

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

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

**MOTION RECORD  
(returnable 1 April 2019)**

Date: 11 March 2019

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**TAB 1**

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 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**

**NOTICE OF MOTION**

**PEOPLES TRUST COMPANY** will make a motion to the Court on Monday the 1<sup>st</sup> of April 2019 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. An Order Vesting certain property in the City of Toronto;
2. Authorizing Mr. Hartley Bricks, Ms. Catherine Hristow and Mr. Paul Casey to be the first directors of the condominium corporation established in respect of the building located at 15-17 Maplewood Avenue, Toronto, Ontario; and
3. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The grounds set out in the Ninth Report of the Receiver dated 25 February 2019.

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 Motion:

1. The Ninth Report of the Receiver dated 25 February 2019; and
2. Such further and other evidence as this Honourable Court may permit.

11 March 2019

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# TAB A

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

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

THE HONOURABLE ) DAY, THE  
JUSTICE )  
) 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

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**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.

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

**PEOPLES TRUST COMPANY**

**- and -**

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

**Applicant**

**Respondent**

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

(PROCEEDING COMMENCED AT TORONTO)

**NOTICE OF MOTION**

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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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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

# TAB 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.

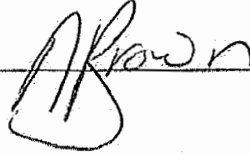
28. **THIS COURT ORDERS** that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or,

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 ~~neither TC LFIN 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

RECORDED AT THE COURT AT TORONTO  
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** v.  
Applicant

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

**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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M5X 1G5

**Clifton Prophet**  
**LSUC No.: 34845K**

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Lawyers for the Applicant,  
Peoples Trust Company

**TAB B**

000119

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**

**EIGHTH REPORT TO THE COURT OF THE RECEIVER**  
**(dated May 12, 2017)**

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- APPENDIX "A": Amended and Restated Appointment Order dated September 27, 2011
- APPENDIX "B": Seventh Report to the Court of the Receiver dated March 3, 2015
- APPENDIX "C": Order of Justice Wilton-Siegel dated March 6, 2015
- APPENDIX "D": Letter to Gowling Lafleur Henderson LLP from the City of Toronto City Planning Division dated July 11, 2016 re Notice of Decision Under S. 51(37) of The Planning Act
- APPENDIX "E": Schedule of 48 Peoples Priority Units
- APPENDIX "F": Settlement Agreement between Mugungwha Homes and Peoples Trust Company concerning Unit 207
- APPENDIX "G": Copy of the Affidavit of Service of Eric Golden sworn March 6, 2015, that was before Justice Wilton-Siegel on March 6, 2015, as well as Mr. Golden's letters dated March 4 and March 19, 2015 to the tenants of Unit PH8, Mr. Golden's emails dated March 10, 2015, to the entire email Service List (including Justin Baichoo) and to Justin Baichoo individually, and Mr. Golden's letters of March 10, 2015 to Justin Baichoo and Leon Hui
- APPENDIX "H": Agreement to Lease between Imseop Kim and Grace Kim and Unimac Group Ltd. dated June 28, 2014 for Unit PH8 along with copy of cheque
- APPENDIX "I": Notice to End Tenancy For Non-payment of Rent dated March 9, 2017
- APPENDIX "J": Summary Statement of Income for the Period January 1 to December 31, 2016 for the Nursing Home
- APPENDIX "K": Receiver's Interim Statement of Receipts and Disbursements for the period September 28, 2011 to March 31, 2017
- CONFIDENTIAL APPENDIX "A": Residential Condominium Marketing and Sales Agreement between Milborne Real Estate Inc. and Deloitte Restructuring Inc.
- CONFIDENTIAL APPENDIX "B": Exclusive Listing Agreement between John A. Jensen Realty Inc. and Deloitte Restructuring Inc.

## INTRODUCTION

1. Pursuant to an Order (the "**Appointment Order**") of Justice Campbell of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 27, 2011 (the "**Appointment Date**"), 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 Sixth 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 "**Life-Lease Residence**").
4. The Receiver's Third Report to the Court dated February 19, 2013 (the "**Third Report**") provided the Court with, among other things, the history of the Property, the construction of the Property, a detailed analysis of the Units purchased in the Life-Lease Residence, the categorization of the Units and those claiming an interest in those Units, details on the terms of the loan provided by Peoples Trust Company ("**Peoples**") used to fund construction of the Property (the "**Construction Loan**"), the competing interests in the Property, and the Receiver's position on priority of the first mortgage registered against title to the Property (the "**Construction Mortgage**") and held by Peoples as against the other various agreements, loans, notes, liens, charges and mortgages registered and unregistered against the Property (the "**Priority Issue**").
5. The Receiver's Fourth Report to the Court (the "**Fourth Report**") dated March 11, 2013, provided the Court with an update on the Receiver's activities in respect of its motion for the appointment of Kronis, Rotzstain, Margles, Cappel LLP ("**KRMC**") as representative

counsel (“**Representative Counsel**”) of arm’s length purchasers of 28 Units in the Life-Lease Residence (the “**ALUs**”), composed mostly of persons of Korean Heritage, many of whom are elderly and/or have a limited grasp of English. The Fourth report also included re-categorization of certain Unit-holders into or out of the ALU category, and addressed procedural matters related to the appointment of Representative Counsel. The Receiver had proposed the appointment of representative counsel would be to the general benefit of the Rose estate and the ALUs, and would allow for the Priority Issue to be dealt with in a more efficient process.

6. On April 8, 2013, Peoples served its motion materials (the “**Priority Motion**”) seeking priority over all of the mortgages registered against the Property and over the Life-Lease Claimants (as defined in the Priority Motion, and essentially being all persons having an interest in the Property, except for those having construction lien claims found to be valid and in priority to Peoples).
7. On April 11, 2013, Justice Mesbur issued an Order approving the appointment of KRMC as Representative Counsel in respect of the Priority Motion for the group that what would eventually consist of only the ALUs (the “**Representative Counsel Order**”).
8. On September 10, 2013, the date scheduled for the hearing of the Priority Motion, Gowlings advised the Court that Peoples and the Receiver had reached a settlement with the ALUs in respect of the Priority Motion, representing 28 Units in the Life-Lease Residence (the “**ALU Settlement**”), and sought the Court’s approval of the ALU Settlement. Justice Mesbur approved the ALU Settlement and issued an Order (the “**ALUs Settlement Approval Order**”) to that effect. There was no opposition to the ALU Settlement at that time (as noted in Justice Mesbur’s Endorsement, Justin Baichoo attended on the motion as counsel for both Unimac Group Ltd. (“**Unimac**”) and IWOK Corporation (“**IWOK**”). Unimac was the general contractor for the Building, and both it and IWOK held mortgages over the Property at different points in time (IWOK held a fifth mortgage as of September 10, 2013). Unimac and its principal, Leon Hui, also claimed an interest in seven Units. Leon Hui was also an officer and director of IWOK. Other mortgagees as of September 10, 2013, included Turfpro Investments Inc.

(“**Turfpro**”, a third and a fourth mortgagee), which also claimed an interest in seven Units. The remaining issues concerning the Priority Motion were adjourned to November, 2013.

9. As summarized in the Receiver’s Fifth Report to the Court dated December 10, 2013 (the “**Fifth Report**”), the continuation of the Priority Motion resulted in the following Orders:
  - (a) on November 14, 2013, Justice Mesbur ordered and declared that Peoples was entitled to priority over the claims of all persons claiming an interest in 25 non-ALU Units in the Property, except for any construction lien claims found to be valid and prior by a judge presiding over the Superior Court of Justice (Commercial List) (the “**November 14 Priority Claims Order**”). These 25 non-ALU Units consisted of sixteen (16) Released and Vacant Units, three (3) Turfpro RTOA Units, two (2) Turfpro Option Units identified as Units 310 and PH3, one (1) Unsold and Vacant Unit, and three (3) Units in which John Yoon or Moon Yoon claimed an interest;
  - (b) on November 22, 2013, Justice Mesbur made an order (the “**ILA Order**”) that KRMC be discharged as Representative Counsel and that it perform a new mandate to provide independent legal advice (“**ILA**”) to certain individual unrepresented non-ALUs (the “**ILA Mandate**”, ultimately encompassing Unit-holders of 6 Units purchased by non-ALUs, separate and apart from the 25 Units set out in subparagraph (a) above) who had entered, or would be entering, into settlements with Peoples regarding their Units (“**ILA Unit-holders**”); and,
  - (c) on November 22, 2013, Justice Mesbur made an order refusing to admit the supplementary affidavit of Leon Hui sworn November 11, 2013 on behalf of Unimac (the “**Second Hui Affidavit**”), and adjourning the remaining issues in the Priority Motion to December 13, 2013.
10. On December 13, 2013, Justice Mesbur issued an Order (the “**December 13 Order**”) that, among other things:



- (a) approved settlements between Peoples, the Receiver and Unit-holders claiming an interest in 14 additional non-ALU Units (the “**December 13 Settlements**”);
  - (b) declared that Peoples is entitled to priority over the claims of all persons claiming an interest in 17 Units, except for any construction lien claims found to be valid and prior; and
  - (c) declared that Peoples is entitled to priority over the claims of IWOK and Turfpro, including any assignees, claiming under four subordinate mortgages.
11. On January 9, 2014, Madam Justice Kiteley heard and denied a motion brought by Unimac for leave to appeal Justice Mesbur’s decision of November 22, 2013, refusing to admit the Second Hui Affidavit.
12. On February 4, 2014, 2383431 Ontario Inc. (“**238**”) appealed the December 13 Settlements, alleging, among other things, that 238 never received any notice of the receivership proceedings, including the motion for approval of the December 13 Settlements (the “**238 Appeal**”). On or about September 26, 2013, 238 had taken an assignment of the second mortgage registered against the Property.
13. Unimac was claiming an interest in six Units (including Unit PH8) and Leon Hui was claiming an interest in one Unit. On February 6, 2014, the Unimac/Leon Hui portion of the Priority Motion was heard by Justice D. M. Brown, who granted an Order declaring that Peoples’ security is entitled to priority over “over the claims of all persons, including Unimac and Leon Hui, claiming an interest in” the Unimac Units and the Leon Hui Unit (the “**February 6 Order**”).
14. On February 18, 2014, Unimac appealed the February 6 Order (the “**Unimac Appeal**”).
15. The Receiver’s Sixth Report to the Court (the “**Sixth Report**”) dated May 16, 2014 provided the Court with an update on the disposition of matters involved in the Priority Motion since December 10, 2013, including providing the Court with information with respect to 238.

16. On July 4, 2014, Justices Feldman, MacPherson and Cronk heard the 238 Appeal and the Unimac Appeal. Both appeals were dismissed.
17. The Receiver's Seventh Report to the Court (the "**Seventh Report**") dated March 3, 2015 provided the Court with an update on, among other things, the rehabilitation work at the Building, the status of the conversion of the Nursing Home and Life Lease Units to condominiums, the status of litigation involving Rose of Sharon and the status of the Occupied Units (as defined in the Seventh Report). Additionally, the Receiver sought approval for, among other things, a settlement of a construction lien action, and an increase in the amount that the Receiver is authorized to borrow pursuant to paragraph 20 of the Appointment Order, which funds would substantially be used to fund the rehabilitation work at the Building. The Seventh Report without exhibits is attached hereto as **Appendix "B"**.
18. On March 6, 2015, Justice Wilton-Siegel issued an Order (the "**March 6 Order**") that, among other things:
  - i) approved the settlement of the construction lien action, including sealing an unredacted version of the Minutes of Settlement until the completion of the Minutes of Settlement;
  - ii) in respect of the Occupied Units, ordered that Unimac, John Yoon, Moon Yoon, and Leon Hui:
    - a) each provide an accounting of funds received;
    - b) pay to the Receiver funds received since July 31, 2014; and
    - c) provide the Receiver with copies of any and leases;
  - iii) in respect of defined "Occupied Units", ordered that all tenants of those Units:
    - a) produce on or before March 31, 2015, information required in the Notices to Tenants, Demands for Particulars of Tenancy Agreement and Notices of Rental Attornment (the "**Notices**") that were served by the Receiver; and,

- b) commence paying rent to the Receiver from the date of the March 6 Order forward based on the terms of their lease, and, to the extent there is no lease, at market rates as determined by the Receiver;
- iv) increased the amount that the Receiver is authorized to borrow pursuant to paragraph 20 of the Appointment Order from \$2,500,000 to \$6,500,000; and
- v) approved the fees and disbursements of the Receiver to November 30, 2014, of Blaneys McMurtry LLP (“**Blaneys**”) to September 30, 2014, of Gowling WLG Canada LLP (“**Gowlings**”) to December 31, 2014, and KRMC to March 6, 2015.

A copy of the March 6 Order is attached hereto as **Appendix “C”**.

19. The purpose of this Eighth Report to the Court (the “**Eighth Report**”) is to:
- a) provide the Court with an update on the rehabilitation works at the Rose of Sharon building;
  - b) provide the Court with the status of the conversion of the Property to condominiums;
  - c) provide the Court with an update on the Life-Lease Residence and its Unit-holders;
  - d) seek the Court’s approval to enter into a conditional settlement agreement with Mugungwha Homes with respect to Unit 207;
  - e) provide the Court with an update on the operations of the Nursing Home;
  - f) seek the Court’s approval to enter into a Marketing and Sales Agreement with Milborne Real Estate Inc. for the marketing and sale of the available residential condominium units as set out further below;
  - g) seek the Court’s approval to enter into an Exclusive Listing Agreement with John A. Jensen Realty Inc. to market and sell the Nursing Home;
  - h) provide the Court with an update on the Statement of Claim Rose, by its Receiver, issued and served against Trisura Guarantee Assurance Company (“**Trisura**”, the

surety who issued a Performance Bond in respect of the construction of the Property), Unimac (the general contractor on the project), and other parties involved in the construction of the Property (the “**Building Action**”);

- i) seek an Order requiring that Grace Kim and Imseop Kim (collectively, the “**Kims**”) vacate Unit PH8 at the Property, a Declaration that the purported lease entered into for that Unit is void *ab initio*, and should the Kims take the position they are tenants, Judgment against the Grace Kim for the rent owing for the rental of Unit PH8 since the date of the March 6 Order;
- j) seek a Declaration that KRMC has fulfilled its ILA Mandate, and an Order discharging KRMC from its ILA Mandate;
- k) seek the Court’s approval of the Eighth Report, and the actions and activities of the Receiver from December 1, 2014 to March 31, 2017;
- l) seek the Court’s approval of the Receiver’s Interim Statement of Receipts and Disbursements for the period from September 27, 2011 to March 31, 2017;
- m) seek the Court’s approval of the Receiver’s fees incurred for the period December 1, 2014 to December 31, 2016; and
- n) seek the Court’s approval of the fees of Blaneys and KRMC as detailed more fully herein.

#### **TERMS OF REFERENCE**

20. In preparing this Eighth 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 Life-Lease Units.
21. 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.

22. 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 CONVERSION TO CONDOMINIUMS

23. In paragraphs 187 through 193 of the Third Report, the Receiver reported on the status of the conversion of the Building to condominiums and that the deadline for submission of materials to the City of Toronto (the "City") in respect of approval of the Draft Plan of Condominium was May 26, 2013. In the Fifth Report, the Receiver advised that by letter dated April 19, 2013, the City had agreed to extend the deadline for the submission of materials to April 19, 2014.
24. Prior to the expiration of the April 19, 2014 deadline, Gowlings contacted the City to seek a further extension. The City did not respond to the Receiver's request and, as a result, the draft approvals of the plans of condominium for the Nursing Home and the Life-Lease Residence portions of the Building lapsed.
25. As a result, the Receiver was required to submit a new application for draft approval to the City. The Receiver engaged Sedun + Kanerva Architects Inc. ("Sedun") to finalize the condominium application and certify that the easements and reciprocal rights of ways are correctly identified in the Declaration. The Receiver also engaged Norman Lee & Associates ("NLA") to provide the certification required by the City that the Property had been completed in accordance with the *Condominium Act*. As discussed below, the Receiver had previously engaged NLA to prepare a Building Audit Report ("BAR"), the results of which were set out in the Third Report, and to manage the commissioning of the Building's mechanical and HVAC systems. As a result, NLA was intimately familiar with the Property. NLA advised the Receiver that in order to provide the certification required by the City (that the Property had been completed in accordance with the *Condominium Act*), substantially all of the deficiencies identified in the BAR needed to

be rectified. The progress in completing the rectification of the deficiencies is discussed further below.

26. In December 2015, the Receiver submitted a new application to the City (the “**Condo Application**”) for a Draft Plan of Standard Condominium (the “**Draft Plan**”). The Condo Application differs from the original application submitted by Rose in that it involves only the Life-Lease Residence and its 91 units (the Life Lease Residence previously was reported to have 90 units; however, it was determined that at some point one of the units, Unit 5 on level 12, had been bifurcated into two units, Units 5 and 7, identified as PH4 and PH6, resulting in 91 units), whereas the original application included applications for both the Life-Lease Residence and the Nursing Home. The decision to not proceed with the Nursing Home application was made to save the costs that would be involved in that separate application and also reflects the advice received from Gowlings that an eventual purchaser of the Nursing Home would expect to purchase a fee simple interest rather than a condominium.
27. By letter dated July 11, 2016, attached hereto as **Appendix “D”**, the City provided its approval of the Condo Application subject to certain conditions attached to the letter. The conditions for approval are summarized as follows:
- the plans submitted for final approval and registration must be substantially in accordance with the approved draft plans;
  - confirmation that taxes have been paid in full and that there are no outstanding City initiated assessment or tax appeals;
  - the filing of a complete copy of the final version of the Declaration and Description which includes: i) a schedule containing an opinion from the declarant’s solicitor that 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 ii) the certification of NLA that the Building has been constructed in accordance with the regulations made under the Condominium Act;

- visitor parking spaces will be clearly delineated on the condominium plan to be registered and that 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;
  - the final Declaration and Description shall contain a provision concerning parking units for persons with physical disabilities;
  - the filing of certificates with respect to the creation of necessary easements;
  - the Declaration must contain 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;
  - establish separate water meters for the non-condominium lands or include wording in the Declaration that the services are to be shared and designate who will be responsible to the local water authority for payment of the water bill;
  - the Parties (assumed to be the owner and the Nursing Home) will have entered into a Cost Sharing Agreement with respect to the shared services and/or any other shared facilities; and
  - Rose must convey to the City a 2.2 metre strip of land, in perpendicular width across the entire Vaughan Road frontage of the Property.
28. The Receiver and Gowlings are working towards satisfying the conditions and anticipate being in a position to apply for final approval in late Spring 2017.
29. Once the application for final approval of the Draft Plan is submitted, the Receiver has been advised by Gowlings that it typically takes one to two months to receive final approval from the City.

## STATUS OF THE REMEDIATION OF BUILDING DEFICIENCIES

30. As discussed in its Third Report, upon its appointment, the Receiver authorized certain immediate repairs to the mechanical systems to ensure that the HVAC system was functioning appropriately, and for certain rooftop mechanical pumps to repair leaks and bring the systems into proper functioning capacity. As noted above, the Receiver also engaged NLA to conduct a BAR of the Property. NLA undertook a thorough review of the Building and in March 2012 delivered the BAR. As detailed in the BAR, NLA identified a number of deficiencies in the Building, the most significant of which involved the windows, glass sliding doors, balcony guardrails, roof and garage waterproofing, mechanical issues and exterior walls and caulking. A summary of the deficiencies identified in the BAR is set out in Appendix "F" attached to the Seventh Report.
31. As a result of the disposition of the Priority Motion, Peoples advised the Receiver that it was in a position to move forward with funding the balance of the Building remediation in order to meet the requirements for application to the City of the Draft Plan. At the Receiver's direction, NLA prepared tender packages for the Building envelope repairs that were required to be made to obtain the certification. The general scope of Building envelope work involved:
- removal of existing windows, frames, and sliding doors metal panels, and supply and installation of new aluminium framed thermal windows, insulated metal panels, insect screens, and insulated metal patio doors;
  - retrofitting of existing guardrails at all balconies to meet dimensional requirements of the Ontario Building Code;
  - tuckpointing of all missing or prematurely deteriorated brick mortar joints; and,
  - installation of new metal flashing at specified areas.
32. As a result of the tender process, the Receiver entered into a Standard Construction Document CCDC2-2008 with KC Structural Ltd. dated July 25, 2014 (the "Remediation



**Contract**). The base amount of the Remediation Contract was \$2,375,400 plus HST. After incorporating NLA's fees in respect of the design, tendering and project management of the Remediation Contract, and the addition of a performance bond and a labour and material payment bond, the total cost of the Remediation Contract was \$3,048,499 including HST. The Remediation Contract was completed in late fall of 2015.

33. In addition to the Remediation Contract, the Receiver engaged contractors to repair other Building envelope deficiencies, including repair of deteriorated concrete in the underground parking garage and installation of a waterproofing membrane, and waterproofing the mechanical penthouse, at a cost of \$136,617 including HST.

#### **STATUS OF LIFE-LEASE RESIDENCE AND UNIT HOLDERS**

34. The various court appearances, orders and endorsements concerning the Priority Motion are discussed in paragraphs 4 to 16 above, the net result of which is the following:

- The ALU Settlement (28 Units, but as the result of the bifurcation of Unit PH6 into PH4 and PH6, now 29 Units) and the December 13 Settlements (14 Units) (collectively, the "**Settlements**"), as approved by the ALUs Settlement Approval Order and the December 13 Order, respectively, and the proposed settlement with Mugungwha Homes for Unit 207 as discussed below, allowed for holders of Right to Occupy Agreements ("**RTOAs**") representing 44 units (the "**Settlement Units**") to continue to occupy their unit pending the conversion of the Building to condominiums, at which point those settling Unit-holders can elect to close the purchase of their unit(s) by the payment of amounts as stipulated in the settlements, or abandon their interest in their Units. Upon the final approval of the Plan of Condominium, the Receiver will provide the parties to the Settlements with a Purchase Notice as provided for in the ALUs Settlement Approval Order and the December 13 Order. The Purchase Notice will set out the total amount due on closing should they elect to purchase their unit, which amount will include the settlement amount owing plus any unpaid common area maintenance fees and unpaid interest required to be paid pursuant to RTOAs (the "**Unit Purchase Price**"). Those parties will have 60 days from the date of Purchase Notice to pay

the Receiver the Unit Purchase Price, failing which the Receiver will be free to sell the Unit free and clear of any and all claims of the Unit-holder; and,

- The November 14 Priority Claims Order (24 Units), the December 13 Order (17 Units) and the February 6 Order (7 Units) declared that Peoples is entitled to priority over the claims of all persons claiming an interest in 48 Units. After consideration of the proposed settlement with Mugungwha Homes for Unit 207, as discussed below, the total number of units that Peoples is declaring priority over is 47 Units (the "**Peoples Priority Units**"). A schedule listing the 47 Peoples Priority Units, which includes details concerning their size and configuration, is attached hereto as **Appendix "E"**;

35. With respect to Unit PH6 (the "**Bifurcated Unit**"), the Settlement that Peoples entered with the ALU for that Unit was completed before it was discovered that the Unit had been split into two Units (PH6 and PH4). As a result, upon the final approval of the Plan of Condominium by the City, and in the event the Unit-holder of the Bifurcated Unit elects to complete the purchase of the Bifurcated Unit, the Receiver will take steps to convey both Units PH4 and PH6 to that ALU.
36. With respect to Unit 207, both Unimac and Mugungwha Homes claimed an interest in that Unit. Prior to the December 13 Hearing, Mugungwha Homes entered into a conditional settlement agreement with Peoples and the Receiver (the "**Unit 207 Settlement**") which agreement applied the same terms, including payment methodology, as was employed in the ALU Settlements. Justice Mesbur declined to approve the Unit 207 Settlement prior to the disposition of Unimac's claim to Unit 207. A copy of the Unit 207 Settlement is attached hereto as **Appendix "F"**.
37. Given Justice Brown's February 6 Order declaring that Peoples is entitled to priority over the Unimac Units, over the claims of all other parties in the those Units, and given that the Unimac Appeal was dismissed by the Court of Appeal, Peoples has advised the Receiver that it wishes to seek this Court's approval for the Unit 207 Settlement.

Extension of Settlement Agreements

38. The ALUs Settlement Approval Order provided that the ALU Settlements (28 Units) would be effective until 12 months after the date of court approval of the ALU Settlements (the “**ALU Outside Date**”), unless Peoples, in its sole discretion, agrees in writing to extend to a later date. The initial ALU Outside Date was September 9, 2014. As the work to register the Property as a condominium had not been completed by the initial ALU Outside Date, Gowlings on behalf of Peoples has written to the settling ALUs from time to time as required giving them notice that Peoples was extending the ALU Outside Date. The most recent notices issued on March 9, 2017 extend the ALU Outside Date by a further six months.
39. The settlements with the Unit-holders claiming an interest in the non-ALU Units (14 Units), which were approved in the December 13 Order, also provided for an outside date that is twelve months after court approval (the “**Non-ALU Outside Date**”). Similar to the ALU Settlements, by various letters, the most recent dated December 13, 2016, Gowlings on behalf of Peoples extended the Non-ALU Outside Date by a further six months.

Unimac Units and Yoon Units

40. Upon the resolution of the Priority Issue, the Receiver determined that of the 48 Peoples Priority Units (now 47), 10 Units were occupied by either a relative or third-party tenant of the former Unit-holder (the “**Occupied Units**”) while the remainder were vacant. Accordingly, on July 29, 2014, the Receiver delivered Notices to Tenants, Demands for Particulars of Tenancy Agreement and Notices of Rental Attornment (the “**Notices**”) to each of the occupants of the Occupied Units.
41. Subsequent to the delivery of the Notices, while certain of the tenants commenced paying the Receiver their monthly lease payments, the majority did not. As a result, the Receiver sought the March 6 Order. The occupants of the Occupied Units, Unimac, Leon Hui and John Yoon and counsel for Unimac and Leon Hui (Justin Baichoo) were all provided with a copy of the motion material in support of the March 6 Order, as well as with a copy of the March 6 Order when issued. A copy of the affidavit of service of Eric Golden sworn March 6, 2015, that was before Justice Wilton-Siegel on March 6, 2015, as

well as Mr. Golden's letters dated March 4 and March 19, 2015 to the tenants of Unit PH8, Mr. Golden's emails dated March 10, 2015, to the entire email Service List (including Justin Baichoo) and to Justin Baichoo individually, and Mr. Golden's letters of March 10, 2015 to Justin Baichoo and Leon Hui are attached hereto as **Appendix "G"**.

42. In addition, a copy of the Order of Justice D. M. Brown made February 6, 2014, granting Peoples priority over Unimac's claim to six Units and Leon Hui's claim to one additional Unit was delivered to the occupants of those Units, including the occupants of Unit PH8, on or about July 29, 2014 (see Appendix "G" of the Receiver's Seventh Report dated March 3, 2015).
43. Of those tenants served, the tenant of Unit 301, Jonathan Yapp, and the tenant of Unit PH8, Grace Kim, failed to pay any rent to the Receiver.
44. In the case of Unit 301, the Receiver sent a number of demands for payment of rent to Mr. Yapp who refused to comply with the March 6 Order. The Receiver understands that in or around October 2016, Mr. Yapp vacated Unit 301. In addition, there has been further turnover in the Building such that only three of the Occupied Units are currently still occupied, being Units 1105, PH1 and PH8.
45. The tenants occupying Units 1105 and PH1 continue to pay monthly rent for their Units at the same amount as they were paying in April 2015 (\$1,300). Unit 1105 is a 2 bedroom, 2 bathroom unit totaling 825 sq. ft. and Unit PH1 is a 1 bedroom + den, 2 bathroom unit measuring 857 sq. ft. By way of comparison, Unit PH8, is a 2 bedroom, 2 bathroom unit measuring 1,181 sq. ft.
46. The March 6 Order required the tenants of the Occupied Units pay rent for their Unit to the Receiver from the date of that Order based on the terms of their lease, and to the extent there is no lease, at market rates as determined by the Receiver.
47. In the case of Unit PH8, after a number of requests to forward rent payments to the Receiver, by email dated April 28, 2015 (i.e. more than 30 days after the March 6 Order and after notice of that Order and the supporting material was provided to the occupants of PH8, and to Unimac, Hui and Justin Baichoo), Grace Kim provided the Receiver with

an Agreement to Lease dated June 28, 2014 (one month before the date of the Notices) between Grace Kim and Imseop Kim as lessees and Unimac Group Ltd as "landlord" (the "**Purported Unit PH8 Lease**").

48. The Receiver has been advised that Imseop Kim is Grace Kim's mother and a former resident of the Nursing Home. The Purported Unit PH8 Lease provides for a long-term lease of nine years and two months commencing on July 1, 2014 with rent comprising "a lump sum payment of Thirty Three Thousand Canadian Dollars (CDN\$ 33,000.00) before closing and this lump sum shall cover the terms of Nine (9) years and Two (2) months." This rental term equates to monthly rent of \$300 for a two-bedroom, 1,181 sq. ft. suite, which is also the largest unit in the Life-Lease Residence. Under the terms of use under the Purported Unit PH8 Lease, the following has been added: "Retirement Residential – This Rental Agreement superseded previous Rental Agreement, as a settlement from the physical abuse and wrongful discharge of IMSEOP KIM by Rose O [sic] Sharon LTC as claimed by the Tenant, see pictures attached. Tenant tried to appeal in Court before Judge Brown twice." Attached to the April 28, 2015 email is a copy of the front of cheque dated June 28, 2014, for \$33,000.00 written by Mr. In Soo Pak and Mrs. Young Sook Pak to Unimac Group Ltd. The Receiver is unaware if the cheque was cashed, or if so on what date. The Receiver believes Mrs. Pak to be the sister of Grace Kim. A copy of the April 28, 2015, email along with the Agreement to Lease and cheque are attached hereto as **Appendix "H"**. The Receiver was not provided with a copy of any previous Rental Agreement that was apparently superseded by the Purported Unit PH8 Lease.
49. Neither Unimac, nor anyone else, was authorized to enter into the Purported Unit PH8 Lease on their own behalf, or on behalf of the Receiver or Peoples, or deal with Unit PH8 in any way, shape or form. The Purported Unit PH8 Lease was entered into without the knowledge or consent of Peoples and the Receiver.
50. On or about March 8, 2017, the Receiver delivered to the Kims a Notice to End Tenancy for Non-payment of Rent totalling \$31,200.00, which is attached hereto as **Appendix "I"**.

51. With respect to Imseop Kim, the Nursing Home Manager advises that she was indeed a former resident of the Nursing Home and there were a number of incidents concerning Grace Kim and the Nursing Home Staff. On August 30, 2013, as a result of an incident at the Nursing Home on August 29, 2013, a Critical Incident Report was submitted to the Ministry of Health and Long-Term Care (the "Ministry") by the Nursing Home Administrator concerning Grace Kim's abusive behaviour to staff. The Receiver was advised by the Nursing Home Administrator that in October 2013, Grace Kim contacted the local police to report abuse allegations against staff at the Nursing Home. The Receiver was advised by ACC that the police found the allegations to be groundless, no charges were filed, and the police supported restricting Grace Kim's visits. As a result of excessive vacation absences from the Nursing Home, pursuant to O. Reg. 79/10, s 146(4)(c), Imseop Kim was discharged on January 2, 2014. The Receiver believes that since her discharge, Imseop Kim has been living with Grace Kim in unit PH8.
52. The Receiver is seeking a Declaration that the Kims do not have any right, title or interest in Unit PH8, and that the Purported Unit PH8 Lease is void *ab initio*. As well, the Receiver is seeking an Order providing it with vacant possession of Unit PH8 and, should the Kims take the position that they are tenants, judgment against them for \$31,200 being the minimum rent they would have had to pay the Receiver for rental of Unit PH8 since April, 2015 (\$1,300 per month).

#### NURSING HOME UPDATE

53. The Nursing Home continues to be fully occupied with an average occupancy for the year-to-date ending December 31, 2016 of 99.8%. The Nursing Home has a wait list of approximately 150 applicants.
54. In its report dated March 27, 2015, the Ministry provided the results of its annual Resident Quality Inspection ("**RQI Inspection**") of the Nursing Home, which it conducted between March 4 and March 11, 2015. The purpose of the Resident Quality Inspection is to ensure long-term care homes comply with the *Long Term Care Homes Act, 2007* and its regulations, which the Ministry achieves through interviews with residents, family members and staff, direct observations of how care is being delivered

and record reviews. The Ministry identified six areas of non-compliance (down from thirteen in the previous year's review) for which it requested the Nursing Home prepare written plans of correction action to achieve compliance. The written plans of correction were submitted to the Ministry within the required timeframe and no further actions were required. The Nursing Home Manager has advised the Receiver that the results of the RQI Inspection were one of the best amongst the long-term care facilities that they manage.

55. In its report dated February 16, 2017, the Ministry provided the results of a further RQI Inspection conducted between January 4 and 12, 2017. During this RQI Inspection, the Ministry investigated an incident that occurred on October 31, 2016, wherein a resident sustained injuries as a result of a fall during bathing. The Ministry initially issued a Compliance Order requiring the Nursing Home to "review and revise the plan of care for that resident to ensure he/she is monitored during bathing". The Nursing Home appealed the Compliance Order, which appeal was upheld and the Compliance Order was rescinded.
56. Attached hereto as **Appendix "J"** is a Summary Statement of Income for the period January 1 to December 31, 2016 for the Nursing Home. As set out in the operating statement, the Nursing Home has generated positive net income of approximately \$512,000 for the 12-month period, which is approximately \$132,000 or 26% greater than budgeted operating income. The positive operating income variance is essentially due to lower than budgeted expenses in repairs and maintenance, utilities (as a result of a hydro refund relating to prior years) and realty taxes. With respect to realty taxes, MPAC reassessed the Nursing Home in 2016 making it exempt from realty taxes, resulting in no realty expense for the year, which was partially offset by the requirement to repay to the Ministry funding received up to the date of the reassessment (the Ministry reimburses 85% of realty taxes).

## MARKETING AND SALE PROGRAMS

### Residential Component

57. With the Priority Motion issues resolved, the Building remediation complete and approval of the Draft Plan received, the Receiver approached real estate brokers who specialize in condominiums in order to solicit proposals for the marketing and sale of the residential component of the Building.
58. The Receiver contacted five brokers who have experience in the marketing and sale of condominium residences. Of those contacted, two elected to tour the Property and submit proposals. Of the proposals received, the Receiver determined that the proposal from Milborne Real Estate Inc. ("Milborne") provided the most appropriate marketing program and fee structure.
59. Milborne advises that it has over 37 years of experience in condominium sales acting on behalf of over 700 developments and selling over 100,000 units involving residential condominiums, hotel condominiums, condominium conversions, hotel conversions to residential, commercial condominiums and resort properties. Milborne considers itself the most experienced project marketing company in Toronto and estimates that it has 30% market share of the total units for sale being marketed by outside agencies.
60. Milborne's proposed marketing plan involves the following:
- Reviewing each residential Unit to assess any work required both in the individual units and common areas with a view to maximization of sale proceeds;
  - Providing recommendations regarding refinements/extras to maximize proceeds and to compete with similar condominium offerings in the area;
  - Preparing a detailed Competitive Market Analysis presenting both relevant resale and new competition to assist in establishing pricing with a view to maximizing proceeds in a reasonable timeframe;
  - Preparing suggested additions or modifications to the Property to maximize revenue, including analysis of parking and storage locker spaces;



- Reviewing agreements of purchase and sale, disclosure statements, condominium budgets, declarations and by-laws, and surveys to assist with the sale process;
  - Establishing furnished model suites and an on-site office staffed by Milborne reception and sales personnel; and,
  - Promoting the condominiums via on-site signage, open houses, Multiple Listing Service, social media, and other appropriate methods (the cost of which will be borne by the Receiver).
61. The Receiver and Milborne have negotiated a Residential Condominium Marketing and Sales Agreement (the “**Milborne Agreement**”), a copy of which is attached hereto as **Confidential Appendix “A”**, which sets out the terms and conditions under which Milborne will market and sell available residential Units (representing those Units not subject to a Settlement Agreement, and those units subject to a Settlement Agreement but for which the unitholder elects not to complete the purchase of the Unit). The Milborne Agreement includes the following key terms:
- Six month listing agreement, which automatically renews in further one month increments, and which can be terminated by either party on 30-day’s notice;
  - A fee for one-time mobilization costs payable upon execution of the Milborne Agreement, which is to cover preparation time, unit walk-throughs and preparation of deficiency lists, upgrade and improvement recommendations and document review;
  - Selling commissions at market rates, and provisions for co-broker arrangements should a purchaser be introduced to the Property through their own real estate broker;
  - The Receiver shall be responsible for the costs of establishing the on-site sales office including rent, utilities, site administration, reception staff, equipment, services, supplies, insurance, and business and real estate taxes; and,

- Milborne will compensate and supervise all full-time qualified sales agents as may be reasonably required to sell the units in an effective manner.
62. The Receiver is of the view that Milborne is sufficiently experienced and qualified to conduct the marketing and sale process for the residential component of the Building and that the terms of the Milborne Agreement are reasonable. Both Peoples and CMHC have advised the Receiver that they approve of the engagement of Milborne under the terms of the Milborne Agreement.
63. The Receiver is seeking the Court's approval to enter into and carry out the terms of the Milborne Agreement. The Receiver is further seeking that Confidential Appendix "A" filed with this Court be sealed until such time as all of the residential Units are sold and closed.

#### Nursing Home

64. The Receiver obtained a listing proposal and Exclusive Listing Agreement (the "**Jensen Listing Agreement**") from John Jensen Realty Inc. ("**Jensen Realty**") for the marketing and sale of the Nursing Home. Jensen Realty specializes in the purchase and sale of seniors housing properties and advises that it has sold or financed over 150 seniors housing properties with an aggregate transaction value in excess of \$1 billion. The Receiver has engaged Jensen Realty in previous receivership situations involving seniors housing which resulted in successful transactions. Given the relatively small size of the Nursing Home, both in terms of beds and potential sale price, and the fact that the proposed listing agreement with Jensen Realty represent normal market terms, the Receiver is of the view that incurring fees soliciting and evaluating further listing proposals would not be in the best interests of the estate. A copy of the Jensen Listing Agreement is attached hereto as **Confidential Appendix "B"**.

65. Jensen's proposed marketing plan involves the following:
- Implementing a high profile marketing campaign that includes newspaper advertising, posting the opportunity on Jensen Realty's website, networking with other real estate brokerages in the seniors housing sector and distribution of an email teaser to Jensen Realty's proprietary database of over 400 parties interested in seniors housing investment opportunities.
  - Establishing an online data room with relevant information concerning the operation of the Nursing Home including financial and operating statements, budgets, contracts and agreements, and offer documentation; and,
  - Establishing an appropriate "Sunrise Date" for the acceptance of offers. A Sunrise Date is the earliest date at which offers will be accepted, and is typically one to two months from the commencement of the marketing process, depending on the time of year, the nature of the property and the interest in the market. The Sunrise Date methodology allows for an ample amount of time for interested parties to be made aware of the availability of the Nursing Home, execute a confidentiality agreement, and perform their due diligence in order to submit an offer for the property in a form to be provided in the data room.
66. Jensen Realty has suggested that the marketing campaign exclude an asking price so as not to set a target in purchaser's minds. The Receiver agrees with this recommendation. The Receiver and Jensen Realty will set the Sunrise Date based on the timing of commencement of the marketing process should the Court approve the Receiver entering into the Jensen Listing Agreement.
67. The Jensen Listing Agreement provides for a brokerage commission at market rates and provides for a co-broker arrangement should the purchaser be introduced to the property by a cooperating broker. The term of the Jensen Listing Agreement is 6 months, which term can be extended by way of mutual agreement between the parties.

68. Both Peoples and CMHC have advised the Receiver that they support the engagement of Jensen Realty under the terms of the Jensen Listing Agreement. The Receiver is seeking this Court's approval to enter into the Jensen Listing Agreement. The Receiver is further seeking that Confidential Appendix "B" filed with this Court be sealed until such time as a closing of the sale of the Nursing Home has been completed.

## STATEMENT OF CLAIM

### Statement of Claim

69. As detailed in paragraphs 174 through 182 in the Third Report, given the extent of deficiencies identified in the BAR, on September 14, 2012, Rose, by its Receiver, issued and served a Statement of Claim (the "**Statement of Claim**") against i) 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 pursuant to the Performance Bond; ii) Unimac Group Ltd. operating as Mikal-Calladan Construction Inc., Unimac Group Ltd. and Mikal Calladan Construction Inc. (the general contractor), iii) Victor J. Heinrichs Architect Inc. and Victor J. Heinrichs Inc., (the architect), iv) York Health Care Developments Inc. (the project manager), 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.
70. In its Fifth Report, the Receiver reported that:
- pleadings in this Building Action against the bonding company had closed;
  - the Statement of Claim had been amended to add Royal Windsor Mechanical as a party defendant. Royal Windsor Mechanical failed to defend and had been noted in default; and,
  - the remaining parties, including Unimac, had agreed to a timetable that required affidavits of documents to be delivered before December 31, 2013, with

discoveries to be held in June, 2014. The plaintiff delivered its affidavit of documents on November 4, 2013. Only one other party, N.C.K. Engineering Ltd., who had been brought into the litigation via a third party claim by the architect, had delivered its affidavit of documents as of the date of the Fifth Report.

71. Examinations for discovery have been completed, with the exception of examinations of the defendants Unimac Group Ltd. and Mikal-Calladan Construction Inc. Despite numerous requests, and contrary to a court-ordered Discovery Plan, they have not produced witnesses for examinations for discovery. The Receiver is moving to strike the statements of defence of those two parties. The Receiver has also answered its undertakings.
72. 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.
73. On November 3, 2016, the Receiver participated in a mediation with Heinrichs and York. The mediation failed to result in a settlement and the Receiver intends to move forward to trial. Neither Unimac nor Mikal-Calladan Construction Inc. attended the mediation, and the Receiver intends to go to trial against both of them if they continue to defend.

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

74. Attached hereto as **Appendix "K"** is the Receiver's Interim Statement of Receipts and Disbursements for the period September 28, 2011 to March 31, 2017 (the "**R&D**"). The R&D indicates that as of March 31, 2017, the balance in the Receiver's bank account 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 \$262,824. The R&D excludes the bank account maintained by the Nursing Home manager for the Nursing Home which is discussed in the following paragraph. In addition, the R&D excludes proceeds received from Jain and Shore as described in paragraph 72 above as pursuant to the Full and Final Release executed between the parties, the amount of these settlements is not to be disclosed.

75. 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 March 31, 2017, the balance in the bank account maintained by the Nursing Home operator (Assured Care Consulting) is \$1,022,406. 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, \$850,000 in excess funds have been transferred back to the Receiver's bank account.
76. The Receiver is seeking the Court's approval of the R&D.

#### STATEMENTS OF ACCOUNT OF THE RECEIVER AND ITS COUNSEL

77. The Receiver's fees for services rendered for the period December 1, 2014 to March 31, 2017, in respect of its activities as Receiver are particularized in the Affidavit of Hartley Bricks sworn May 2, 2017, and the invoices attached as exhibits thereto. The total amount of the invoices for this period is \$401,086.72, inclusive of HST ("**Receiver Fees**").
78. The fees and disbursements of Blaneys, independent counsel to the Receiver, in respect of work performed for the period October 1, 2014 to December 31, 2016, is particularized in the affidavit of Chad Kopach sworn May 11, 2017. The total amount of the invoices for this period is \$51,633.19 inclusive of HST ("**Blaneys Fees**").
79. As discussed above, KRMC acted as ILA Counsel to certain non-ALUs concerning the December 13 Settlements. The Order of Justice Mesbur made November 22, 2013, appointing KRMC to its ILA Mandate provided for payment of KRMC's fees up to a maximum amount of \$15,000.00 (excluding disbursements and HST). The Order of Justice Wilton-Siegel made March 6, 2015, approved KRMC's fees for its ILA Mandate to March 6, 2015, totalling \$11,883.52 (including disbursements and HST, and a fee estimate of \$2,666.80 for time after March 21, 2014 to complete the ILA Mandate). I am advised by Phillip Cho of KRMC that this estimate was below actual fees incurred, due in part to attempts by Mr. Baichoo's clients to set aside, vary and/or appeal certain Orders

of Justice Mesbur. The actual fees and disbursements of KRMC in respect of work performed on its ILA Mandate from March 22, 2014 to March 20, 2015, are set out in the final KRMC invoice dated April 8, 2015, included in the fee affidavit of Philip Cho sworn May 11, 2017. The total of the invoice for that period is \$3,318.56 (the "KRMC Fees"), but the total fees billed by KRMC for its entire ILA Mandate are still below the maximum amount provided for in the Order of Justice Mesbur made November 22, 2013 (\$15,000.00, plus HST and disbursements), even taking into account the additional KRMC Fees.

80. The Receiver has reviewed the invoices of Blaneys and KRMC, and finds the work performed and charges to be appropriate and reasonable.
81. The Receiver sought and received the approval of Peoples to the Receiver taking interim draws against the fees of the Receiver, Blaneys and Gowlings.
82. The Receiver is seeking this Honourable Court's approval of its activities to March 31, 2017, and the Receiver Fees, Blaneys Fees and KRMC Fees.

#### RECEIVER'S REQUEST TO THE COURT

83. The Receiver is respectively seeking an Order:
  - i) approving this Eighth Report and the actions and activities of the Receiver from December 1, 2014 to March 31, 2017;
  - ii) approving the Receiver entering into the Milborne Agreement for the marketing and sale of the available residential units and sealing the Milborne Agreement until such time as all of the residential Units are sold and closed;
  - iii) approving the Receiver entering into the Jensen Listing Agreement for marketing and sale of the Nursing Home and sealing the Jensen Listing Agreement until such time as a sale of the Nursing Home has closed;
  - iv) declaring that the Kims do not have any right, title or interest in Unit PH8, and that the Purported Unit PH8 Lease is void *ab initio*;

- v) if the Kims take the position that they are tenants of Unit PH8, judgment against Grace Kim for \$31,2000.00, being the minimum market rent that should have been payable by them to the Receiver as tenants for Unit PH8 since April 1, 2015;
- vi) regardless of whether the Kims are tenants or occupants, providing the Receiver with vacant possession of Unit PH8;
- vii) approving the R&D;
- viii) declaring that KRMC has fulfilled its mandate as ILA counsel to the ILA Unit-Holders, and discharging KRMC as ILA counsel to the ILA Unit-Holders; and,
- ix) approving the Receiver Fees, the Blaneys Fees and the KRMC Fees.

All of which is respectfully submitted to this Honourable Court.

DATED this 12<sup>th</sup> day of May, 2017

**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:



Adam Bryk, CPA, CA, CIRP, LIT  
*Senior Vice-President*



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



**TAB C**

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

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

THE HONOURABLE  
JUSTICE BATTILLO

)  
)  
)

TUESDAY, THE 6<sup>TH</sup> DAY  
OF JUNE, 2017



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

**PEOPLES TRUST COMPANY**

Applicant

- and -

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

Respondent

**A P P R O V A L O R D E R**

**THIS MOTION** made by **Deloitte Restructuring Inc.**, in its capacity as Receiver and Manager over all of the current and future assets, undertakings and properties of the Respondent (in that capacity, the "**Receiver**") for an Order (i) abridging the time for service of the Notice of Motion and Motion Record herein, validating service of the Notice of Motion and Motion Record, and dispensing with further service thereof, (ii) approving the Eighth Report to the Court of the Receiver dated May 12, 2017 (the "**Eighth Report**"), and the actions and activities of the Receiver as set out therein, (iii) authorizing the Receiver to enter into a Marketing and Sales Agreement with Milborne Real Estate Inc. for the marketing and sale of the available residential condominium units of the Rose of Sharon Life-Lease-Residence (the "**Life Lease Residence**"), and approval of this Marketing and Sales Agreement, (iv) authorizing the Receiver to enter into

- 2 -

an Exclusive Listing Agreement with John A. Jensen Realty Inc. to market and sell the Rose of Sharon nursing home (the "**Nursing Home**") and approval of this Exclusive Listing Agreement, (v) sealing Confidential Appendix "A" to the Eighth Report until all of the residential units of the Life-Lease Residence are sold and those sales have all closed, and sealing Confidential Appendix "B" to the Eighth Report until the Nursing Home is sold and that sale has closed, (vi) approving and accepting the Receiver's Interim Statement of Receipt and Disbursements for the period from September 28, 2011 to March 31, 2017, (vii) declaring that Kronis, Rotsztain, Margles, Cappel LLP ("**KRMC**") has fulfilled its mandate as counsel providing independent legal advice ("**ILA Counsel**") to certain Unit-holders in the Rose of Sharon Life-Lease Residence (the "**ILA Unit-Holders**") regarding settlements that those Unit-holders entered into with the Applicant Peoples Trust Company ("**Peoples**"), and discharging KRMC as ILA counsel to the ILA Unit-Holders, and (viii) approving the fees and disbursements of the Receiver for the period from December 1, 2014 to December 31, 2016, the fees and disbursements of Blaney McMurtry LLP ("**Blaneys**") for the period from October 1, 2014, to December 31, 2016, and the fees and disbursements of KRMC for the period from March 22, 2014 to March 20, 2015, was heard this day at Toronto.

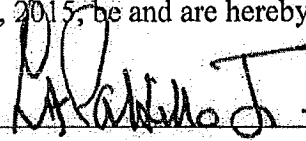
**ON READING** the Receiver's Motion Record dated May 12, 2017, the Eighth Report, the Receiver's Supplementary Report to the Eighth Report dated June 5, 2017, the affidavit of Hartley Bricks sworn May 2, 2017, the affidavit of Chad Kopach sworn May 11, 2017, and the affidavit of Phillip Cho sworn May 11, 2017, and upon hearing the submissions of counsel for the Receiver and counsel for Peoples, and counsel for 2383431 Ontario Inc., no one else appearing,

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion returnable May 31, 2017 (the "NOM"), and related motion material filed in support of that NOM (the "Motion Material"), be and is hereby abridged, that service of the NOM and Motion Material is hereby validated, and that further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS** that the Eighth Report dated May 12, 2017, and the actions of the Receiver described therein, be and are hereby approved.
3. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to enter into a Marketing and Sales Agreement with Milborne Real Estate Inc. for the marketing and sale of the available residential condominium units of the Life-Lease Residence, and approval of this Marketing and Sales Agreement.
4. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to enter into an Exclusive Listing Agreement with John A. Jensen Realty Inc., to market and sell the Nursing Home, and approval of this Exclusive Listing Agreement.
5. **THIS COURT ORDERS** that Confidential Appendix "A" to the Eighth Report be and is hereby sealed until all of the residential units of the Life-Lease Residence are sold and those sales have all closed, and that Confidential Appendix "B" to the Eighth Report be and is hereby sealed until the Nursing Home is sold and that sale has closed.
6. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period from September 28, 2011 to March 31, 2017 as set out at Appendix "A" of the Receiver's Supplementary Report to the Eighth Report, be and is hereby accepted and approved.

- 4 -

7. **THIS COURT DECLARES** that KRMC be and is hereby discharged as ILA Counsel to the ILA Unit-Holders.

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



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

JUN 07 2017

PER / PAR:



**PEOPLES TRUST COMPANY**

and

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

Applicant

Respondent

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

Proceeding Commenced at **TORONTO**

**APPROVAL ORDER**

**BLANEY McMURTRY LLP**  
Barristers and Solicitors  
1500 — 2 Queen Street East  
Toronto, ON M5C 3G5

**Eric Golden (LSUC #38239M)**  
**Chad Kopach (LSUC #48084G)**  
(416) 593-1221 (Tel)  
(416) 593-5437 (Fax)

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

**TAB D**



City Planning Division

Toronto City Hall  
100 Queen Street West  
12<sup>th</sup> Floor, East Tower  
Toronto ON M5H 2N2

Jennifer Keasmaat, MES MCIP RPP  
Chief Planner and Executive Director

Fax: (416) 392-1330  
Refer to: Carla Tsang at (416) 395-7137  
E-Mail: ctsang@toronto.ca  
www.toronto.ca/planning

Gowling Lafleur Henderson LLP  
David Tang  
100 King St W Suite 1600  
Toronto ON M5X 1G5

Re: **Notice of Decision Under S.51(37) of The Planning Act**  
Draft Plan of Standard Condominium  
Condominium Approval 15 268792 STE 21 CD  
165 - 171 Vaughan Road  
Ward 21 - St. Paul's

The above draft plan of standard condominium has been approved subject to the attached conditions and a 20-day appeal period from the date of this letter. A copy of the plan, endorsed to this effect, is enclosed. This approval applies to Draft Plan of Condominium of Part of Lots 24, 25 and 26, Block F of Registered Plan 875 (York), Drawing No. 2166-ODP1, Sheets 1-3, prepared by D. Miret, Ontario Land Surveyor, and date stamped received by the City of Toronto on January 4, 2016. An approved copy of the plan is enclosed.

The applicant, any person or public body who 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 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 Ontario Municipal Board setting out the reasons for the appeal, accompanied by the fee prescribed under the *Ontario Municipal Board Act* in the amount of \$125.00 payable by cheque to the Minister of Finance, Province of Ontario. The notice of appeal is to be filed with the City Clerk, Attention: Ellen Devlin, Administrator, Toronto and East York District, 100 Queen St W Floor 2west, 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 Ontario Municipal Board. 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 Ontario Municipal Board'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 conditions, after the 20<sup>th</sup> day from the date of this letter.

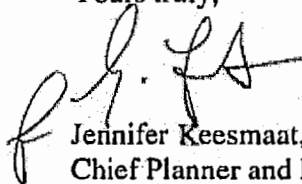
When the final plan is prepared it should be forwarded, along with the required copies, to Gregg Lintern, MCIP RPP, Director, Community Planning, Toronto and East York District, 18th Floor East Tower, City Hall, 100 Queen Street West, Toronto ON M5H 2N2. We need to receive:

1. the original set of mylars
2. one (1) mylar print
3. four (4) paper prints

If the draft plan complies with the terms of approval and all 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 Carla Tsang, Assistant Planner at (416) 395-7137 if you have any questions.

Yours truly,



Jennifer Keesmaat, MES MCIP RPP,  
Chief Planner and Executive Director  
City Planning Division

July 11.16

Date

Attachment  
Enclosure

cc: Rose Of Sharon (Ontario) Retirement Community, 53 The Links Rd, Toronto ON M2P 1T7  
Administrator, City Clerk's Office, Toronto and East York District (no enclosures)  
Director, Planning & 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)  
Joe Mihevc, Councillor (no enclosures)

**Attachment: 1****City File No. : 15 268792 STE 21 CD****CONDITIONS**

This approval applies to Draft Plan of Condominium of Part of Lots 24, 25 and 26, Block F of Registered Plan 875 (York), Drawing No. 2166-ODP1, Sheets 1-3, prepared by D. Miret, Ontario Land Surveyor, and date stamped received by the City of Toronto on January 4, 2016. An approved copy of the plan is enclosed.

- (1) The plans submitted for final approval and registration must be substantially in accordance with the approved draft plans specified above. Any revisions to these plans must be approved by the Chief Planner's designate, the Director of Community Planning, Toronto and East York District.
- (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.

- (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;
  - 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 retail 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 & Construction Services when the services are being shared.
- (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 draft plan approval, then this approval shall be null and void and the plans and drawings must be resubmitted to the City of Toronto for approval.

**Attachment: 2****City File No. : 15 268792 STE 21 CD****ADVISORY NOTES**

- (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.

**BETWEEN:**

**PEOPLES TRUST COMPANY**

**- and -**

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

**Applicant**

**Respondent**

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

(PROCEEDING COMMENCED AT TORONTO)

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

**GOWLING WLG (CANADA) LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto, ON M5X 1G5

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Solicitors for the Moving Party

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

**PEOPLES TRUST COMPANY**

**- and -**

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

**Applicant**

**Respondent**

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

(PROCEEDING COMMENCED AT TORONTO)

**MOTION RECORD**  
**(returnable 1 April 2019)**

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