a result of Mr. Yoon's conflict of interest and breach of his fiduciary and statutory duties, Rose of Sharon was denied the opportunity to sell a lease-life interest in an unoccupied unit and enjoy the benefit of the full market value of the sale of such an interest in a unit.

13. In acquiring his life lease interest in what are now Unit #1009 and Unit #1011 and in concluding the sale of his life lease interest in Unit # 1009, Mr. Yoon failed to make any or adequate disclosure of his interest in these transactions to the Rose of Sharon board of directors.

14. In the alternative, as the controlling mind of Rose of Sharon and in the absence of an independent and qualified board of directors, it was not possible for the board to make a considered decision on these transactions and they were concluded in breach of applicable law.

15. In the further alternative, even if adequate disclosure was made, Mr. Yoon was still in breach of his duties, as the transactions were significantly under market value and not on terms that would be expected of arm's length parties.

16. Mr. Yoon was unjustly enriched through his actions in the amount of \$204,675, to the corresponding detriment of Rose of Sharon and there is no juridical reason for the enrichment. Rose of Sharon therefore claims an order for the disgorgement of Mr. Yoon's ill-gotten gain or damages in that amount, and in that regard pleads and relies on ss.132(9) of the *OBCA*.

### **Unauthorized Payments**

17. In the period from 2009 to 2011, Mr. Yoon caused Rose of Sharon to pay \$55,392 to SDM, representing a "finder's fee" for soliciting loans through promissory notes from various parties, including promissory notes issued as far back as 2007 (the "**Finders Fee**").

18. Many of these loans were from unit-holders who believed that these payments were on account of amounts owed under right to occupy agreements governing their interests in units at Rose of Sharon and not separate loans to Rose of Sharon. The Rose of Sharon board did not approve payment of a fee to Mr. Yoon or any other party soliciting loans on Rose's behalf.

19. In addition, SDM was paid a "Development Consulting fee" of \$4,200 per month plus GST/HST (the "**Development Consulting Fees**"). In the period from December 2009 to July 2011, SDM was paid \$111,067.

20. This occurred at a time when Rose of Sharon was seriously short of funds and unable to meet its obligations to make debt payments.

21. Mr. Yoon's actions constituted a breach of fiduciary and statutory duties under ss. 132 and 134 of the OBCA because his actions preferred his interests over those of Rose of Sharon. As a result of Mr. Yoon's conflict of interest and breach of his fiduciary and statutory duties, Rose of Sharon was deprived of its funds.

22. In causing SDM to be paid the Unauthorized Payments, Mr. Yoon failed to make any or adequate disclosure of his interest in these transactions to the Rose of Sharon board of directors.

23. In the alternative, as the controlling mind of Rose of Sharon and in the absence of an independent and qualified board of directors, it was not possible for the board to make a considered decision on these transactions and they were concluded in breach of applicable law.

24. In the further alternative, even if adequate disclosure was made, Mr. Yoon was still in breach of his duties, as the transactions were significantly under market value and not on terms that would be expected of arm's length parties.

25. The defendants were enriched through their actions in the amount of \$166,459, to the corresponding detriment of Rose of Sharon and there is no juridical reason for the enrichment. Rose of Sharon therefore claims an order for the disgorgement of the defendants' ill-gotten gain or damages in that amount, and in that regard pleads and relies on ss.132(9) of the *OBCA*.

26. The Receiver proposes that the trial of this action be held in the City of Toronto.

September 27, 2013

**BLANEY McMURTRY LLP**  
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Lawyers for the Plaintiffs

**ROSE OF SHARON (ONTARIO) RETIREMENT  
COMMUNITY by DELOITTE RESTRUCTURING INC.  
solely in its capacity as court-appointed receiver and manager  
and not in its personal capacity**  
Plaintiff

**JOHN YOON and SDM DESIGN CONSULTING INC.**

Court File No.

Defendants *2/13-10269-0002*

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

Proceeding Commenced at **TORONTO**

**STATEMENT OF CLAIM**

**BLANEY McMURTRY LLP**  
Barristers and Solicitors  
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Lawyers for the plaintiff

# APPENDIX “N”

**IN THE MATTER OF THE RECEIVERSHIP OF  
ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**

**Receiver's Interim Statement of Receipts and Disbursements  
for the period September 27, 2011 to April 30, 2021**

Receipts	Sept 17/11 to Mar 30/ 17	Apr 1/17 to Jan 31/21	Sept 17/11 to Apr 30/21
1. Ministry of Health funding	\$ 15,980,249	\$ 13,695,770	\$ 29,676,019
2. Receipts from preferred accommodation re: nursing home residents	7,135,307	6,464,169	13,599,476
Receipts from life lease residence	6,346,167	3,042,301	9,388,467
3. Receiver borrowings	5,750,000	750,000	6,500,000
4. Receipts from life lease tenants (Life lease payments and Nursing Home - Return of excess funding)	400,000	1,232,400	1,632,400
5. Cash in bank	404,887	-	404,887
6. HST refund	239,703	78,961	318,664
7. Proceeds from litigation settlements	160,000	500,000	660,000
8. Property tax refund	139,700	-	139,700
9. Misc. other receipts	177,684	218,010	395,694
<b>10. Total receipts</b>	<b>\$ 36,733,695</b>	<b>\$ 25,981,612</b>	<b>\$ 62,715,307</b>
<b>Disbursements</b>			
Funding of Nursing Home	\$ 22,240,198	\$ 19,458,861	\$ 41,699,059
Life lease residence disbursements	10,419,104	4,552,432	14,971,536
Receiver fees	1,603,209	801,634	2,404,843
Legal fees	1,330,123	1,062,133	2,392,256
HST/PST paid	403,038	306,793	709,831
Insurance	54,612	-	54,612
Consulting fees	64,523	90,431	154,955
Buyout of kitchen equipment lease	60,913	-	60,913
Property taxes	14,419	-	14,419
Building Condition Assessment	41,270	-	41,270
Appraisal fees	43,792	7,490	51,282
City of Toronto Development Charges	10,030	4,598	14,628
Ministry of Health & Long-Term Care fees	3,750	-	3,750
Other Miscellaneous disbursements	2,150	-	2,150
Bank Charges	6,425	4,187	10,611
	<b>\$ 36,297,556</b>	<b>\$ 26,288,558</b>	<b>\$ 62,586,114</b>
<b>Excess of receipts over disbursements</b>	<b>\$ 436,140</b>	<b>\$ (306,946)</b>	<b>\$ 129,194</b>

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

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

**PEOPLES TRUST COMPANY**  
Applicant

v.

**ROSE OF SHARON (ONTARIO) RETIREMENT COMPANY**  
Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
  
**(PROCEEDING COMMENCED AT TORONTO)**

**ELEVENTH REPORT OF THE RECEIVER**  
**(dated 1 June 2021)**

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

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

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Respondent

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**SUPERIOR COURT OF JUSTICE**  
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(PROCEEDING COMMENCED AT TORONTO)

**MOTION RECORD**  
(returnable 10 June 2021)

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