

Court File No. CV-16-11290-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

IN THE MATTER OF MAPLE BANK GmbH

AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,  
R.S.C. 1985, C.W-11, AS AMENDED

AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

SIXTH REPORT OF KPMG INC. IN ITS CAPACITY AS  
COURT APPOINTED LIQUIDATOR OF THE BUSINESS IN CANADA OF MAPLE BANK  
GMBH AND ITS ASSETS AS DEFINED IN SECTION 618 OF THE *BANK ACT*

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- Appendix D - Copy of press release made by Equitable Bank announcing the Equitable Transaction dated September 12, 2016
- Appendix E - Redacted copy of Successor Issuer Agreement between Equitable Bank and the Canada Mortgage and Housing Corporation dated September 12, 2016 and related agreements
- Appendix F - Redacted copy of Agreement of Purchase and Sale dated September 12, 2016 between the Liquidator and Equitable Bank

# ***1. INTRODUCTION AND PURPOSE OF REPORT***

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## **BACKGROUND**

1. Maple Bank GmbH (“**Maple Bank**”) is a Canadian-owned German bank, and an authorized foreign bank in Canada under section 2 and Part XII.1 of the *Bank Act* (an “**Authorized Foreign Bank**”). In Germany, Maple Bank is subject to regulation by the Federal Financial Supervisory Authority (“**BaFin**”). As an Authorized Foreign Bank, Maple Bank was regulated with respect to its business in Canada (the “**Toronto Branch**”) by the Office of the Superintendent of Financial Institutions (“**OSFI**”).
2. As more fully described in the Liquidator’s first report to this Court dated March 2, 2016 (the “**First Report**”), in the period leading up to the commencement of the *Winding Up and Restructuring Act* (“**WURA**”) proceeding, the Toronto Branch had three major lines of business: (i) the origination and securitization of real property mortgages in Canada; (ii) structured secured lending; and (iii) security financing transactions (collectively, the “**Business**”).
3. The emergence of significant German tax claims against Maple Bank (said to arise from alleged tax evasion in Germany) and the resulting indebtedness of Maple Bank led to:
  - i. BaFin imposing a moratorium on Maple Bank’s business activities, which caused Maple Bank to cease business and institute insolvency proceedings in Germany (the “**Moratorium**”);
  - ii. The appointment of a German insolvency administrator (the “**GIA**”);
  - iii. The issuance of default notices and the termination of agreements by financial institutions that were counterparties to financial contracts (primarily swaps and hedging instruments) with the Toronto Branch in respect of their dealings with Maple Bank’s business in Canada;
  - iv. Canada Mortgage and Housing Corporation (“**CMHC**”), after the issuance of a default notice to Maple Bank, taking control of the Mortgage Backed Securities (“**MBS**”) business of the Toronto Branch and the corresponding mortgage pools (totaling approximately \$3.5 billion); and

- v. OSFI issuing orders under section 619 of the *Bank Act* for the taking of control of the assets of Maple Bank in respect of the Business.
4. The events described above prompted OSFI to request that the Attorney General of Canada seek a winding-up order pursuant to section 10.1 of the WURA in respect of the Toronto Branch. On February 16, 2016 (the “**Liquidation Date**”), this Court granted an order (the “**Winding-Up Order**”) to, among other things, (i) wind-up the Business; and (ii) appoint KPMG Inc. (“**KPMG**”) as liquidator (the “**Liquidator**”) of the Business and of the assets of the Toronto Branch as defined in section 618 of the *Bank Act* (the “**Assets**”). Attached as Appendix “A” is a copy of the Winding-Up Order.
5. On March 2, 2016, the Liquidator filed its First Report to the Court which, among other things, outlined the protocol that was agreed to between the Liquidator and the GIA in connection with the existing Chapter 15 filing under the *United States Bankruptcy Code* made by the GIA with regard to Maple Bank’s non-Toronto Branch assets in the U.S. and the Assets of the Toronto Branch which reside in the U.S.
6. On March 30, 2016, the Liquidator filed its Second Report to the Court which provided: (i) an update on the actions of the Liquidator since the granting of the Winding-Up Order; (ii) an update on the Assets and liabilities of the Toronto Branch; and (iii) details of a proposed marketing process to identify a successor issuer (“**Successor Issuer**”) to the Toronto Branch’s MBS program and for the sale of all or a portion of certain other Assets as further described in Section 18 below.
7. On June 2, 2016, the Liquidator filed its Third Report to the Court which provided information in respect of: (i) an update on the actions of the Liquidator since the issuance of the Second Report; (ii) an update on the status of the Marketing Process; (iii) a proposed claims procedure for use in these proceedings, including the appointment of a Claims Officer; (iv) the proposed appointment of an Independent Cost Counsel to review and report to the Court on the fees and disbursements of the Liquidator and its counsel; and (v) the statement of receipts and disbursements of the Toronto Branch for the period February 16 to May 13, 2016.

8. On June 17, 2016, the Liquidator filed its Fourth Report to the Court which provided information regarding the sale by the Liquidator of certain un-pooled insured residential mortgages (the “**Unpooled Mortgages**”) to the originators of those mortgages; myNext Mortgage Premier Trust, and Xceed Mortgage Corporation.
9. On July 25, 2016, the Liquidator filed its Fifth Report to the Court which provided information regarding the sale by the Liquidator of the structured loans associated with the Immigrant Investor Program (“**IIP**”), which included receivable backed notes (the “**Receivable Backed Notes**”) issued by PWM Financial Trust, CTI Capital Securities Inc. and KEB Hana Bank, respectively, and secured by, *inter alia*, notes issued by either Citizenship and Immigration Canada (“**CIC**”) or IQ Immigrants Investisseurs Inc. (“**IQII**”).

#### **TERMS OF REFERENCE AND DISCLAIMER**

10. In preparing this report, the Liquidator has been provided with, and has relied upon, unaudited and other financial information, books and records (collectively, the “**Information**”) prepared by the Toronto Branch and/or its representatives, and discussions with its former management and/or its former representatives. The Liquidator has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided and in consideration of the nature of evidence provided to the Court. However, the Liquidator has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Liquidator expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.
11. The information contained in this report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Liquidator.
12. Capitalized terms not defined in this sixth report to the Court (the “**Sixth Report**”) are as defined in either the Winding-Up Order and/or the First through Fifth Reports. Unless

otherwise indicated, all references to monetary amounts herein are denominated in Canadian dollars (“**CAD**”).

13. Copies of the Liquidator’s Court reports and all motion records and Orders in these proceedings are available on the Liquidator’s website at <http://www.kpmg.com/ca/maplebank>.

#### **PURPOSE OF THE LIQUIDATOR’S SIXTH REPORT**

14. The purpose of the Sixth Report is to provide information to the Court in respect of:
  - i. The selection by CMHC of Equitable Bank (“**Equitable**”) as the Successor Issuer for the Toronto Branch’s National Housing Act (“**NHA**”) MBS Program and the resulting acquisition and assumption by Equitable of all of the Toronto Branch’s rights and obligations under the CMHC NHA MBS Guide and NHA MBS Program with respect to the NHA MBS originally issued by the Toronto Branch thereunder as well as the proposed sale of MBS still owned by the Toronto Branch and certain other Toronto Branch assets to Equitable (the “**Equitable Transaction**”); and,
  - ii. The activities of the Liquidator in respect of its administration of the Marketing Process.

## ***2. SUCCESSOR ISSUER AGREEMENT AND AGREEMENT OF PURCHASE AND SALE WITH EQUITABLE BANK***

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15. Prior to February 9, 2016, Maple Bank was an Approved Issuer under the NHA MBS Program. As a result of restrictions placed on the operations of Maple Bank by BaFin that affected Maple Bank's ability to fulfill its obligations as an Approved Issuer, CMHC issued a notice of default suspending the Toronto Branch as an Approved Issuer of NHA MBS on February 9, 2016.
16. As a result, and in accordance with the NHA MBS Program, it became necessary for CMHC to identify and select a Successor Issuer to Maple Bank. In order to efficiently: (i) identify and approach potential successor issuers for Maple Bank's NHA MBS; (ii) realize on the Interest Only Spread (as defined below) associated with Maple Bank's NHA MBS; and (iii) realize on certain other Toronto Branch assets, CMHC and the Liquidator determined that it would be most effective to administer a single marketing process. Accordingly, the Liquidator entered into a memorandum of understanding with CMHC on March 16, 2016 (the "**MOU**"), which outlined the basis on which the Liquidator would administer a marketing process for CMHC to identify potential Successor Issuer candidates in conjunction with the Liquidator marketing the remaining Toronto Branch assets<sup>1</sup>.
17. The Liquidator subsequently developed, in consultation with CMHC and the GIA, the aforementioned marketing process (the "**Marketing Process**") to both expose certain Toronto Branch assets to the market and identify potential Successor Issuer candidates for CMHC. The MOU and Marketing Process are described in the Second Report and both were approved by the Court on April 5, 2016 (the "**Marketing Process Order**"). The Marketing Process was launched by the Liquidator on April 13, 2016. Attached as Appendix "**B**" is a copy of the Marketing Process Order. Attached as Appendix "**C**" is a copy of the Liquidator's Second Report.
18. The Toronto Branch assets that were subject to the Marketing Process were as follows:

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<sup>1</sup> The MOU was later amended to deal with the Origination and Servicing Agreements (as defined below)



- Approximately \$115 million of NHA MBS still owned by the Toronto Branch as valued as at May 31, 2016 (“**Maple Owned NHA MBS**”);
  - A loan to Lakeview Mortgage Funding Trust 1, which is secured by insured single family residential mortgages (the “**Lakeview Loan**”), in the amount of approximately \$37.3 million as at May 31, 2016;
  - Receivable Backed Notes associated with the IIP, with the principal balance outstanding at maturity being approximately \$228.8 million, as at May 31, 2016;
  - The Origination Agreements (“**Origination Agreements**”) and Servicing Agreements (“**Servicing Agreements**”) that Maple Bank had entered into with five mortgage originators (collectively, the “**Origination and Servicing Agreements**”); and
  - Insured single family residential mortgages that had been purchased by the Toronto Branch under certain of the Origination Agreements and not yet pooled under the NHA MBS Program, having an aggregate principal amount outstanding of approximately \$36 million as of May 31, 2016 (“**Un-pooled Mortgages**”).
19. Although the Liquidator was responsible for the administration of the Marketing Process, the selection of the Successor Issuer remained solely within CMHC’s discretion and authority. The Toronto Branch continued to maintain an economic interest in the selection of a Successor Issuer by CMHC in respect of any payment that such Successor Issuer may make to CMHC in return for becoming entitled to the “**Interest Only Spread**” associated with the NHA MBS issued by the Toronto Branch. The Interest Only Spread, in simplistic terms, is the net present value of the interest payments and prepayment penalties generated by the mortgages underlying Maple Bank’s NHA MBS less the interest payments to be made to investors that purchased such NHA MBS directly or Canada Mortgage Bonds (backed by such NHA MBS) issued pursuant to the NHA mortgage securitization program administered by CMHC and less related program expenses.

20. To date, the Marketing Process has resulted in two sets of concluded transactions:
  - i. The sale of the Un-pooled Mortgages, as described in the Fourth Report and approved by the Court on June 21, 2016; and
  - ii. The sale of certain Receivable Backed Notes as described in the Fifth Report and approved by the Court on July 27, 2016.

### ***3. MARKETING PROCESS FOR THE MBS BUSINESS***

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21. The Third Report provides an update on the Marketing Process as at June 2, 2016. Several LOIs were submitted by the Phase 1 Bid Deadline for, *inter alia*, the identification of a Successor Issuer for the Toronto Branch's NHA MBS and the purchase of the Maple Owned NHA MBS, the Lakeview Loan and the Origination and Servicing Agreements (collectively, the "**Maple Assets**"). Following clarification of certain LOIs and in consultation with CMHC and the GIA, the Liquidator invited all prospective bidders that submitted LOIs to continue into Phase 2, which was launched on May 20, 2016. During Phase 2, the Liquidator undertook the following activities with respect to the Marketing Process in connection with such identification of a Successor Issuer and sale of the Maple Assets:
- i. Updated the electronic data room with additional documents in respect of the Toronto Branch's NHA MBS and the Maple Assets to facilitate prospective bidders' Phase 2 due diligence and responded to their information requests;
  - ii. Developed a template assignment and assumption agreement for the conveyance of the Origination and Servicing Agreements to the Successor Issuer (the "**Assignment and Assumption Agreement**"), along with a template agreement of purchase and sale for the other Maple Assets (the "**Maple Asset Agreement**"), to be used by potential bidders in order to submit binding offers for the Toronto Branch Assets at the end of Phase 2;
  - iii. Worked with CMHC to develop a template agreement for a party to become the Successor Issuer for the Maple Bank issued NHA MBS (the "**Successor Issuer Agreement**");
  - iv. Uploaded underwriting documentation in respect of several thousand mortgages which back the Toronto Branch's NHA MBS to assist with prospective bidders' due diligence requests; and

- v. Facilitated discussions between prospective bidders and, former Toronto Branch management, CMHC and other parties as required, to provide information regarding various aspects of the Toronto Branch's NHA MBS and the Maple Assets.
22. The Marketing Process originally provided that the Phase 2 Bid Deadline would be June 17, 2016. On account of the development of the template Successor Issuer Agreement taking much longer to finalize than was originally expected, the Liquidator, in consultation with CMHC and the GIA, extended the Phase 2 Bid deadline to August 5, 2016 (the "**Extended Phase 2 Bid Deadline**"). The Successor Issuer Agreement, the Assignment and Assumption Agreement and the Maple Asset Agreement templates were posted to the electronic data room on July 6, 2015, following which the Liquidator consulted with prospective bidders regarding the amount of time required to complete their respective Phase 2 offers. On July 13, 2016, the Liquidator informed the affected parties of the Extended Phase 2 Bid Deadline.
  23. The Liquidator received a number of binding, irrevocable offers to become the Successor Issuer for the Toronto Branch's NHA MBS and/or purchase/assume all or some of the Maple Assets by the Extended Phase 2 Deadline. Offers were received for most of the Maple Assets.
  24. The Liquidator performed an analysis of the various offers, which was provided to both CMHC and the GIA.
  25. In performing its analysis of the offers, among other things, the Liquidator attributed value not only to the purchase price to be received but also to the liabilities that a bidder was assuming (this was relevant as, based on the Toronto Branch's accounting records, the Liquidator believes that there will be significant (if not full) payment of the Toronto Branch's creditors), and the type and extent of closing conditions required by bidders.
  26. The Liquidator subsequently held discussions with certain bidders to clarify their offers. While a number of bidders were not prepared to assume the Servicing Agreements, certain of them were.

27. CMHC subsequently advised the Liquidator that it intended to select Equitable as the Successor Issuer subject to concluding an acceptable Successor Issuer Agreement. The Liquidator supported CMHC's decision as it had concluded that the Equitable offers to become the Successor Issuer and for the Maple Assets, collectively, generated the greatest economic benefit to the creditors and other stakeholders of the Toronto Branch. The GIA was also supportive of Equitable's offers based on the information it has received from the Liquidator.
28. On August 16, 2016, the Liquidator and CMHC agreed to amend the MOU to confirm that CMHC had selected Equitable to be the Successor Issuer, contingent upon Equitable currently acquiring the rights and assuming the obligations of Maple Bank under the Origination and Servicing Agreements subject to the negotiation and agreement between CMHC and Equitable of a Successor Issuer Agreement.<sup>2</sup>
29. The Liquidator (and CMHC with respect to the Successor Issuer Agreement) subsequently entered into exclusive negotiations with Equitable, with the goal of having Equitable execute a Successor Issuer Agreement, an Assignment and Assumption Agreement and a Maple Asset Agreement, in each case upon terms and conditions satisfactory to the Liquidator and CMHC, as the case may be. On September 12, 2016, following extensive negotiations with Equitable, which included the participation of CMHC's legal counsel, and consultation with CMHC and the GIA, CMHC and Equitable entered into a Successor Issuer Agreement (the "**SI Agreement**"), while the Liquidator and Equitable entered into a single agreement to assign and assume the Origination and Servicing Agreements and purchase the Maple Owned NHA MBS and Lakeview Loan ("**Maple Assets APS**"). On September 12<sup>th</sup>, Equitable issued a press release announcing the Equitable Transaction, a copy of the press release is attached hereto as **Appendix "D"**.

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<sup>2</sup> This agreement was formalised by a first amendment to the MOU effective as of September 16, 2016.

#### **4. THE EQUITABLE TRANSACTIONS**

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30. A redacted copy of the SI Agreement and related agreements are attached to this Sixth Report as Appendix “E”. The following are the related agreements:
- The Escrow Agreement, which addresses the deposit as provided by Equitable pursuant to the SI Agreement and the Liquidator’s appointment thereunder as Escrow Agent (as defined in the Maple Assets APS); and
  - The Acknowledgement and Confirmation that the Liquidator issued to CMHC and Equitable, pursuant to which the Liquidator agrees to, amongst other things, diligently pursue the motion for the SI Confirmation Order (as defined below) as described in the SI Agreement.

The SI Agreement and the Escrow Agreement have been redacted to remove references to certain key terms, including the following: (i) the SI Purchase Price; (ii) the Deposit; and, (iii) the Outside Date, each as defined in the SI Agreement.

31. A redacted copy of the Maple Assets APS is attached as Appendix “F”. Reference to the following has been removed from the Maple Assets APS: (i) Lakeview Loan Purchase Price; (ii) the NHA MBS Purchase Price; (iii) the Origination/Servicing Purchase Price; (iv) the Defaulted Mortgages Purchase Price; (v) the Deposit; and, (vi) the Outside Date, each as defined in the Maple Assets APS.
32. The Liquidator has prepared a Confidential Supplemental Report to the Sixth Report (the “**Confidential Report**”) which includes additional information regarding the Marketing Process and the results thereof, as well as un-redacted copies of the SI Agreement, the Escrow Agreement and the Maple Assets APS. The Liquidator is seeking to have the Confidential Report sealed by order of the Court so as to maintain the competitive nature of the Marketing Process in the event that the Equitable Transaction does not close, in which case the Liquidator and CMHC may seek to complete an alternative transaction with another bidder.

33. Pursuant to the terms of the MOU and the Marketing Process, the Liquidator is not a party to the SI Agreement, nor is the SI Agreement subject to approval by the Court. The SI Agreement includes a condition that an order be granted by the Court confirming that Maple Bank has no right, title or interest in the Pools, the Mortgages or the Maple Bank NHA MBS (as each of those terms are defined in the SI Agreement) except for certain mortgages in collection or that are subject to the Maple Assets APS (the “**SI Confirmation Order**”).

34. A summary of the key terms of the SI Agreement is provided below (capitalized terms as defined in the SI Agreement):

<b>Appointer of Successor Issuer Corporation</b>	CMHC
<b>The Successor Issuer Corporation</b>	Equitable Bank
<b>Nature of Transaction</b>	Pursuant to the Marketing Process, Equitable has proposed to become the successor issuer to Maple Bank with respect to the Pools, the Mortgages and the Maple Bank NHA MBS, and CMHC will appoint Equitable as such (following which, Maple Bank will have no further liability as Issuer with respect to the Pools, the Mortgages and the Maple Bank NHA MBS). In exchange for the rights and benefits of being selected successor Issuer to Maple Bank for the Maple NHA MBS (including the excess interest spread generated from the Pools), Equitable will pay to CMHC the SI Price.
<b>SI Price</b>	A discounted IO Spread, adjusted in a lengthy formula as set out in the SI Agreement.
<b>Key Representations and Warranties</b>	Equitable is an Issuer.  CMHC represents and warrants, as of the date of the SI Agreement and the Closing Date, the timely payment of the Maple Bank NHA MBS provided by CMHC pursuant to the NHA MBS program remains in full force and effect.
<b>Custodial Title to Mortgages</b>	CMHC confirms that (i) Maple Bank, pursuant to the Guide and written transfer agreement, has previously assigned to CMHC as guarantor of the Maple Bank NHA MBS on behalf of the Maple Bank NHA MBS investors all right, title and interest to the mortgage loans and related security which are

	<p>identified in the SI Agreement respecting the Pools (the “<b>Mortgages</b>”), and the Custodian holds nominal title to the Mortgages (other than the Mortgages in Collection), in its capacity as title custodian only; and (ii) the Maple Bank NHA MBS outstanding as of the Closing Date will represent all the issued and outstanding NHA MBS of Maple Bank. Equitable acknowledges and affirms that all right, title and interest in and to the mortgages is vested in CMHC as Guarantor of the Maple Bank NHA MBS and on behalf of the Maple Bank NHA MBS investors.</p>
<b>Escrow Agreement with the Liquidator</b>	<p>The Parties entered into the Escrow Agreement with the Liquidator. CMHC and Equitable will jointly direct the Liquidator under the Escrow Agreement to make any payments to be made by the Liquidator in respect of the Deposit in accordance with the terms of the SI Agreement in a timely manner.</p>
<b>Taxes</b>	<p>Equitable will pay upon closing all Taxes applicable to or payable by Equitable under Applicable Law in connection with the Transaction. Equitable agrees to indemnify and save CMHC harmless from and against all claims and demands or payment of all Taxes.</p>
<b>Key Conditions</b>	<p>An Order of the Court shall be made confirming by declaration that Maple Bank has no right, title or interest in the Pools, the Mortgages, the Maple Bank NHA MBS, or as an Issuer of NHA MBS such declaration to be effective upon the delivery of a Liquidator’s certificate.</p> <p>Equitable will have made servicing arrangements satisfactory to CMHC in its sole discretion.</p> <p>Equitable is an Approved Issuer.</p>
<b>Closing Date</b>	<p>The 17<sup>th</sup> business day of the month in which the SI Confirmation Order is granted, unless such order is granted after the 5<sup>th</sup> business day of such month, in which case the closing date will be the 17<sup>th</sup> business day of the immediately following month; or such other date as mutually agreed between CMHC and Equitable.</p>
<b>Outside Date (being the date upon which the Agreement will automatically terminate if not Closed)</b>	<p>“Confidential”</p>



35. A summary of the key terms of the Maple Assets APS is provided below (capitalized terms as defined in the Maple Assets APS):

<b>Purchaser</b>	Equitable Bank
<b>Assets Purchased</b>	<ul style="list-style-type: none"> <li>a. Lakeview Assets;</li> <li>b. NHA MBS;</li> <li>c. Origination Agreements (including the Origination Reserve Amounts);</li> <li>d. Servicing Agreements; and</li> <li>e. Defaulted Mortgages and Additional Defaulted Mortgages<sup>3</sup></li> </ul>
<b>Purchase price</b>	“Confidential”
<b>Deposit</b>	“Confidential”
<b>Closing Date</b>	The closing date will be “Closing Date” under the SI Agreement (being the 17 <sup>th</sup> business day of the month in which the SI Confirmation Order is granted, unless such order is granted after the 5 <sup>th</sup> business day of such month, in which case the closing date will be the 17 <sup>th</sup> business day of the immediately following month; or such other date as mutually agreed between CMHC and Equitable).
<b>Outside Date (being the date upon which the Agreement will automatically terminate if not Closed)</b>	“Confidential”
<b>Adjustments</b>	<p><b>Lakeview Assets</b> – purchase price to be calculated on the Closing Date based on the remaining principal balance on that date and accrued and unpaid interest.</p> <p><b>NHA MBS</b> – purchase price to be calculated on the Closing Date based on outstanding balances, accrued interest and a detailed calculation that considers specific spreads above a defined Government of Canada yield.</p>

<sup>3</sup> These are mortgages that have been removed from the NHA MBS Mortgage Pools due to being subject to collection proceedings and were not technically part of the Marketing Process.

<p><b>Taxes</b></p>	<p>Purchaser will deduct and withhold 25% of the Purchase Price for the Lakeview Assets and Maple Owned NHA MBS, to be placed in escrow with the Liquidator as the Withholding Escrow Agent. This amount will be released as provided in the form of Withholding Escrow Agreement attached to the Maple Assets PSA as an exhibit.</p> <p>Seller will not collect provincial sales tax if the Purchaser provides sufficient documentation to claim exemption under Applicable Law.</p>
<p><b>Assumed Contracts</b></p>	<p>Equitable has agreed to assume the Lakeview Credit Agreement and all of the Lakeview Loan Documents from and after the Closing Date. Equitable is attempting to obtain the consents to the assignment of these agreements from Lakeview Mortgage Funding Inc. and Trez Capital; however if any such consent is not granted, the form of Approval and Vesting Order attached to the Maple Assets APS provides for an order assigning each of these agreements to Equitable notwithstanding the lack of consent and prohibiting the counterparties from exercising any termination remedies under the agreements.</p> <p>Equitable has agreed to assume all of Maple Bank’s Origination and Servicing Agreements from and after the Closing Date. The Liquidator is attempting to obtain consents to the assignment of these agreements from the Originators and Servicers; however if any consent is not granted, the form of Approval and Vesting Order attached to the Maple Assets APS provides for an order assigning each of these agreements to Equitable notwithstanding the lack of consent and prohibiting the Originators and Servicers from exercising any termination remedies under the agreements (subject to the payment of certain specified “<b>Cure Amounts</b>” under the Origination Agreements, which the Liquidator will pay).</p>
<p><b>Material Conditions to Closing</b></p>	<p>Obtain the Approval and Vesting Order, substantially in the form attached to the Maple Assets APS.</p> <p>Purchaser becomes the Successor Issuer under the SI Agreement concurrently with the closing of the Maple Assets APS.</p>
<p><b>Material Deliveries on Closing</b></p>	<p>Approval and Vesting Order.</p> <p>Assignment and Assumption Agreement.</p>

	Withholding Escrow Agreement.
<b>Termination / Recourse</b>	Recourse is limited to the Deposit.  Agreement is automatically terminated if Closing does not occur before the Outside Date.

36. The Equitable Transaction is not conditional on financing and includes a limited number of closing conditions which are typical for this type of transaction and which the Liquidator believes are achievable.
37. CMHC and Equitable have executed the SI Agreement and it also has limited, but typical closing conditions, which the Liquidator believes are also achievable. The SI Agreement is conditional on the Court issuing the SI Confirmation Order. Upon Court approval of the Equitable Transaction, if granted, the Liquidator will immediately commence work with Equitable to address the closing conditions with a view to closing the Equitable Transaction as soon as possible, and as early as October 2016.
38. The Liquidator will receive proceeds in respect of these transactions as follows:
- i. **The Successor Issuer Transaction** – on closing of this transaction, CMHC will receive proceeds from Equitable in respect of the IO Spread. This amount will be deposited into the Central P&I Account for the Maple NHA MBS. CMHC has agreed, pursuant to the MOU, that after deduction of all amounts required under the SI Agreement and which CMHC is entitled to deduct or be paid pursuant to the NHA MBS Guide (including all of its fees and expenses), it will remit the net balance of such account to the Liquidator in due course; and
  - ii. **The Equitable Transaction** – Equitable will remit the balance of the Purchase Price (less the Withholding Escrow Amount as defined in the Maple Assets APS) directly to the Liquidator pursuant to the terms of the Maple Assets APS.

### **Liquidator’s Observations**

39. The Liquidator makes the following observations with respect to the Equitable Transaction for consideration by the Court:
- i. The Marketing Process has been administered by the Liquidator in accordance with the Marketing Process Order. In administering the Marketing Process the Liquidator has consulted with both CMHC and the GIA and with their respective legal counsel. The Maple Assets were broadly exposed to the market of potential purchasers and the SI Agreement and Maple Assets APS have been rigorously negotiated between the Liquidator and Equitable, in consultation with CMHC and with the assistance of its legal counsel;
  - ii. As will be set out in detail in the Confidential Report, the Equitable Transaction, if closed, will produce the highest value for the Toronto Branch estate, as net overall realizations thereunder are anticipated to be in excess of those provided for in any other offers received by the Liquidator pursuant to the Marketing Process. In the Liquidator's view, the consideration provided for under the Equitable Transaction is reasonable and fair, taking into account the offers received, the current interest rate environment and the nature of the assets sold. In addition, the Liquidator believes the Equitable Transaction has reasonably achievable conditions for a transaction of this nature.
40. Under the Equitable Transaction, it is expected that certain other stakeholders will also benefit in a material way. Such stakeholders include:
- i. CMHC, insofar as a Successor Issuer acceptable to CMHC has been identified to replace Maple Bank and will return certainty to the NHA MBS Program;
  - ii. Originators and servicers whose agreements will be assigned to and assumed by Equitable, will continue to have the benefit of their agreements with a solvent counterparty;

- iii. The Borrower and its other subordinated creditors under the Lakeview Credit Agreement and Lakeview Loan Documents will continue to have the benefit of their agreements with a solvent counterparty; and
  - iv. Maple Bank creditors, generally, in that: (i.) potential claims associated with any of the Maple Assets assumed by Equitable will be mitigated; and (ii.) closing of the Equitable Transaction should facilitate an earlier distribution to creditors and the GIA in the WURA proceedings.
41. The Maple Assets APS provides for the timely closing of the Equitable Transaction with relatively few closing conditions. The Liquidator has received a significant deposit under the terms of the Maple Assets APS and the Liquidator has recourse to such deposit if Equitable does not fulfill its obligations thereunder.

## ***5. RECOMMENDATIONS OF THE LIQUIDATOR***

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42. It is the Liquidator's view that the Equitable Transaction is the most beneficial transaction for the creditors of the Toronto Branch and certain other stakeholders relative to any other offers received pursuant to the Marketing Process.
43. Based on the foregoing discussion in this report, the Liquidator recommends that this Court grant the following relief as requested by the Liquidator:
  - i. Approval of the Equitable Transaction contemplated by the Maple Assets APS and vesting in Equitable Maple Bank's right, title and interest in and to the assets described in the Maple Assets APS;
  - ii. Approval of the assignment to Equitable of all of Maple Bank's rights and obligations resulting from or in connection with the Origination and Servicing Agreements and the Lakeview Assets as described in the Maple Assets APS subject to the conditions set out in the form of the Approval and Vesting Order attached to the Maple Assets APS;
  - iii. Granting of the Approval and Vesting Order, as attached to the Maple Assets APS, substantially in the form attached thereto;
  - iv. Authorizing and directing the Liquidator to take such additional steps and execute such additional documents including, without limitation, any assignment and assumption agreement(s) as may be necessary or desirable for the completion of the Equitable Transaction and for the conveyance of the Maple Assets to Equitable;
  - v. Granting of the SI Confirmation Order substantially in the form attached to the Successor Issuer Agreement;
  - vi. Sealing of the Confidential Report to be filed by the Liquidator until such time as a Liquidator's certificate has been filed with the Court, or upon further order of the Court; and
  - vii. Approval of the actions and activities of the Liquidator, as set out herein, with respect to the Marketing Process.

All of which is respectfully submitted at Toronto, Ontario this 19 day of September, 2016.

**KPMG Inc., in its capacity as Court Appointed Liquidator of the Business in Canada of  
Maple Bank GmbH and its Assets as defined in Section 618 of the *Bank Act***

Per: 

Philip Reynolds  
Senior Vice President

Per: 

Nicholas Brearton  
President

**This is Appendix “A” to the  
Sixth Report of the Liquidator Dated September 19, 2016**



Court File No. CV-16 - 11290 - 0002

ONTARIO  
SUPERIOR COURT OF JUSTICE  
*COMMERCIAL LIST*

THE HONOURABLE REGIONAL )  
SENIOR JUSTICE MORAWETZ )  
)

TUESDAY, THE 16<sup>TH</sup>  
DAY OF FEBRUARY, 2016



IN THE MATTER OF MAPLE BANK GmbH

AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,  
R.S.C. 1985, C.W-11, AS AMENDED

AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

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**WINDING-UP ORDER**

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**THIS APPLICATION** made by the Attorney General of Canada under the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended ("*WURA*"), for the appointment of KPMG Inc. ("KPMG") as liquidator, without security, in respect of the winding up of the business in

Canada (the "Business") of the Respondent, Maple Bank GmbH ("Maple Bank"), and of the assets, as defined in section 618 of the *Bank Act*, S.C. 1991, c. 46, as amended, (the "*Bank Act*") of Maple Bank was heard this day at Toronto, Ontario.

**ON READING** the Notice of Application and Application Record in the within matter, and on hearing submissions of counsel for each of the Attorney General of Canada, and for KPMG as the proposed Liquidator.

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof, including without limitation, the prescribed notice requirements of section 26 of *WURA*.

**WINDING-UP**

2. **THIS COURT DECLARES** that Maple Bank is an authorized foreign bank subject to *WURA*.
3. **THIS COURT ORDERS** that the Business in Canada of Maple Bank be wound up by this Court under the provisions of *WURA*.

**APPOINTMENT**

4. **THIS COURT ORDERS** that KPMG is appointed as liquidator (the "Liquidator") without security, in respect of the winding up of the Business, and of the assets of Maple Bank, as defined in section 618 of the *Bank Act* namely:

- a) any assets of Maple Bank in respect of Maple Bank's Business in Canada, including the assets referred to in subsection 582(1) and section 617 of the Bank Act and assets under its administration; and,
  - b) any other assets in Canada of Maple Bank,
- collectively (the "Assets")

- 5. **THIS COURT ORDERS** that the giving of security by the Liquidator upon its appointment as liquidator be and is hereby dispensed with.
- 6. **THIS COURT ORDERS** that Maple Bank shall cease to carry on its Business in Canada or deal in any way with its Assets, except in so far as is, in the opinion of the Liquidator, required for the beneficial winding-up of its Business in Canada and liquidation of its Assets.

#### **LIQUIDATOR'S POWERS**

- 7. **THIS COURT ORDERS** that, in addition to the exercise of the Liquidator's duties under sections 33 and 152 of WURA and the performance of its powers under section 35 of WURA, the Liquidator is hereby expressly empowered and authorized to do any of the following where the Liquidator considers it necessary or desirable:
  - a) take possession of and/or exercise control over the Assets or such part thereof as the Liquidator shall determine, and any and all proceeds, receipts and disbursements arising out of or from the Assets;
  - b) manage, operate and carry on the Business in Canada of Maple Bank so far

as it is necessary to the beneficial winding up of Maple Bank's Business in Canada and the liquidation of the Assets, 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 or terminate any contracts of Maple Bank in respect of the Assets or Maple Bank's Business;

- c) receive, preserve, and protect the Assets, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Assets to safeguard them, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- d) market any or all of the Assets, including advertising and soliciting offers in respect of the Assets or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;
- e) in respect of the Assets or the Business, initiate, prosecute and continue the prosecution of any and all Proceedings and to defend, to the extent not stayed, all Proceedings now pending or hereafter instituted with respect to Maple Bank, in the Liquidator own name as liquidator or in the name or on behalf of Maple Bank, as the case may be. 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;
- f) sell, convey, transfer, lease, assign or otherwise realize upon the Assets or any part or parts thereof, by public auction or private contract, and to

transfer the whole thereof to any Person, or sell them in parcels:

- A. without the approval of this Court in respect of any transaction not exceeding \$250,000 provided that the aggregate consideration for all such transactions does not exceed \$1 million; and
  - B. 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.
- 
- g) apply for any approval and vesting order or other orders necessary to convey the Assets or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Assets;
  - h) execute, assign, issue and endorse documents of whatever nature in the name of and on behalf of Maple Bank in respect of the Assets or Maple Bank's Business, and for that purpose use, when necessary, the seal of Maple Bank;
  - i) file any election (tax or otherwise), objection or registration, and any renewals thereof, and file any notices, as may be necessary or desirable in the opinion of the Liquidator in respect of the Assets or Maple Bank's Business;
  - j) draw, accept, make and endorse any bill of exchange or promissory note in the name of and on behalf of Maple Bank in respect of the Assets or Maple Bank's Business in Canada;

- k) mortgage or otherwise encumber the Assets or any part thereof, or give discharges of mortgages and other securities, partial discharges of mortgages and other securities, and pay property taxes and insurance premiums on mortgages and other securities taken in favor of Maple Bank in respect of the Business;
- l) pay such debts of the Maple Bank (whether incurred prior to or after the date of this Order) as may be necessary or desirable to be paid in order to properly preserve and maintain the Assets or to carry on the Business;
- m) surrender possession of any leased premises occupied by the Maple Bank in respect of its Business in Canada and disclaim any leases entered into by Maple Bank in respect of its Business in Canada on not less than 10 calendar days' prior written notice to the lessor affected thereby;
- n) apply for any permits, licenses, approvals or permissions as may be required by any governmental or regulatory authority in respect of the Assets or the Business;
- o) re-direct Maple Bank's mail in respect of the Business;
- p) settle, extend or compromise any indebtedness or contractual or other obligations or liability owing to or by Maple Bank in respect of the Assets or the Business;  
and
- q) do and execute all such other things as are necessary for or incidental to: (i) the winding-up of the Business or the liquidation of the Assets; and (ii) the

exercise by the Liquidator of its powers hereunder or under any further Order of the Court in the within proceedings or the performance by the Liquidator of any statutory obligations to which it is subject.

**COOPERATION WITH THE GERMAN INSOLVENCY ADMINISTRATOR**

8. **THIS COURT ORDERS** that the Liquidator, in exercise of its powers as enumerated under section 35 of WURA and as set out above:

- (a) shall provide to Dr. Michael C. Frege, as Insolvency Administrator of Maple Bank, as appointed pursuant to the German Insolvency Code (the "German Administrator"), from time to time, such information regarding the Business and Assets of Maple Bank as the German Administrator may reasonably require in order to fulfill his statutory obligations under German law, including, without limitation, information regarding status and location of assets and liabilities, with particulars, including amount, the filing of claims by creditors, valuations and assessments if available, the disposition of Assets and negotiations with counterparties related thereto, the resolution of Liabilities, and reporting for tax and accounting purposes related to the Business and Assets of Maple Bank in Canada;
- (b) shall, within fourteen (14) days of the date hereof, develop in consultation with the German Administrator an Interim Winding-Up Plan with respect to the administration and liquidation of the Business, Assets and liabilities of Maple Bank in Canada during the first sixty (60) days after the date hereof, and shall

obtain the prior approval of the German Administrator thereto, and shall thereafter act in accordance therewith as amended in accordance with the terms hereof;

- (c) shall, within sixty (60) days of the date hereof, develop, in consultation with the German Administrator, a Final Winding-Up Plan with respect to the administration and liquidation of the Business, Assets and liabilities of Maple Bank in Canada and shall obtain the prior approval of the German Administrator thereto, and shall thereafter act in accordance therewith, as amended in accordance with the terms hereof;
- (d) may, after consultation with, and with the prior approval of, the German Administrator, propose changes to the Interim Wind-Up Plan or the Final Wind-up Plan and the Final Wind-Up Plan shall be amended in accordance with any such changes approved by the German Administrator;
- (e) shall consult with, and obtain the prior approval of, the German Administrator in respect of any proposed disposition of Assets or groups of Assets which, individually or collectively, would, or would reasonably be expected to, result in net proceeds in excess of \$10 million; and
- (f) shall consult with, and obtain the approval of, the German Administrator with respect to, any proposed settlement of a claim or liability relating to the Business or Assets of Maple Bank in Canada in excess of \$10 million, any claims process or any distribution to the creditors of Maple Bank in Canada,

provided that, if the German Administrator declines to provide its approval in respect of



any matters contemplated in (b), (c), (d), (e) or (f) above, the Liquidator may, on five (5) days' notice, apply to this Court for such approval, and the approval of this Court (subject to rights of appeal) shall replace any requirement for the approval of the German Administrator.

9. **THIS COURT ORDERS** that: (a) the Liquidator and the German Administrator shall consult and exchange information in respect of the Assets and Business of Maple Bank in Canada and such assets and business of Maple Bank as may be connected thereto, all as may be required for the effective and efficient administration of Maple Bank in Canada and Maple Bank; (b) the German Administrator shall have the right to apply, if it so elects, to be appointed as an Inspector of the estate of Maple Bank in Canada, or, if formed, a member of any committee of creditors, and to exercise the power and rights ordinarily associated with such an appointment; and (c) the Liquidator and the German Administrator (or their respective designees) shall meet at least once in each week, which meeting may be telephonic or in person to exchange information, discuss and coordinate matters related to the administration of the Business, Assets and liabilities of Maple Bank in Canada and such assets and businesses of Maple Bank as relate thereto.

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

10. **THIS COURT ORDERS** that: (i) Maple Bank; (ii) all of Maple Bank's current and former directors, officers, employees, agents, accountants, actuaries, appointed actuary, 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 (all of the foregoing, collectively, being

"Persons" and each being a "Person") shall forthwith advise the Liquidator of the existence of any Assets in such Person's possession or control, shall grant immediate and continued access to the Assets to the Liquidator, and shall deliver all such Assets to the Liquidator upon the Liquidator's request.

11. **THIS COURT ORDERS** that all Persons shall forthwith advise the Liquidator of the existence of any books, documents, securities, contracts, orders, corporate, actuarial and accounting records, and any other papers, working papers, records and information of any kind related to the Business, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Book and Records") in that Person's possession or control, and shall provide to the Liquidator or permit the Liquidator to make, retain and take away copies thereof and grant to the Liquidator unfettered access to and use of accounting, actuarial, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 10 or in paragraph 11 of this Order shall require the delivery of Books and Records, or the granting of access to Books and Records, which may not be disclosed or provided to the Liquidator due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.
  
12. **THIS COURT ORDERS** that if any Books and 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 Books and Records shall forthwith give unfettered access to the Liquidator for the purpose of allowing the Liquidator 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 Liquidator in its discretion deems expedient, and shall not alter, erase or destroy any Books and Records without the prior written consent of the Liquidator. Further, for the purposes of this paragraph, all Persons shall provide the Liquidator with all such assistance in gaining immediate access to the information in the Books and Records as the Liquidator may in its discretion require, including providing the Liquidator with instructions on the use of any computer or other system and providing the Liquidator with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO INTERFERENCE WITH LIQUIDATOR**

13. **THIS COURT ORDERS** that, subject to subsection 22.1(1.1) of WURA, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favor of or held by Maple Bank in respect of the Assets or the Business, without written consent of the Liquidator or leave of the Court obtained on not less than seven (7) days' notice to the Liquidator.

#### **CONTINUATION OF SERVICES**

14. **THIS COURT ORDERS** that all Persons having oral or written agreements with Maple Bank in respect of the Assets or the Business, or statutory or regulatory mandates for the supply of goods and/or services in respect of the Assets or the Business, including, without limitation, all computer software, hardware, support and data services,

communication services, centralized banking services, payroll services, insurance and reinsurance, transportation services, utility (including the furnishing of oil, gas, heat, electricity, water, telephone service at present telephone numbers used by Maple Bank) or other services to Maple Bank in respect of the Business, are hereby restrained from terminating, accelerating, suspending, modifying or otherwise interfering with such agreements and the supply of such goods and services without the written consent of the Liquidator or leave of this Court, and all such parties shall continue to comply with their obligations under such agreements or otherwise on terms agreed to by the Liquidator in writing; 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 Liquidator in accordance with normal payment practices of Maple Bank or such other practices as may be agreed upon by the supplier or service provider and the Liquidator, or as may be ordered by this Court.

**PREMISES**

15. **THIS COURT ORDERS** that all Persons are hereby restrained from disturbing or interfering with the occupation, possession or use by the Liquidator of any premises occupied or leased by Maple Bank in Canada or in respect of the Business as at the date of this Order, except upon further Order of this Court. From and after the date hereof, and for such period of time that the Liquidator occupies any leased premises, the Liquidator shall pay occupation rent to each lessor based upon the regular monthly base rent that was previously paid by the Maple Bank in respect of the premises so occupied or as may hereafter be negotiated by the

Liquidator and the applicable lessor from time to time.

**NO PROCEEDINGS AGAINST THE LIQUIDATOR**

16. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Liquidator except with the written consent of the Liquidator or with leave of this Court having been obtained on at least seven (7) days' notice to the Liquidator.

**NO PROCEEDINGS AGAINST MAPLE BANK OR THE BUSINESS AND THE ASSETS**

17. **THIS COURT ORDERS** that no Proceeding against or in respect of Maple Bank in respect of the Business, or in respect of the Assets shall be commenced or continued except with the written consent of the Liquidator or with leave of this Court having been obtained on at least seven (7) days' notice to the Liquidator, and any and all such Proceedings currently under way are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

18. **THIS COURT ORDERS** that all rights and remedies against Maple Bank in respect of the Business, or against the Liquidator, or affecting the Assets, are hereby stayed and suspended except with the written consent of the Liquidator or leave of this Court obtained on at least seven (7) days' notice to the Liquidator; provided, however, that nothing in this paragraph shall: (i) empower the Liquidator or Maple Bank to carry on any business that Maple Bank is not lawfully entitled to carry on; (ii) exempt the

Liquidator or Maple Bank 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.

19. **THIS COURT ORDERS** that, without limiting the foregoing, without the consent of the Liquidator or leave of the Court:

- a) all Claimants (as hereinafter defined) are restrained from exercising any extra judicial remedies against Maple Bank in respect of the Business or the Assets, including the registration or re-registration of any securities owned by Maple Bank, into the name of such persons, firms, corporations or entities or their nominees, the exercise of any voting rights attaching to such securities, the retention of any payments or other distributions made in respect of such securities, the retention of any payments or other distributions made in respect of such securities, any right of distress, repossession, or consolidation of accounts in relation to amounts due or accruing due in respect of or arising from any indebtedness or obligation of Maple Bank in respect of the Business as of the date hereof;
- b) all Persons be and they are hereby restrained from terminating, canceling or otherwise withdrawing any licenses, permits, approvals or consents with respect to or in connection with Maple Bank in respect of the Assets or the Business, as they were on the date hereof;
- c) Any and all Proceedings taken or that may be taken by any person, firm, corporation or entity including without limitation any of the creditors of Maple

Bank, suppliers, contracting parties, depositors, lessors, tenants, co-venturers or partners (herein "Claimants") against or in respect of Maple Bank in respect of the Assets or the Business shall be stayed and suspended;

- d) the right of any Claimant to make demands for payment on or in respect of any guarantee or similar obligation or to make demand or draw down under any orders of credit, bonds or instruments of similar effect, issued by or on behalf of Maple Bank in respect of the Assets or the Business, to take possession of, to foreclose upon or to otherwise deal with any Assets, or to continue any actions or proceedings in respect of the foregoing, is hereby restrained; and
- e) the right of any Claimant to assert, enforce or exercise any right (including, without limitation, any right of dilution, buy-out, divestiture, forced sale, acceleration, termination, suspension, modification or cancellation or right to revoke any qualification or registration), option or remedy available to it including a right, option or remedy arising under or in respect of any agreement in respect of the Assets or the Business is hereby restrained.

#### **LIQUIDATOR'S ACCOUNTS**

- 20. **THIS COURT ORDERS** that the Liquidator and counsel to the Liquidator shall be paid their reasonable fees and disbursements, incurred both before and after the making of this Order.
- 21. **THIS COURT ORDERS** that the Liquidator and its legal counsel shall pass its

accounts from time to time, and for this purpose the accounts of the Liquidator and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. **THIS COURT ORDERS** that prior to the passing of its accounts, the Liquidator 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, and such amounts shall constitute advances its remuneration and disbursements, when and as approved by the Court.

#### **CASH MANAGEMENT AND PAYMENTS**

23. **THIS COURT ORDERS** that the Liquidator may deposit all moneys belonging to the Business received by or on behalf of the Liquidator and its agents to and use the bank accounts currently in the name of Maple Bank and may, at its discretion, open accounts in the name of the Liquidator.

#### **EMPLOYEES**

24. **THIS COURT ORDERS** that the employment of each of the employees of the Maple Bank in Canada with respect to the Business is hereby and deemed to be terminated as of the date of this Order. The Liquidator shall be entitled to pay all accrued and unpaid wages and vacation pay of each of such employees, including any remittances relating thereto.
25. **THIS COURT ORDERS** that the Liquidator may retain such employees of Maple Bank in respect of the Business as the Liquidator deems necessary or desirable



to assist the Liquidator in fulfilling the Liquidator's duties on such terms as may be approved by this Court and all reasonable and proper expenses that the Liquidator may incur in so doing shall be costs of liquidation of the Business and Assets. The Liquidator shall not be liable for any employee-related liabilities, including any successor employer liabilities, other than such amounts as the Liquidator may specifically agree in writing to pay.

26. **THIS COURT ORDERS** that the Liquidator may retain, employ or engage such actuaries, accountants, financial advisors, investment dealers, solicitors, attorneys, valuers or other expert or professional persons as the Liquidator deems necessary or desirable to assist the Liquidator in fulfilling the Liquidator's duties, and all reasonable and proper expenses that the Liquidator may incur in so doing shall be costs of liquidation of the Assets of Maple Bank.

#### **PRIVACY MATTERS**

27. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Liquidator shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Assets (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 Liquidator, or in the alternative destroy all

such information. The purchaser of any Assets shall be entitled to continue to use the personal information provided to it, and related to the Assets purchased, in a manner which is in all material respects identical to the prior use of such information by Maple Bank, and shall return all other personal information to the Liquidator, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

28. **THIS COURT ORDERS** that nothing herein contained shall require the Liquidator to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Assets 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 Liquidator from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Liquidator shall not, as a result of this Order or anything done in pursuance of the Liquidator's duties and powers under this Order, be deemed to be in Possession of any of the Assets within the meaning of any Environmental Legislation, unless it is actually in

possession.

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

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Liquidator under *WURA* or as an officer of this Court, the Liquidator shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Liquidator by the *WURA* or any applicable legislation.
30. **THIS COURT ORDERS** that the Liquidator may act on the advice or information obtained from any actuary, accountant, financial advisor, investment dealer, solicitor, attorney, valuer or other expert or professional person, and the Liquidator shall not be responsible for any loss, depreciation or damage occasioned by acting in good faith in reliance thereon.

### **CALL FOR CLAIMS**

31. **THIS COURT ORDERS** that the Liquidator shall not be obligated to call for claims or otherwise implement a claims process until a further Order of this Court to this effect is issued.

### **SERVICE AND NOTICE**

- f) **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol

(which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'www.kpmg.com/ca/maplebank'.

- g) **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Liquidator is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to Maple Bank's creditors or other interested parties at their respective addresses as last shown on the records of Maple Bank and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

32. **THIS COURT ORDERS AND DIRECTS** that the Liquidator shall publish notice of the Winding-Up Order in respect of the Business and Assets for two (2) consecutive days within five (5) business days of the making of this Order in The Globe and Mail,

National Edition, and shall also send written notice to every depositor, creditor and employee of Maple Bank in respect of the Business within seven (7) business days of making of this Order to the last known mailing address as provided for in the records of Maple Bank.

**RECOGNITION**

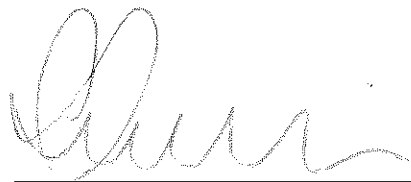
33. **THIS COURT ORDERS** that this Order and any other orders in these proceedings shall have full force and effect in all Provinces and Territories in Canada.
34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the Republic of Germany, including the Amtsgericht Frankfurt am Main [Insolvency Court] to give effect to this Order and to assist the Liquidator 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 Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Liquidator in any foreign proceeding, or to assist the Liquidator and their respective agents in carrying out the terms of this Order.
35. **THIS COURT HEREBY REQUESTS** the aid and assistance of the German Administrator to assist the Liquidator and its agents in carrying out the terms of this Order
36. **THIS COURT ORDERS** that the Liquidator 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 Liquidator 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.

37. **THIS COURT ORDERS** that the Attorney General of Canada shall be entitled to the costs of this application, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Liquidator from the Business and Assets as costs properly incurred in the winding-up of the Business and Assets.

**ADVICE AND DIRECTIONS**

38. **THIS COURT ORDERS** that Liquidator may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
39. **THIS COURT ORDERS** that interested parties may apply to the Court for advice and directions on at least seven (7) days notice to the Liquidator 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.



**C. Irwin  
Registrar**

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

FEB 16 2016



IN THE MATTER OF MAPLE BANK GmbH  
AND IN THE MATTER OF THE WINDING-UP AND RESTRUCTURING ACT,  
R.S.C. 1985, C.W-11, AS AMENDED  
AND IN THE MATTER OF THE BANK ACT, S.C. 1991, C.46, AS AMENDED

Court File No. CV-16-11290-0001

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**WINDING-UP ORDER**

**John J. Lucki**

Department of Justice  
Ontario Regional Office The Exchange Tower  
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**This is Appendix “B” to the  
Sixth Report of the Liquidator Dated September 19, 2016**



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE HONOURABLE REGIONAL )  
SENIOR JUSTICE MORAWETZ )  
)**

**TUESDAY, THE 5<sup>th</sup>**

**DAY OF APRIL, 2016**



**IN THE MATTER OF MAPLE BANK GmbH**

**AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,  
R.S.C. 1985, C.W-11, AS AMENDED**

**AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**MAPLE BANK GmbH**

**Respondent**

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**ORDER**

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**THIS MOTION** made by KPMG Inc. (the "**Liquidator**"), in its capacity as the Court-appointed Liquidator in respect of the winding up of the business in Canada (the "**Business**") of Maple

Bank GmbH (“Maple Bank”) and its assets as defined in section 618 of the *Bank Act* (the “Assets”) was heard this day at Toronto, Ontario.

ON READING the Notice of Motion and Second Report of the Liquidator dated March 30, 2016 (the “Second Report”), and on hearing submissions of counsel for each of the Liquidator, the German Insolvency Administrator, Canada Housing and Mortgage Corporation (“CMHC”), and such other parties as may be in attendance.

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Second Report is hereby abridged and validated so that this Motion is properly returnable today and dispenses with further service thereof.

**SECOND REPORT AND MARKETING PROCESS**


2. **THIS COURT ORDERS** that the activities of the Liquidator as set out in the Second Report be and are hereby approved.
3. **THIS COURT ORDERS** that the marketing process, as more particularly described in the Second Report and appended as Schedule “A” hereto (the “Marketing Process”) is hereby approved.
4. **THIS COURT ORDERS** that the Liquidator be and is hereby authorized and directed to perform its obligations under the Marketing Process, and to take such further steps as the Liquidator considers necessary or desirable in carrying out the Marketing Process, and that any steps taken by the Liquidator in connection with the Marketing Process prior to the date hereof be and are hereby approved and ratified.
5. **THIS COURT ORDERS** that the Liquidator’s Statement of Receipts and Disbursements for the period February 16, 2016 to March 11, 2016 is approved.
6. **THIS COURT ORDERS** that the Memorandum of Understanding dated March 16, 2016 entered into between the Liquidator and CMHC (the “MOU”) is hereby approved.

7. **THIS COURT ORDERS** that, subject to the rights of CMHC as set out in the MOU, nothing contained in this Order, or the Marketing Process shall in any way amend, change, or derogate from the requirements imposed on the Liquidator to consult with, and obtain the approval of, the German Administrator as provided for in paragraph 8 of the Winding-Up Order dated February 16, 2016.



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

APR 05 2016

PER / PAR: 

**SCHEDULE "A"**

**MARKETING PROCESS TO IDENTIFY A SUCCESSOR ISSUER OF MAPLE BANK  
GMBH, TORONTO BRANCH, UNDER THE NHA MBS PROGRAM AND THE SALE  
OF THE MAPLE BANK GMBH ASSETS**

**INTRODUCTION**

1. Maple Bank GmbH (“Maple Bank”) is a Canadian-owned German bank and an “authorized foreign bank” in Canada under section 2 and Part XII.1 of the *Bank Act*. As a German bank, Maple Bank is subject to regulation in Germany by the Federal Financial Supervisory Authority (“BaFin”). As an authorized foreign bank under the *Bank Act*, Maple Bank is regulated with respect to its business in Canada by the Office of the Superintendent of Financial Institutions (“OSFI”). Maple Bank was an approved issuer under the *National Housing Act* Mortgage-Backed Securities Program (the “NHA MBS Program”) as administered by Canada Mortgage and Housing Corporation (“CMHC”).
2. CMHC is a federal Crown corporation that provides housing loan related insurance and guarantees, enabling eligible lenders to provide financing for both homeowner and rental housing. CMHC Insurance Programs and CMHC Securitization Programs contribute to a stable housing finance system by helping eligible lenders access an adequate supply of funds for housing loans. CMHC is an agent of Her Majesty the Queen in right of Canada, and as such its obligations are those of the federal Government of Canada and a charge on the Consolidated Revenue Fund.
3. Under the NHA MBS Program, lenders, if approved, upon application to CMHC (the “Approved Issuer”), may issue mortgage-backed securities (“NHA MBS”) fully guaranteed by CMHC as to timely payment of principal and interest. In connection with each permitted issuance of NHA MBS, Approved Issuers agree to transfer all legal and beneficial title to a pool of mortgages to CMHC to be held, in trust, for investors in NHA MBS and for CMHC, as guarantor, subject to the terms and conditions set out in the NHA MBS Program Guide published by CMHC (the “NHA MBS Guide”).
4. On February 6, 2016, BaFin issued an order of moratorium on Maple Bank’s business activities by reason of imminent over-indebtedness. On February 9, 2016, CMHC: (i) issued a notice of default to Maple Bank as issuer under the NHA MBS Program; (ii) suspended Maple Bank as an issuer under the NHA MBS Program; (iii) directed Bank of Montreal (“BMO”) to immediately transfer the entire balance in the P&I Custodial/Trust Account with BMO to the NHA MBS Central Payor and Transfer Agent account of Computershare Trust Company of Canada (“Computershare”); (iv) directed Computershare to establish a Custodial/Trust Account (the “Computershare Account”) for revenues related to the mortgages underlying the NHA MBS issued by Maple Bank and to withdraw amounts from the Computershare Account as needed to pay amounts due to holders of NHA MBS issued by Maple Bank; and (v) directed the servicers to Maple Bank’s MBS business to pay to the Computershare Account, all amounts that would otherwise have been paid to the P&I Custodial/Trust Account with BMO and advised the servicers that the servicing arrangements are subject to the NHA MBS Guide.
5. On February 10, 2016 BaFin advised OSFI that it filed for insolvency proceedings in Germany in respect of Maple Bank based on the admission of Maple Bank of its

impending insolvency and with Maple Bank's consent. On February 11, 2016 the German Court issued an order commencing insolvency proceedings and appointing an Insolvency Administrator over Maple Bank.

6. Upon application by the Attorney General of Canada, pursuant to section 10.1 of the *Winding Up and Restructuring Act* (WURA), on February 16, 2016 the Ontario Superior Court of Justice (Commercial List) (the "Court") made a winding-up order (the "Winding-Up Order"): (a) that the business in Canada of Maple Bank (the "Business") be wound up and that its assets, as defined under section 618 of the *Bank Act* (the "Assets") be liquidated; and, (b) appointing KPMG Inc. ("KPMG") as the liquidator (the "Liquidator") of the estate of Maple Bank, Canada Branch under section 23 of WURA.
7. Upon Maple Bank's default, pursuant to Chapter 13 of the NHA MBS Guide, CMHC may, *inter alia*, in its sole and absolute discretion, approve a successor issuer to Maple Bank (the "Successor Issuer"), which will take on the rights and responsibilities of Maple Bank for the NHA MBS pools from that point forward.
8. In furtherance of the marketing process, more particularly described in the following sections (the "Marketing Process"), the Liquidator and CMHC have agreed, pursuant to the terms of a Memorandum of Understanding dated March 16, 2016 (the "MOU"), to: (i) exchange information; (ii) consult and cooperate in connection with the Marketing Process to be undertaken by the Liquidator to find: (a) the Successor Issuer (acceptable to CMHC) under the NHA MBS Program for the mortgage pools in relation to NHA MBS issued by Maple Bank; and, (b) a purchaser for Maple Bank's Assets, which may also be attractive to the Successor Issuer, including its inventory of CMHC insured mortgages that have not yet been pooled, NHA MBS mortgage pools that Maple Bank owns as an investor and its mortgage aggregation processes, policies and business (collectively, the "Maple Assets").
9. The purpose of this Marketing Process is to seek LOIs and Offers (each as defined below) and to implement an Accepted Successor Issuer Offer (as defined below) and one or more Accepted Sale Offers (as defined below), the whole as more fully detailed below.
10. Capitalized terms used in this Marketing Process shall have the meanings given to them herein.

#### Marketing Process Order

11. Pursuant to an Order dated April 5, 2016, the Court approved: (a) the Marketing Process (the "Marketing Process Order"); (b) that the Liquidator implement and carry out the terms of this Marketing Process in accordance with the terms of the MOU; and, (c) the solicitation process pursuant to which the Liquidator and CMHC will solicit offers for: (i) the Successor Issuer, and/or (ii) the sale of the Maple Assets, in accordance with the terms of the Marketing Process.
12. This Marketing Process shall govern the solicitation by the Liquidator for LOIs and Offers for the Successor Issuer and/or the Maple Assets and the selection by CMHC of the Successor Issuer.

Selection of a Successor Issuer

13. Pursuant to the Marketing Process Order, the Liquidator will be responsible for implementation of the Marketing Process. Nothing in this Marketing Process is intended to limit the exclusive right of CMHC to select the Successor Issuer. Accordingly, CMHC, in consultation with the Liquidator, shall retain its authority to select the Successor Issuer and in furtherance of this objective the Liquidator and CMHC will cooperate and consult during the Marketing Process with the objective of selecting the Successor Issuer, acceptable to CMHC, and a purchaser for the Maple Assets.
14. In the event that there is disagreement or clarification required as to the interpretation or application of this Marketing Process, as between the Liquidator and CMHC, the applicable provisions of the MOU shall govern.

Selection of the Successor Issuer and/or Sale Proposal for the Maple Assets

15. A Prospective Offeror (as defined below) may, at the option of such Prospective Offeror, submit an LOI, or an Offer for one or more of the following:
  - (a) An offer to be selected as the Successor Issuer for some or all of the NHA MBS business of Maple Bank, as acceptable to CMHC (a "Successor Issuer Offer"); and/or
  - (b) The purchase of all, or substantially all, or any portion of the Maple Assets (the "Sale Proposal"). For greater certainty, the Sale Proposal shall not include an offer to auction or liquidate any of the Maple Assets.

(and collectively, the Successor Issuer Offer and the Sale Proposal, the "Offers")

Selection of the Successor Issuer

16. With respect to a Successor Issuer Offer, CMHC shall have the sole and exclusive right to select the Successor Issuer.

Maple Assets Subject to Sale

17. With respect to a Sale Proposal, the assets available to be sold include all, or substantially all, of the Maple Assets, as more particularly described in Schedule "A" hereto. Interested parties will need to indicate whether, or not they are seeking to become the Successor Issuer, and if so, whether their offer is partially, or fully conditional on being selected as the Successor Issuer Offer.
18. Notwithstanding anything else contained in this Marketing Process, at any time after entry of the Marketing Process Order, the Liquidator, in the exercise of its reasonable business judgment and in accordance with the applicable provisions of the MOU, after consulting with CMHC, and upon notice to any Prospective Offeror, if any, may, from time to time, withdraw any Maple Assets from this Marketing Process.

As is, where is

19. Any sale of the Maple Assets shall be on an “as is, where is” basis and without representations, warranties, covenants or indemnities of any kind, nature, or description by the Liquidator, or any of its respective agents, directors, officers, employees, professionals, advisors, or otherwise, except to the extent set forth in the executed definitive sale agreement(s) with the Accepted Sale Offeror(s) (as defined below) and any orders of the Court.

Free of Any And All Claims and Interests

20. All of the rights, title and interests of Maple Bank in and to any or all of the Maple Assets to be acquired under a Sale Proposal, may be sold free and clear of all security, charges, pledges, liens, encumbrances, claims or other restrictions thereon and there against including, for greater certainty, any charges or encumbrances created by the Winding-Up Order, subsequent orders of the Court in the Winding-Up proceedings, or as provided for under WURA (collectively, the “Encumbrances”), except for those liens and encumbrances expressly to be assumed by the Accepted Sale Offeror(s) and permitted pursuant to an Approval and Vesting Order(s) in a form satisfactory to the Accepted Sale Offeror(s), the Liquidator, and as may be granted by the Court. The Encumbrances shall attach to the net proceeds of the sale of the Maple Assets subject to such Encumbrances, without prejudice to any claims or causes of action regarding priority, validity or enforceability thereof.

Solicitation

21. As soon as reasonably practicable, the Liquidator will prepare, in consultation with CMHC: (a) a list of potential offerors who may be interested in submitting a Successor Issuer Offer and/or a Sale Proposal (collectively, the “Prospect List”), including both existing CMHC approved issuers (the “Approved Issuers”) and non-CMHC approved issuers (the “Non-Approved Issuers”) who, in the Liquidator’s judgment, (after consultation with CMHC), may have a reasonable prospect of becoming the Successor Issuer and/or concluding a transaction in respect of a Sale Proposal; (b) an initial offering summary (the “Teaser Letter”) to notify each party on the Prospect List of the solicitation process under this Marketing Process and to invite each potential offeror to submit an LOI in respect of a Successor Issuer Offer and/or a Sale Proposal and; (c) a form of confidentiality agreement, which shall include an agreement to be bound by the provisions of this Marketing Process (the “Confidentiality Agreement”).
22. As soon as reasonably practicable, but in any event no later than April 13, 2016 (the “Phase 1 Commencement Date”), the Liquidator shall send the Teaser Letter, a copy of the Marketing Process Order, and the form of Confidentiality Agreement to those persons on the Prospect List and, as soon as reasonably practicable thereafter, after consulting with CMHC, to any other person who expresses an interest in this Marketing Process and who requests a copy of the Teaser Letter, or who is identified to the Liquidator or CMHC as a potential offeror.



**MARKETING PROCESS- PHASE 1**

23. For a period of twenty-four (24) calendar days following the Phase 1 Commencement Date, or for such longer period as agreed to by the Liquidator and CMHC ("Phase 1"), the Liquidator, after consulting with CMHC, will solicit non-binding indications of interest in the form of non-binding letters of intent (each an "LOI") from each potential offeror on the Prospect List, as well as any other interested party who has communicated an interest to either the Liquidator or CMHC in respect of submitting a Successor Issuer Offer or a Sale Proposal (collectively, a "Prospective Offeror").
24. Prospective Offerors that execute and deliver to the Liquidator, the Confidentiality Agreement, shall receive a detailed confidential information memorandum prepared by the Liquidator, in consultation with CMHC, describing the opportunity to complete a transaction to become the Successor Issuer and/or effect a Sale Proposal. Such parties shall also receive access to an electronic due diligence database (the "Due Diligence Access"). The Due Diligence Access for each party shall terminate: (a) upon the Phase 1 LOI Deadline (as defined below) in the event that such party fails to deliver an LOI in accordance with the instructions contained in the "Phase 1 Timing" section below; (b) in the event that such party does not progress to Phase 2 (as defined below).
25. The Liquidator will designate a representative to coordinate all reasonable requests for Due Diligence Access for all parties eligible to receive such access in accordance with this section. The Liquidator and CMHC are not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the NHA MBS Program, the Business or the Maple Assets, and do not make any representations or warranties as to the information or materials provided.
26. In respect of information requests, or any other matters concerning the Successor Issuer Offer and/or a Sale Proposal, Prospective Offerors must communicate with KPMG, and to the extent that such requests relate to the NHA MBS Program, with CMHC, or with such other individual or individuals, as KPMG and CMHC may authorize in writing. Without the prior written consent of the Liquidator, no Prospective Offeror, or representatives of a Prospective Offeror, may initiate or cause to be initiated or maintain any communication with any officer, director, agent, employee, affiliate, creditor, customer or supplier of Maple Bank concerning the NHA MBS business, the Business, the Maple Assets, operations, prospects or finances, or any matters relating to a Successor Issuer Offer and/or a Sale Proposal. For greater certainty, the restrictions set out in paragraph 26 herein shall not apply to CMHC, who shall be at liberty to communicate with any officer, director, agent, employee, affiliate, creditor, shareholder, customer or supplier of Maple Bank concerning the NHA MBS business, the Business, the Maple Assets, operations, prospects or finances, or any matters relating to a Successor Issuer Offer.

**Phase 1 Timing**

27. Prospective Offerors that wish to pursue a Successor Issuer Offer and/or a Sale Proposal must deliver a non-binding LOI in writing, via email or by personal delivery to the Liquidator and CMHC in respect of a Successor Issuer Offer, and to the Liquidator only in respect of a Sale Proposal, so that they are actually received by no later than 5:00 PM

(Toronto time) on or before May 4, 2016, or such later date as determined by CMHC, in consultation with the Liquidator, with regard to a Successor Issuer Offer, and by the Liquidator with regard to a Sale Proposal (the "Phase 1 LOI Deadline").

28. All Successor Issuer Offers should be delivered to:

Canada Mortgage and Housing Corporation  
700 Montreal Road, C2-214  
Ottawa, Ontario  
K1A 0P7

Attention: Reem Hindieh and Karen Bailey  
Email: rhindieh@cmhc-schl.gc.ca; kbailey@cmhc-schl.gc.ca

With a copy to counsel to CMHC:

Borden Ladner Gervais LLP  
Scotia Plaza  
40 King St. W.  
Toronto, ON M5H 3Y4

Attention: Rosalind Morrow, Marc Duchesne and Roger Jaipargas  
Email: rmorrow@blg.com; mduchesne@blg.com; rjaipargas@blg.com

With a copy to the Liquidator:

KPMG Inc.  
Bay Adelaide Centre  
333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5

Attention: Philip J. Reynolds, Nick Brearton and Ryan Adlington  
Email: pjreynolds@kpmg.ca; nbrearton@kpmg.ca; radlington@kpmg.ca

With a copy to counsel to the Liquidator:

Gowling WLG  
1 First Canadian Place,  
100 King St. W., Suite 1600  
Toronto, ON M5J 2T3

Attention: Alex MacFarlane and Lilly Wong  
Email: alex.macfarlane@gowlingwlg.com; lilly.wong@gowlingwlg.com

29. All Sale Proposal Offers should be delivered to:

KPMG Inc.  
Bay Adelaide Centre  
333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5

Attention: Philip J. Reynolds, Nick Brearton and Ryan Adlington  
Email: pjreynolds@kpmg.ca; nbrearton@kpmg.ca; radlington@kpmg.ca

With a copy to counsel to the Liquidator:

Gowling WLG  
1 First Canadian Place,  
100 King St. W., Suite 1600  
Toronto, ON M5J 2T3

Attention: Alex MacFarlane and Lilly Wong  
Email: alex.macfarlane@gowlingwlg.com; lilly.wong@gowlingwlg.com

Non-Binding Letters of Intent Requirements

30. An LOI will be considered a qualified LOI (a "Qualified LOI") only if it:
- (a) is submitted on or before the Phase 1 LOI Deadline;
  - (b) contains an executed Confidentiality Agreement (if not already delivered);
  - (c) indicates whether the LOI involves a Successor Issuer Offer and/or a Sale Proposal;
  - (d) identifies the Prospective Offeror and representatives thereof who are authorized to appear and act on behalf of the Prospective Offeror for all purposes regarding the contemplated transaction, and it must fully disclose the identity of each entity that will be sponsoring, participating in, or benefiting from the transaction contemplated by the LOI, and the complete terms of such participation, including, in the case of an entity formed or to be formed for the purpose of entering into the transaction contemplated by the LOI, the identity of each actual or anticipated direct or indirect equity holder or beneficiary of such entity and the percentage of such equity holder or beneficiary's interest in the transaction contemplated by the LOI;
  - (e) describes the structure and financing of the proposed transaction (including, but not limited to, a specific indication of the sources of financing for the purchase price, and preliminary evidence of the availability of such financing and the steps necessary and associated timing to obtain such financing and consummate the proposed transaction in each case in sufficient detail to permit the Liquidator and CMHC to make a reasonable business or professional judgment as to the

- Prospective Offeror's financial or other capabilities to consummate the transaction);
- (f) describes the conditions and approvals required for a final and binding offer, including the approval by CMHC to become an Approved Issuer, if applicable, and any anticipated corporate, security holder, internal or regulatory approvals required to close the transaction, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such approvals;
  - (g) describes any additional due diligence required to be conducted during Phase 2 (as defined below);
  - (h) identifies all conditions to closing to be imposed by the Prospective Offeror including, without limitation, any form of agreement required from CMHC, or any other government body, stakeholder or other third party;
  - (i) contains such other information reasonably requested by the Liquidator, or CMHC;
  - (j) sets out the purchase price (or range thereof) in Canadian dollars, including details of any liabilities to be assumed by the Prospective Offeror;
  - (k) in the case of a Successor Issuer Offer, is an offer for all or certain of the NHA MBS mortgage pools for which Maple Bank was the Approved Issuer; provided that no offer for a part of a mortgage pool will be accepted;
  - (l) in the case of a Successor Issuer Offer, if it is not already an Approved Issuer, each offeror must confirm that it will provide within 15 days after the Phase 2 Commencement Date (as defined in paragraph 34) the relevant documentation to demonstrate that it meets all of the requirements, prerequisites and criteria set out under the NHA MBS Guide to be an issuer of NHA MBS (including but not limited to current net worth requirements) and, for parties, other than federally regulated banks, trust companies and insurance companies, proof of licensing or exemption from licensing to trade in mortgages and act as an MBS Issuer in all provinces (and for loan administration if they will service any of the mortgage loans, as well as proof of being a NHA Approved Lender or Genworth or Canada Guaranty Qualified Mortgage Lender);
  - (m) in the case of a Successor Issuer Offer, the offer must indicate whether, or not the proposed Successor Issuer intends to assume the existing mortgage servicing and/or mortgage originating agreements entered into with Maple Bank; and,
  - (n) includes any other terms or conditions that the Prospective Offeror believes are material to the transaction.

In the case of a Sale Proposal, a Qualified LOI must also identify or contain the following information:

- (i) identifies the Maple Assets that are to be purchased as part of the transaction;
- (ii) identifies the Maple Assets that are to be excluded from the transaction;
- (iii) describes the intended use of the Maple Assets that are to be purchased as part of the transaction;
- (iv) whether the Sale Proposal is partially, or entirely conditional upon the Successor Issuer Offer; and,
- (v) any other terms or conditions of the Sale Proposal that the Prospective Offeror believes are material to the transaction.

Any such conditions may be waived, in whole or in part, by the Liquidator and CMHC, acting jointly.

31. An LOI received by the Liquidator and CMHC after the Phase 1 LOI Deadline shall not constitute a Qualified LOI, it being understood that, with respect to a Successor Issuer Offer, CMHC, in consultation with the Liquidator, and with respect to a Sale Proposal, the Liquidator, in its sole discretion, shall have the right to deem an LOI received after the Phase 1 LOI Deadline as a Qualified LOI.

**Assessment of Qualified LOIs and Continuation or Termination of Solicitation Process**

32. Following the Phase 1 LOI Deadline, CMHC and the Liquidator will assess the Qualified LOIs received during Phase 1, if any, and will determine whether there is a reasonable prospect of obtaining a Successor Issuer Offer, and the Liquidator will assess the Qualified LOIs to determine whether there is a reasonable prospect of obtaining a Sale Proposal. For the purpose of such consultations and evaluations, CMHC and the Liquidator may request clarification of the terms of any Qualified LOI submitted by a Prospective Offeror.
33. In assessing the Qualified LOIs submitted in Phase 1, CMHC and the Liquidator may consider, among other things, the following:
- (a) the form and amount of consideration being offered and the net value to Maple Bank (including any assumed liabilities or other obligations to be performed by the Prospective Offeror);
  - (b) in respect of a Sale Proposal, whether the Qualified LOI maximizes value for the Maple Assets;
  - (c) in respect of a Successor Issuer Offer, that a Successor Issuer must be chosen for each of the NHA MBS mortgage pools for which Maple Bank was the Approved Issuer;
  - (d) the demonstrated financial capability of the Prospective Offeror to consummate the proposed transaction;

- (e) the identity of the Prospective Offeror;
  - (f) the costs and risks associated with entering into a transaction with a Prospective Offeror;
  - (g) any transition services required in respect of the transaction contemplated by the Qualified LOI;
  - (h) any monetary value that may reasonably be attributed to any non-cash consideration provided by a Prospective Offeror;
  - (i) the conditions to closing of the proposed transaction (including any required regulatory approvals and any other factors affecting the speed, certainty and value of the transaction);
  - (j) the treatment of Maple Bank employees, where hired by the Liquidator (whether active or inactive);
  - (k) whether the Qualified LOI is likely to create, or allow to remain outstanding, a claim against Maple Bank and, if so, and a comparison of any such claims to claims likely to be created by any other Qualified LOI;
  - (l) the terms of the Qualified LOI (including, but not limited to, the anticipated counterparties to the transaction, and the anticipated closing date);
  - (m) the estimated time required to complete the proposed transaction and whether, in respect of a Successor Issuer Offer, CMHC, in consultation with the Liquidator, is of the opinion, and with respect to a Sale Proposal, the Liquidator is of the opinion, that the anticipated transaction is reasonably likely to close on or before the Outside Termination Date (as defined below); and
  - (n) such other criteria as CMHC and the Liquidator may determine as appropriate.
34. If one or more Qualified LOIs are received in respect of a Successor Issuer Offer, and CMHC, in consultation with the Liquidator, determines that there is a reasonable prospect of obtaining a Successor Issuer Offer, the Liquidator may notify the Prospective Offerors that the Marketing Process shall progress to phase 2 (the date of such notification being the "Phase 2 Commencement Date") and the solicitation process shall be continued in accordance with this Marketing Process for a further thirty (30) calendar days following the Phase 2 Commencement Date or for such longer period as CMHC, in consultation with the Liquidator, may determine ("Phase 2").
35. If one or more Qualified LOIs are received in respect of a Sale Proposal and the Liquidator determines that there is a reasonable prospect of obtaining one or more Sale Proposal Offer(s), the Liquidator shall notify the Prospective Offerors that the Marketing Process shall progress to Phase 2 and notify such Prospective Offerors of the Phase 2 Commencement Date.
36. In respect of a Successor Issuer Offer, if CMHC, in consultation with the Liquidator, determines that there is at least one Qualified LOI received by the Phase 1 LOI Deadline,

and CMHC determines that the Prospective Offeror would qualify as an Approved Issuer under the NHA MBS Program, CMHC shall be authorized to negotiate with such Prospective Offeror to consummate a transaction for a Successor Issuer (and notwithstanding anything contained herein, such Prospective Offeror shall thereafter be deemed to be the Accepted Successor Issuer Offeror (as defined below)), following which the Liquidator shall report to the Court on the selection by CMHC of a Successor Issuer without this Marketing Process progressing to Phase 2.

37. In respect of a Sale Proposal, if the Liquidator determines that there is at least one Qualified LOI received by the Phase 1 LOI Deadline, and the Liquidator, in its reasonable business judgment, determines that such Qualified LOI maximizes the recovery on the Maple Assets, in the circumstances, then the Liquidator shall be authorized to negotiate with such Prospective Offeror to consummate a sale transaction with respect to the Maple Assets (and notwithstanding anything contained herein, such Prospective Offeror shall thereafter be deemed to be the Accepted Sale Offeror (as defined below)), following which the Liquidator shall seek Court approval of such agreement at an Authorization/Approval Motion (as defined below) without having this Marketing Process progress to Phase 2.

#### **MARKETING PROCESS – PHASE 2**

38. In respect of a Successor Issuer Offer, in the event that CMHC, in consultation with the Liquidator, determines that this Marketing Process shall progress to Phase 2, each Prospective Offeror that: (a) submits a Qualified LOI; and (b) is not eliminated from the solicitation process by CMHC, after the assessment of whether such Qualified LOI meets the criteria outlined above, will be invited to participate in Phase 2 (a “Successor Issuer Offeror”).
39. In respect of a Sale Proposal, in the event that the Liquidator, determines that this Marketing Process shall progress to Phase 2, each Prospective Offeror that: (a) submits a Qualified LOI; and (b) is not eliminated from the solicitation process by the Liquidator, after the assessment of whether such Qualified LOI meets the criteria outlined above, will be invited to participate in Phase 2 (a “Sale Offeror”).
40. With respect to the Due Diligence Access referenced above, each Successor Issuer Offeror’s and each Sale Offeror’s Due Diligence Access shall continue into Phase 2 and shall terminate upon the earliest of the following events to occur:
- (a) such party does not submit an Offer by the Phase 2 Offer Deadline (as defined below);
  - (b) in respect of a Successor Issuer Offer, such party submits an Offer by the Phase 2 Offer Deadline but CMHC, in consultation with the Liquidator, determines that such party does not constitute a Qualified Successor Issuer Offeror (as defined below);
  - (c) in respect of a Sale Proposal, such party submits an Offer by the Phase 2 Offer Deadline, but the Liquidator determines that such party does not constitute a Qualified Sale Offeror (as defined below); or

- (d) the closing of the transaction contemplated by the Accepted Successor Issuer Offer and/or the Accepted Sale Offer.
41. On the Phase 2 Commencement Date, or as soon as practicable thereafter, Successor Issuer Offerors shall contact CMHC in order to become eligible to be: (a) an Approved Issuer, if not so at the time of the Phase 2 Commencement Date; and, (b) the Successor Issuer. Notwithstanding the foregoing, if a party has submitted a Successor Issuer Offer, CMHC and such party shall be at liberty to begin the process for that party to become an Approved Issuer, (having regard to the criteria established in the NHA MBS Guide to be become an Approved Issuer), at any time after the Phase 1 Commencement Date.
42. On the Phase 2 Commencement Date or as soon as practicable thereafter, the Liquidator shall post: (a) a form of asset purchase agreement/assumption agreement on the Due Diligence Access site (the "APA") for Prospective Offerors who wish to submit a Sale Proposal(s); and (b) the form of agreement to become a Successor Issuer, which would include the consideration payable on closing, together with copies of the relevant documentation, as established by the NHA MBS Guide, for a party to become an approved NHA MBS issuer, as well as the documentation to be entered into once approved by CMHC, which documentation can also be found on the CMHC website.

#### Phase 2 Timing

43. All Successor Issuer Offers and Sale Proposals must be delivered in writing, by email or personal delivery so that they are actually received by CMHC and the Liquidator, with respect to Successor Issuer Offers, and received by the Liquidator, with respect to Sale Proposals, by no later than 5:00 p.m. (Toronto time) on the day that is thirty (30) calendar days following the Phase 2 Commencement Date, or such later date or time as may be determined by the CMHC, in consultation with the Liquidator (in respect of Successor Issuer Offers), and the Liquidator, or the Court (in respect of Sale Proposals), in accordance with the terms of this Marketing Process (the "Phase 2 Offer Deadline") at the addresses specified above in the section entitled "Phase 1 Timing".
44. A Successor Issuer Offer, or a Sale Proposal received by CMHC and/or the Liquidator after the Phase 2 Offer Deadline shall not constitute a Qualified Successor Issuer Offer (as defined below), or a Qualified Sale Offer (as defined below), as the case may be, unless CMHC, in consultation with the Liquidator (with respect to a Successor Issuer Offer) and the Liquidator (in respect of a Sale Proposal), in their respective discretion, deem a Successor Issuer Offer and/or a Sale Proposal received after the Phase 2 Offer Deadline to be a Qualified Successor Issuer Offer or a Qualified Sale Offer, as the case may be.

#### Offer Requirements

45. To be eligible to be a Qualified Successor Issuer Offeror (as defined below) and/or a Qualified Sale Offeror (as defined below), a Successor Issuer Offeror and/or a Sale Offeror must deliver either a Successor Issuer Offer to CMHC and the Liquidator, and/or a Sale Proposal to the Liquidator by the Phase 2 Offer Deadline, which satisfies each of the following applicable conditions (a "Qualified Successor Issuer Offer") or (a "Qualified Sale Offer" and collectively a "Qualified Offer") and the party submitting



such Qualified Successor Issuer Offer and/or Qualified Sale Offer, (a “Qualified Successor Issuer Offeror” or a “Qualified Sale Offeror” and collectively, a “Qualified Offeror”):

- (a) **Confidentiality.** The Successor Issuer Offeror and the Sale Offeror must deliver an executed Confidentiality Agreement (if not already delivered);
- (b) **Identification.** The Successor Issuer Offer and/or the Sale Proposal must identify the Successor Issuer Offeror and/or the Sale Offeror, as may be applicable, and their respective representatives thereof who are authorized to appear and act on behalf of the Successor Issuer Offeror and/or the Sale Offeror for all purposes regarding the contemplated transaction, and it must fully disclose the identity of each entity that will be sponsoring, participating or benefiting from the transaction contemplated in either the Successor Issuer Offer and/or the Sale Proposal, and the complete terms of such participation, including, in the case of an entity formed or to be formed for the purpose of entering into the transaction contemplated by the Successor Issuer Offer and/or the Sale Proposal, the identity of each actual or anticipated direct or indirect equity holder or beneficiary of such entity and the percentage of such equity holder or beneficiary’s interest in the transaction contemplated by either the Successor Issuer Offer and/or the Sale Proposal;
- (c) **Subject Assets.** In the case of a Successor Issuer Offer, if the offer is to become the Successor Issuer for less than all of the NHA MBS mortgage pools for which Maple Bank was the Approved Issuer, then the offer must include a list of the NHA MBS mortgage pools covered by the Successor Issuer Offer. In the case of a Sale Proposal, the offer must include a description of the Maple Assets proposed to be purchased and an allocation of the purchase price amongst those assets.
- (d) **Form and Content.** In the case of a Successor Issuer Offer, the Successor Issuer Offer must be in a form acceptable to CMHC, in order to qualify as a Successor Issuer (the “Successor Issuer Form”) and executed by the Successor Issuer Offeror (each, a “Proposed Successor Issuer Agreement”) together with all exhibits and schedules thereto and such ancillary agreements as may be required by CMHC, in consultation with the Liquidator. Any changes and modifications to the Successor Issuer Form are to be indicated on a blackline to the Successor Issuer Form. In the case of a Sale Proposal, the Sale Proposal must be in the same form as the APA and executed by the Sale Offeror (each, a “Proposed Purchase Agreement”), together with all exhibits and schedules thereto and such ancillary agreements as may be required by the Sale Offeror. Any changes and modifications to the APA shall be indicated on a blackline to the APA including, if applicable, any modifications made to reflect the Maple Assets, or parts thereof, sought to be purchased;
- (e) **Treatment of Contracts.** The Successor Issuer Offer and/or the Sale Proposal must identify, with particularity, the contracts, permits, licenses and/or leases the Successor Issuer Offeror and/or the Sale Offeror wishes to assume and those it wishes to reject and must contain full details of either the Successor Issuer

- Offeror's and/or the Sale Offeror's proposal for the treatment of related cure costs, if applicable;
- (f) **Approvals.** The Successor Issuer Offer and/or the Sale Proposal must outline any anticipated regulatory and other approvals required, in addition to the required approval from CMHC to become the Successor Issuer, in order to close the respective transaction(s) and the anticipated timeframe and any anticipated impediments for obtaining such approvals;
  - (g) **Corporate Authorizations.** The Successor Issuer Offer and/or the Sale Proposal must include evidence, in form and substance reasonably satisfactory to: (a) CMHC and the Liquidator (in the case of a Successor Issuer Offer); and (b) the Liquidator (in the case of a Sale Proposal) the authorization and approval from the Successor Issuer Offeror's and/or Sale Offeror's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction(s) contemplated by the Offers;
  - (h) **Deposit.** The Sale Proposal must be accompanied by a cash deposit equal to ten percent (10%) of the total value of the consideration contemplated by the Offer, to a maximum of \$5 million, (the "Deposit" and collectively, the "Deposits"), and the Deposits shall be paid to the Liquidator in accordance with wire instructions provided by the Liquidator, and shall be held by the Liquidator in accordance with this Marketing Process;
  - (i) **Financial Wherewithal.** The Successor Issuer Offer and/or the Sale Proposal must include evidence satisfactory to CMHC and the Liquidator (in respect of a Successor Issuer Offer) and the Liquidator (in respect of a Sale Proposal) of the respective offeror's financial ability to complete the Successor Issuer Offer and/or the Sale Proposal and close the transaction(s) on a closing date (the "Closing Date");
  - (j) **Closing Date.** The Successor Issuer Offer and/or the Sale Proposal must contain a binding commitment by the Successor Issuer Offeror and/or the Sale Offeror to close on the terms and conditions set forth in the proposed Successor Issuer Agreement, or the Proposed Purchase Agreement, as applicable, as soon as practicable after satisfaction or waiver of all conditions; provided that the Closing Date must take place by no later than August 31, 2016, or such later date as agreed to by CMHC, in consultation with the Liquidator, (in respect of a Successor Issuer Offer) and the Liquidator (in respect of a Sale Proposal) and the respective offeror(s) (the "Outside Termination Date");
  - (k) **Closing Timeline.** The Successor Issuer Offer and/or the Sale Proposal must provide a timeline for the closing of the transaction, which includes critical milestones;
  - (l) **Irrevocable.** The Successor Issuer Offer and/or the Sale Proposal must be accompanied by a letter which confirms that the Offers: (i) may be accepted by CMHC (in respect of a Successor Issuer Offer), and the Liquidator, (in respect of a Sale Offer), by countersigning the Proposed Successor Issuer Agreement, or the

Proposed Purchase Agreement, as may be applicable, and (ii) is irrevocable and capable of acceptance until the earlier of (A) the day on which the Successor Issuer Offeror, or the Sale Offeror is notified that their respective offer is not a Qualified Offer; (B) if a Qualified Successor Issuer Offeror, or a Qualified Sale Offeror; (i) the date on which the CMHC and the Liquidator and the Accepted Successor Issuer Offeror have executed a binding agreement in respect of the transaction for a Successor Issuer; or (ii) the date on which the Liquidator and the Accepted Sale Offeror(s) have executed a binding agreement in respect of the transaction(s) for the Sale Proposal(s);

- (m) No Representations and Warranties. The Successor Issuer Offer and/or the Sale Proposal shall include an "as is, where is" clause substantially on the same terms as the "as is, where is" clause set out in the APA and the Successor Issuer Form;
- (n) Acknowledgment. The Successor Issuer Offer and/or the Sale Proposal shall include an acknowledgment and representation that the Successor Issuer Offeror and the Sale Offeror, as applicable: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Maple Assets to be acquired and liabilities to be assumed in making its offer; and (ii) did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied (by operation of law or otherwise), regarding the rights and responsibilities of Maple Bank for the NHA MBS and/or the Maple Assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the Proposed Successor Issuer Agreement, or the Proposed Purchase Agreement, as applicable;
- (o) Contingencies. The Successor Issuer Offer and/or the Sale Proposal shall not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence;
- (p) No Fees Payable to Offeror. The Successor Issuer Offer and/or the Sale Proposal shall not request or entitle the Successor Issuer Offeror and/or the Sale Offeror to any break-up fee, expense reimbursement, termination or similar type of fee or payment. Further, by submitting a Successor Issuer Offer and/or a Sale Proposal, a Successor Issuer Offeror and a Sale Offeror shall be deemed to irrevocably waive any right to pursue a claim in any way related to this Marketing Process; and
- (q) Other Information. Successor Issuer Offer and/or the Sale Proposal shall contain such other information reasonably requested by CMHC, or the Liquidator, as may be applicable.

Any such conditions may be waived, in whole or in part, by the Liquidator and CMHC, acting jointly.

46. Each Successor Issuer Offeror and Sale Offeror shall comply with all reasonable requests for additional information by CMHC or the Liquidator regarding each corresponding offer and its contemplated transaction. Failure by a Successor Issuer Offeror and/or a

Sale Offeror to comply with requests for additional information will be a basis for CMHC, in consultation with the Liquidator (in respect of a Successor Issuer Offer) and the Liquidator (in respect of a Sale Proposal), to determine that the applicable offeror is not a Qualified Successor Issuer Offeror, or Qualified Sale Offeror.

47. CMHC and the Liquidator may discuss, negotiate or seek clarification of any Successor Issuer Offer and/or the Sale Proposal. A Successor Issuer Offeror and/or a Sale Offeror may not modify, amend or withdraw their respective offers without the written consent of CMHC, in consultation with the Liquidator, (with respect to a Successor Issuer Offer) and the Liquidator (with respect to a Sale Proposal). Any such modification, amendment or withdrawal of an offer by an offeror without the written consent of CMHC and the Liquidator, as applicable, shall result in a forfeiture of such offeror's Deposit as liquidated damages and not as a penalty.

### **MARKETING PROCESS – PHASE 3**

48. If one or more Qualified Successor Issuer Offers, or Qualified Sale Offers are received in accordance with this Marketing Process, in the case of a Qualified Successor Issuer Offer, CMHC, in consultation with the Liquidator, may choose to:
- (a) accept one or more than one non-overlapping Qualified Successor Issuer Offer(s) (the "Accepted Successor Issuer Offer(s)" and the party, or parties submitting the Accepted Successor Issuer Offer(s) (the "Accepted Successor Issuer Offeror(s)") shall proceed to finalize and complete an agreement for the Accepted Successor Issuer Offer(s) with the Qualified Successor Issuer Offeror(s); or,
  - (b) continue negotiations with a selected number of Qualified Successor Issuer Offerors with a view to finalizing an agreement with one, or more Qualified Successor Issuer Offeror(s), such that such Qualified Successor Issuer Offeror(s) becomes the Accepted Successor Issuer Offeror(s).

In the case of a Qualified Sale Offer, the Liquidator may choose to:

- (c) accept one Qualified Sale Offer, or multiple sets of non-overlapping Qualified Sale Offers with respect to the Maple Assets (the "Accepted Sale Offer(s), and the party or parties submitting such Accepted Sale Offer(s), the "Accepted Sale Offeror(s)") and take such steps as are necessary to finalize and complete an agreement for the Accepted Sale Offer(s) with the selected Qualified Sale Offeror(s); or,
  - (d) continue negotiations with a selected number of Qualified Sale Offerors with a view to finalizing an agreement with one, or more Qualified Sale Offeror(s) such that such Qualified Sale Offeror(s) becomes the Accepted Sale Offeror(s).
49. Evaluation criteria for the Accepted Successor Issuer Offer(s) and/or Accepted Sale Offer(s) may include, but are not limited to, the factors listed in the section above regarding the "Assessment of Qualified LOIs and Continuation or Termination of

**Solicitation Process”** (except such factors will be applied to an evaluation of the Qualified Offers, as opposed to the Qualified LOIs).

### **OTHER TERMS**

#### **CMHC's and the Liquidator' Reservation of Rights**

50. In addition to the other reservation of rights set out herein, in respect of a Successor Issuer Offer, CMHC, in consultation with the Liquidator, shall have the right in its discretion to: (a) waive strict compliance with any one or more of the LOI Requirements or Offer Requirements, as specified herein, and deem such non-compliant LOIs to be Qualified LOIs or non-compliant Successor Issuer Offers to be Qualified Successor Issuer Offers, as the case may be, provided that such non-compliance is not material in nature; (b) reject any or all LOIs or Successor Issuer Offers if, in CMHC's opinion, in consultation with the Liquidator, no LOI or Successor Issuer Offer complies with the minimum requirements or for any other reasons; (c) adopt such ancillary and procedural rules not otherwise set out herein (including rules that may depart from those set forth herein) that in the CMHC's opinion, in consultation with the Liquidator, will better promote the goal of finding a Successor Issuer(s); and/or (d) truncate or terminate this Marketing Process with regard to identifying a Successor Issuer(s), after consultation with the Liquidator, at any point in time.
51. In addition to the other reservation of rights set out herein, in respect of a Sale Proposal, the Liquidator shall have the right in its discretion to: (a) waive strict compliance with any one or more of the LOI Requirements or Offer Requirements, as specified herein, and deem such non-compliant LOIs to be Qualified LOIs or non-compliant Sale Proposals to be Qualified Sale Offers, as the case may be, provided that such non-compliance is not material in nature; (b) reject any or all LOIs, or Sale Proposals if, in the Liquidator's judgement, no LOI or Sale Proposal complies with the minimum requirements or for any other reasons; (c) adopt such ancillary and procedural rules not otherwise set out herein (including rules that may depart from those set forth herein) that in the Liquidator's judgement, will better promote the goal of this Marketing Process; and/or (d) truncate or terminate this Marketing Process, after consultation with CMHC, at any point in time.
52. To the extent that any notice of changes to this Marketing Process or related dates, times, or locations is required or otherwise appropriate, the Liquidator may publish such notice on the Liquidator's public website and such notice shall be deemed satisfactory, subject to any other notice requirements specifically set forth herein, or as required by the Court.

#### **Discussions with Third Party Stakeholders**

53. If it is determined by CMHC, in consultation with the Liquidator, in respect of a Successor Issuer Offer, that it would be worthwhile to facilitate a discussion between a prospective Successor Issuer Offeror, or a Qualified Successor Issuer Offerer, as applicable, and a stakeholder (including any originators or servicers to Maple Bank's MBS business), or other third party (such as a governmental or regulatory authority) as a consequence of a condition to a potential transaction or potential closing condition identified by such prospective Successor Issuer Offeror, or Qualified Successor Issuer Offerer, CMHC may provide such prospective Successor Issuer Offeror, or Qualified

Successor Issuer Offeror, with the opportunity to meet with the relevant stakeholder or third party to discuss such condition or potential condition, with a view to enabling such prospective Successor Issuer Offeror, or Qualified Successor Issuer Offeror, to seek to satisfy the condition or assess whether the condition is not required or can be waived. Any such meetings or other form of communication will take place on terms and conditions considered appropriate by CMHC, in consultation with the Liquidator.

54. If it is determined by the Liquidator, in respect of a Sale Proposal, that it would be worthwhile to facilitate a discussion between a prospective Sale Offeror or a Qualified Sale Offeror, as applicable, and a stakeholder (including any originators or servicers to Maple Bank's MBS business), or other third party (such as a governmental or regulatory authority) as a consequence of a condition to a potential transaction or potential closing condition identified by such prospective Sale Offeror, or Qualified Sale Offeror, the Liquidator may provide such prospective Sale Offeror, or Qualified Sale Offeror with the opportunity to meet with the relevant stakeholder or third party to discuss such condition or potential condition, with a view to enabling such prospective Sale Offeror, or Qualified Sale Offeror to seek to satisfy the condition or assess whether the condition is not required or can be waived. Any such meetings or other form of communication will take place on terms and conditions considered appropriate by the Liquidator.

#### Authorization/Approval Motion

The Liquidator may apply to the Court for an order approving the Accepted Sale Offer(s) of the sale of the applicable Maple Assets to the Accepted Sale Offeror(s) free and clear of all liens and encumbrances, other than those liens and encumbrances expressly to be assumed by the Accepted Sale Offeror(s) (the "Authorization/Approval Motion"). The Authorization/Approval Motion may be scheduled with the Court as soon as possible thereafter at 330 University Avenue, Toronto, Ontario before Regional Senior Justice Morawetz. The Authorization/Approval Motion may be adjourned, or re-scheduled by the Liquidator, after consulting with CMHC, without further notice, but by an announcement of the adjourned date at the Authorization/ Approval Motion. Notwithstanding the foregoing, in the event that there is more than one Accepted Sale Offer, the Liquidator, reserves the right to impose a condition in each Accepted Sale Offer that the Authorization/Approval Sale Motion for such Accepted Sale Offer be heard on the same day as any other Authorization/Approval Motion(s).

#### Consent to Jurisdiction as Condition to make an Offer

55. All prospective Successor Issuer Offerors, prospective Sale Offerors and all Qualified Offerors shall be deemed to have consented to the exclusive jurisdiction of the Court with respect to any disputes relating to this Marketing Process and the construction and enforcement of the relevant transaction documents, as applicable.

#### Marketing Process Participant Fees

56. Participants in the Marketing Process are responsible for all costs, expenses and liabilities incurred by them for any reason whatsoever, including, but not limited to, in connection with the submission of any LOI, Successor Issuer Offer, Sale Proposal, due diligence

activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

**Closing the Successful Offer(s)**

57. In respect of the Accepted Successor Issuer Offer(s), CMHC, in consultation with the Liquidator and the Accepted Successor Issuer Offeror(s), will take all reasonable steps to complete the transaction contemplated by the Accepted Successor Issuer Offer(s), as soon as possible.
58. In respect of the Accepted Sale Offer(s), the Liquidator and the Accepted Sale Offeror(s) will take all reasonable steps to complete the transaction contemplated by the Accepted Sale Offer(s) as soon as possible after the Accepted Sale Offer(s) is approved by the Court.
59. If the transaction(s) contemplated by the Accepted Successor Issuer Offer(s) and the Accepted Sale Offer(s) has/have not closed by the Outside Termination Date, or such Accepted Successor Issuer Offer(s) and/or Accepted Sale Offer(s) is/are terminated for any reason prior to the Outside Termination Date, then this Marketing Process shall be terminated with respect to either the process to find a Successor Issuer and/or the process to sell the Maple Assets, as applicable.

**Return of Deposit**

60. All Deposits shall be held by the Liquidator in an interest-bearing account until returned to the applicable offeror or otherwise dealt with in accordance with this Marketing Process. Deposits of all offerors who are determined not to be a Qualified Offeror shall be returned to such offeror ten (10) business days after the day on which the offeror is notified that it is not a Qualified Offeror. Deposits of all Qualified Offerors, other than the Accepted Sale Offeror(s), shall be returned to such Qualified Offerors ten (10) business days after the day on which the Liquidator and the Accepted Sale Offeror(s) have executed a binding agreement in respect of the transaction(s) for the Sale Proposal(s).
61. The Deposit with respect to the Accepted Sale Offeror(s) shall be applied to the purchase price of the applicable transaction(s) at closing. If the Accepted Sale Offer(s) fail(s) to close by the Outside Termination Date because of a breach or failure to perform on the part of the Accepted Sale Offeror(s), the Liquidator shall be entitled to retain the Deposit of the applicable Accepted Sale Offeror(s) as part of the liquidated damages resulting from the breach or failure to perform by the applicable Accepted Sale Offeror(s) (and not as a penalty). The Deposit of the Accepted Sale Offeror(s) shall otherwise be returned to the Accepted Sale Offeror(s) in accordance with the terms of the Accepted Sale Offer(s).

**No Amendment**

62. There will be no amendments to this Marketing Process without the written consent of CMHC and the Liquidator, each acting reasonably, or, in the absence of consent, the approval of the Court. This Marketing Process does not, and will not, be interpreted to create any contractual or other legal relationship between CMHC, the Liquidator, and any

prospective Successor Issuer Offeror, prospective Sale Offeror, Successor Issuer Offeror, or a Sale Offeror. At any time during the implementation of this Marketing Process, and subject to the terms of the MOU, CMHC and the Liquidator may apply to the Court for advice and directions with respect to the implementation of this Marketing Process, and in the case of the Liquidator, in respect of the discharge of its powers and duties hereunder.

**No Acceptance Obligation**

63. In the case of a Successor Issuer Offer, CMHC shall be under no obligation to accept the highest Qualified LOI and/or the highest Qualified Successor Issuer Offer, or any Qualified LOI and/or Qualified Successor Issuer Offer, and reserves the right to reject, after consulting with the Liquidator, any or all Qualified LOIs and/or Qualified Successor Issuer Offers. The selection of the Accepted Successor Issuer Offer(s) shall be in the sole discretion of CMHC, after consulting with the Liquidator.
64. In the case of a Sale Offer, the Liquidator, shall be under no obligation to accept the highest Qualified LOI and/or the highest Qualified Sale Offer, or any Qualified LOI and/or Qualified Sale Offer, and reserves the right to reject any or all Qualified LOIs and/or Qualified Sale Offers. The selection of the Accepted Sale Offer(s) shall be in the sole discretion of the Liquidator.

**Summary of Key Dates**

65. The following chart summarizes the key dates provided for in this Marketing Process, which dates are subject to extension, or modification, with agreement of both the Liquidator and CMHC.

Phase 1 Commencement Date / Teaser Letters sent to Prospect List	April 13, 2016
Phase 1 LOI Deadline	May 6, 2016
Phase 2 Commencement Date / APA posted to Due Diligence Access site	May 18, 2016
Phase 2 Offer Deadline	June 17, 2016
Outside Termination Date	August 31, 2016



**Maple Bank GmbH – Toronto Branch  
Marketing Process  
List of Maple Assets**

- Approximately \$117 million of NHA MBS certificates (subject to payment of the guarantee fee to CMHC, as required under the NHA MBS Guide);
- Approximately \$35 million of CMHC insured mortgages that have not yet been pooled;
- The mortgage origination agreements that Toronto Branch had in place as at the winding-up date;
- The mortgage servicing agreements that Toronto Branch had in place as at the winding-up date;
- The Toronto Branch mortgage aggregation processes, policies and business;
- A credit facility, in the amount of approximately \$39 million, secured by insured mortgages; and
- Approximately \$233 million of bonds associated with the Federal Immigrant Investor Program and the Quebec Immigrant Investor Program.

IN THE MATTER OF MAPLE BANK GmbH  
AND IN THE MATTER OF THE WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS  
AMENDED  
AND IN THE MATTER OF THE BANK ACT, S.C. 1991, C.46, AS AMENDED

Court File No. CV-16-11290-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

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Lawyers for KPMG Inc., in its capacity as Liquidator of the  
business in Canada of Maple Bank GmbH and its assets.

**This is Appendix “C” to the  
Sixth Report of the Liquidator Dated September 19, 2016**

Court File No. CV-16-11290-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

IN THE MATTER OF MAPLE BANK GmbH

AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,  
R.S.C. 1985, C.W-11, AS AMENDED

AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

SECOND REPORT OF KPMG INC. in its capacity as

COURT APPOINTED LIQUIDATOR OF THE BUSINESS IN CANADA OF MAPLE BANK  
GMBH AND ITS ASSETS AS DEFINED IN SECTION 618 OF THE *BANK ACT*

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## ***Listing of Appendices***

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- Appendix A - Winding-Up Order dated February 16, 2016
- Appendix B - Endorsement of Regional Senior Justice Morawetz dated February 17, 2016
- Appendix C - The Recognition Order dated March 11, 2016 and endorsed Stipulation dated March 3, 2016
- Appendix D - Notice of default sent by CMHC dated February 9, 2016
- Appendix E - Letter to Maple Bank from CMHC dated February 12, 2016
- Appendix F - Memorandum of Understanding dated March 16, 2016
- Appendix G - Proposed Marketing Process

## ***1. INTRODUCTION AND PURPOSE OF REPORT***

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### **BACKGROUND TO THE WINDING-UP ORDER**

1. As more fully described in the proposed Liquidator's report to this Court dated February 16, 2016 (the "**First Report**"), Maple Bank GmbH ("**Maple Bank**") is a Canadian-owned German bank, and an "authorized foreign bank" in Canada as defined under section 2 and Part XII.1 of the *Bank Act*. As a German bank, Maple Bank is subject to regulation in Germany by the Federal Financial Supervisory Authority ("**BaFin**"). As an authorized foreign bank under the *Bank Act*, Maple Bank is regulated with respect to its business in Canada (the "**Toronto Branch**") by the Office of the Superintendent of Financial Institutions (the "**Superintendent**" or "**OSFI**").
2. The recent emergence of significant German tax claims against Maple Bank (said to arise from alleged tax evasion in Germany) and resulting indebtedness of Maple Bank led to:
  - i. BaFin issuing a "Moratorium" order essentially requiring Maple Bank to cease business and then instituting insolvency proceedings in Germany (the "**German Insolvency Proceedings**");
  - ii. appointing a German insolvency administrator (the "**GIA**");
  - iii. issuing of default notices and terminating of agreements with various financial institutions in respect of their dealings with Maple Bank's business in Canada (the "**Business**");
  - iv. Canada Mortgage and Housing Corporation ("**CMHC**"), after the issuance of a default notice to Maple Bank, taking control of the Mortgage Backed Securities ("**MBS**") business of the Toronto Branch and the corresponding mortgage pools; and
  - v. the Superintendent issuing orders under section 619 of the *Bank Act* for taking control of the assets of Maple Bank in respect of its business in Canada (i.e. Toronto Branch).
3. These events prompted the Superintendent to request that the Attorney General of Canada seek a winding-up order pursuant to section 10.1 of *Winding-Up and Restructuring Act*

(the “WURA”) in respect of Toronto Branch. On February 16, 2016 (the “Winding-Up Date”), this Court granted an order (the “Winding-Up Order”) to (i) wind-up the Business; and (ii) appoint KPMG Inc. (“KPMG”) as liquidator (the “Liquidator”) of the Business and of the assets of Toronto Branch as defined in section 618 of the *Bank Act* (the “Assets”). The Winding-Up Order and corresponding endorsement of Regional Senior Justice Morawetz dated February 17, 2016 are attached hereto as Appendices A and B, respectively.

#### **TERMS OF REFERENCE AND DISCLAIMER**

4. In preparing this report, the Liquidator has been provided with, and has relied upon, unaudited and other financial information, books and records (collectively, the “Information”) prepared by the Toronto Branch and/or its representatives, and discussions with its management and/or representatives. The Liquidator has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided and in consideration of the nature of evidence provided to this Honourable Court. However, the Liquidator has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Liquidator expresses no opinion or other form of assurance contemplated under the CAS in respect of the Information.
5. The information contained in this report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Liquidator.
6. Capitalized terms not defined in this Second Report are as defined in the Winding-Up Order. Unless otherwise indicated, all references to monetary amounts herein are denominated in Canadian dollars (“CAD”).
7. Copies of the Liquidator’s Reports, including a copy of the First Report, this Second Report, and all motion records and Orders in the WURA proceeding are available on the Liquidator’s website at <http://www.kpmg.com/ca/maplebank>.



## PURPOSE OF THE LIQUIDATOR'S SECOND REPORT

8. The purpose of this second report of the Liquidator (the "**Second Report**") is to provide information to this Honourable Court in respect of:
- i. An update on the actions of the Liquidator since the granting of the Winding-Up Order, including the Liquidator's:
    - a) ongoing communications and consultation process with the GIA;
    - b) discussions and negotiations with CMHC with respect of the Toronto Branch's MBS business; and,
    - c) discussions with various originators, servicers and derivative counterparties to as it relates to the Business of the Toronto Branch;
  - ii. An update on the status of certain assets recorded on the books and records of the Toronto Branch and domiciled in the United States;
  - iii. Details of a proposed marketing process to identify a successor issuer of the Toronto Branch's MBS program and for the sale of all or a portion of the Assets and the Liquidator's recommendations related thereto.

## **2. LIQUIDATOR'S ACTIVITIES SINCE APPOINTMENT**

9. On February 10, 2016, pursuant to paragraph 619(1)(a) of the *Bank Act*, OSFI took temporary control the Assets with the assistance of KPMG. At this time KPMG took certain steps to preserve and protect the Assets. Following the issuance of the Winding-Up Order, KPMG as liquidator continued to secure and safeguard the Assets and premises as required, including:
- i. restricting key card access of all employees of the Toronto Branch and Maple Securities Canada Limited (“MSCL”), a related party shared tenant, excluding select information technology (“IT”) personnel who require access to the server room in the case of emergency;
  - ii. arranging for surveillance of the Toronto Branch office premises (the “Premises”) during non-business hours including a daily log of authorized individuals (to date there has been no breaches of the security protocol);
  - iii. identified the Toronto Branch’s IT systems and processes and established control of the systems in a manner that maintained the integrity of the data, systems and processes, including terminating remote access to the systems and restricting physical access to the on-site servers without Liquidator approval;
  - iv. preparing a full volume backup of the financial and other information as of the Winding-Up Date in addition to weekly updates which are stored in a secured evidence vault;
  - v. notified the Bank of Montreal (“BMO”) which maintains all of the Toronto Branch’s bank accounts, of the issuance of the Winding-Up Order, changed signing authorities and took possession of all banking key fobs which are required to process disbursements; and
  - vi. notified affected suppliers and all financial institutions who are known counterparties to financial transactions with the Toronto Branch (i.e.

derivative transactions, repurchase agreements, etc.) of the Liquidator's appointment and the Winding-Up Order.

### **Employees**

10. The Liquidator obtained an employee organization chart for the Toronto Branch. The Liquidator met with executives and certain department heads of the Toronto Branch to understand employees' roles and responsibilities, as well as which employees would be required by the Liquidator to complete the winding-up process.
11. On February 17, 2016, the Liquidator met with all employees of the Toronto branch and issued termination letters. On February 24, 2016, the Liquidator issued new term and task letters to 14 of the 21 employees that were retained on consultancy agreements.

### **Independent Counsel**

12. The Liquidator has retained Gowling WLG ("Gowlings") as Canadian independent legal counsel and Willkie Farr & Gallagher LLP ("Willkie") as U.S. independent legal counsel. U.S. counsel was required to assist with legal matters pertaining to Toronto Branch assets located in the U.S.

### **Derivative Settlement Process**

13. Prior to the appointment of the Liquidator, the Toronto Branch had derivative and financial instrument portfolios with a number of third party counterparties, some of which involved the exchange of collateral cash and bonds.
14. The moratorium on Maple Bank's business activities issued by BaFin was an event of default under all of the derivative and financial instruments and resulted in each of the counterparties terminating their respective arrangements.
15. The Liquidator is working with Toronto Branch and respective counterparties to reconcile any differences in value upon termination and settle these accounts.
16. The Liquidator continues to work with a certain financial institution regarding a specific repurchase transaction as further detailed in **Section 10** of this report.

### **Coordination with various Stakeholders**

17. Since the issuance of the Winding-Up Order, the Liquidator has spent considerable time working with various financial and regulatory stakeholders including:
- i. the GIA on various estate administration matters, including the interim winding-up plan;
  - ii. CMHC on issues relating to the MBS business, including entering into a memorandum of understanding;
  - iii. OSFI as it relates to regular estate updates and various matters;
  - iv. derivative counterparties as it relates to various settlement calculations;
  - v. mortgage loan originators and servicers on matters relating to current obligations and contractual agreements;
  - vi. structured loan counterparties as it relates to continued loan servicing obligations;
  - vii. related entities as it relates to various financial transactions and reconciliations;
  - viii. potential acquirers of various aspects of the Assets; and
  - ix. various other general stakeholders
18. Further details and the results of the Liquidator's interactions with the CMHC and the GIA are further detailed in **Section 7** and **Section 9** below.

### 3. SUMMARY OF ASSETS

19. The following table is a summary of the Toronto Branch's primary asset groups according to its financial books and records<sup>1</sup> as at the date of the Liquidator's appointment.

Summary of Primary Assets As at February 16, 2016 Amounts in SCAD Millions		Total
Cash		316.9
Securities		492.2
Mortgages <sup>(1)</sup>		224.1
Structured loans		361.8
Derivative instruments		158.3
Intercompany receivables <sup>(2)</sup>		27.5
Other assets		0.8
<b>Total Assets</b>		<b>1,581.7</b>

Notes:

- (1) Mortgage business was reported by the Toronto Branch as \$3.7 billion asset and \$3.5 billion liability. For the purposes of this analysis we have shown the net amount.
- (2) Intercompany balances are as per the books and records of the Toronto Branch and have not been subject to intercompany reconciliations with respective counterparties.

#### Cash

20. The Toronto Branch maintains all of its bank accounts with BMO in Canada. The cash balance at the date of the Winding-Up Order consisted of \$282.6 million<sup>2</sup> in CAD accounts and \$26.0 million in USD accounts.

#### Securities

21. The *Bank Act* requires that the Toronto Branch hold Capital Equivalency Deposits ("CED") with an approved financial institution in Canada. At the date of the Winding-

<sup>1</sup> Including off-balance sheet items

<sup>2</sup> Including approximately \$8.3 million of restricted cash relating to the Mortgage Reserve Account as further defined and described herein

Up Order, the Toronto Branch had a total of \$467.5 million of CED at BMO Trust and approximately \$24.6 million in various other securities. The Toronto Branch's security portfolio includes municipal bonds, National Housing Act ("NHA") MBS pools, Government of Canada treasury bills and Schedule 1 bankers' acceptance notes.

22. The Liquidator is working with the GIA to formulate a plan to transition the CED portfolio from the various bonds described above to lower risk treasuries in order to minimize the Toronto Branch's exposure to interest rate and credit swap spread risks.

### **Mortgages**

23. The Toronto Branch's Securitized Products Group's ("SPG") mortgage business can be summarized in the following three stages:
- i. **Stage 1** – CMHC or privately insured mortgages were purchased from up to five (5) different originators;
  - ii. **Stage 2** – Most of these purchased mortgages were then pooled into mortgage backed securities ("NHA MBS") issued by the Toronto Branch under the NHA MBS program (as defined in **Section 6**); and
  - iii. **Stage 3** – The vast majority of the NHA MBS were then sold by the Toronto Branch to Canada Housing Trust No. 1 under the Canada Mortgage Bond Program as further described herein, with the balance being sold to the public.

The net asset balance of the SPG mortgage business is primarily comprised of the following assets or future cash flow value at each step in the process:

- i. **Stage 1** - approximately \$35 million of CMHC or privately insured mortgages that have not been pooled under the NHA MBS Program;
- ii. **Stage 2** - approximately \$117 million of unsold NHA MBS; and
- iii. **Stage 3** – if Maple Bank was not in default, the positive cash flow spread between the interest earned on the NHA MBS pools and the interest paid on such NHA MBS held by the investors, as further described in **Section 6**.

### Structured Loan Portfolio

24. The structured loan portfolio consists of the Immigrant Investor Program (“IIP”) and various commercial loans, which had remaining book balances at the date of the Winding-Up Order of approximately \$223.3 million and \$138.5 million, respectively.
25. The IIP was created by the Canadian and Quebec government to attract successful business immigrants to Canada. In order to qualify an individual must have a net worth of at least \$1.6 million and deposit \$400,000 to \$800,000 with either Citizenship and Immigration Canada (“CIC”) or Investissement Quebec (“IQ”), for a period of 5 years at 0% interest. In exchange the individuals would receive a promissory note guaranteed by either by the government of Quebec or the government of Canada (provincially allocated). The Toronto Branch would provide financing with the promissory notes as collateral.
26. The IIP represents a series of approximately 440 notes with various maturity dates through June 10, 2019. Upon maturity, the Toronto Branch provides the IIP notes to either IQ or CIC for redemption, representing a risk free investment that matures over time.
27. The revolving commercial loan portion of the portfolio is comprised of loans provided to finance mortgage origination, energy related receivables, and life insurance policies. All loans are secured by the underlying asset being financed and mature between 2016 and 2018.

### Derivative Instruments

28. Historically, Toronto Branch entered into derivative contracts to hedge against currency and interest rate risk inherent in its securities portfolio and term deposit liabilities. On the Winding-Up Date, all derivative contracts, with the exception of a contract with Interactive Brokers (“IB”), were in default as a result of the “moratorium” issued by BaFin. According to the Toronto Branch’s records all the derivative contracts are in receivable positions with an estimated balance of approximately \$63.7 million before counterparty reconciliations including any costs incurred by the various non-defaulting counterparties to those derivative contracts.
29. The Toronto Branch also entered into a number of repurchase agreements (“Repos”) and reverse repurchase agreements (“Reverse Repos”) for various securities with both related

and third party counterparties. The net effect of these Repos/Reverse Repos with third parties resulted in an estimated asset position of approximately \$25.7 million.

30. The Toronto Branch also had a receivable from IB of approximately \$69.1 million at the Winding-Up Date representing cash and foreign exchange futures contracts with IB that was, in turn, to be used by Toronto Branch in order to enter into derivative contracts for hedging purposes. On March 16, 2016 the two (2) foreign exchange future positions held with IB matured and were settled resulting in the Toronto Branch's IB account having approximately \$65 million across its CAD, USD and EURO accounts. As at the date of this report, the Liquidator has opened a euro denominated account with a Canadian bank and is in the process of closing out the IB accounts and transferring the balance of approximately 50 million euros.

#### **Intercompany Receivables**

31. Based on company records, the Toronto Branch is in a receivable position with certain related entities primarily as a result of collateral securities provided to MSCL, and the net effect of a related party loan arrangement and interest rate swaps with Maple Holdings Canada Limited ("MHCL"). The Toronto Branch, MSCL and MHCL are currently working on preparing a detailed reconciliation of intercompany amounts which will then be reviewed by the Liquidator.

#### **Other Assets**

32. Other assets of the Toronto Branch are comprised of fixed assets, prepaid expenses, leasehold improvements, and miscellaneous interest receivables.



#### 4. ***SUMMARY OF LIABILITIES***

33. Toronto Branch's primary liabilities, according to its books and records as at February 16, 2016 are as follows:

<b>Summary of Primary Liabilities</b>	
<b>As at February 16, 2016</b>	
<b>Amounts in SCAD Millions</b>	<b>Total</b>
Term deposit liability	(686.0)
Mortgage reserve account	(6.7)
Employee related Payable	(6.2)
Income tax payable	(5.3)
Other trade creditors	(3.5)
Related party liabilities	(41.7)
<b>Total Liabilities <sup>(1)</sup></b>	<b>(749.4)</b>

Notes:

- (1) Summary above excludes certain liabilities related to the CMHC mortgage securitization which have been netted against the mortgage assets in the previous section. Also excludes any amounts recorded as liabilities due to Maple Bank GmbH in the company's books and records.

#### **Term Deposit Liability**

34. While the Toronto Branch could not accept deposits from Canadian residents, it did accept term deposits from German institutional investors. As at the Winding-Up Date, Toronto branch held EUR 444 million denominated term deposits from 18 German institutional investors which we understand to be insured by either the German Private Commercial Banks Compensation Scheme for Depositors and Investors ("EdB") or the German Banks' Deposit Protection Fund ("GDPF"). As of March 11, 2016 the Liquidator has been advised that the EdB and GDPF had compensated 15 of the 18 depositors for a total of approximately EUR 391.3 million. As result of EdB and the GDPF having made compensation to a majority of the depositors and their likely becoming the estates largest creditor, the Liquidator has opened a dialogue with Mr. Cupei a representative of the EdB and GDPF regarding these Liquidation Proceedings.

### **Mortgage Reserve Account**

35. Toronto Branch was, amongst other things, in the business of acquiring residential mortgages from third party mortgage originators, some of the mortgages being insured by CMHC or private insurers, which mortgages Toronto Branch subsequently pooled and sold into the NHA MBS Program. As part of these transactions, Toronto Branch entered into master mortgage purchase agreements (“**MMPA**”) with each of Paradigm Quest Inc. (“**Paradigm**”), CFF Bank, a subsidiary of Home Trust Company (“**CFF**”), Bridgewater Bank (“**Bridgewater**”), MyNext Mortgage Premier Trust (“**MyNext**”), and Xceed Mortgage Corporation (“**Xceed**”) (collectively, the “**Originators**”).
36. The obligations of the Originators under the MMPA included the indemnification of Toronto Branch for various matters associated with the purchased mortgages including any reduction in the amount of insurance proceeds remitted to Toronto Branch in respect of a purchased mortgage that is attributable to actions or omissions of the mortgage servicer (the “**Indemnification of Mortgage Servicer’s Actions or Omissions**”).
37. In the case of Paradigm, CFF, Bridgewater and MyNext, the Indemnification of Mortgage Servicer’s Actions or Omissions as it related to mortgages insured by certain private insurers was secured by a hold-back of a very small percentage of the purchase price otherwise payable by Toronto Branch to the originator (the “**Mortgage Reserve Account**”). Toronto Branch holds the funds, being granted a security interest in them as it related to the originators’ Indemnification of Mortgage Servicer’s Actions or Omissions. Each month end, to the extent there had been a reduction relative to the prior month end in the principal balance of the mortgages insured by the private insurer, the excess balance in the Mortgage Reserve Account was paid to the relevant mortgage originator (the “**Excess Balance Payment**”). These payments occurred on the tenth business day of each calendar month.
38. As noted in the asset section, the Toronto Branch has approximately \$8.3 million in restricted cash set aside from its operating accounts in order to fund these amounts as they qualify to be released.

### **Employee Related Payables**

39. Employee related payables represent accrued bonuses payable to former Toronto Branch employees in respect of the fiscal year ended September 30, 2015, accruals of bonuses earned for certain employees in the period October 1, 2015 to January 31, 2016 and certain deferred compensation arrangements for certain senior staff. Maple Bank GmbH's compensation policy includes both fixed (i.e. salary) and variable (i.e. bonus) compensation elements. Individual variable compensation elements are generally discretionary and determined in accordance with Toronto Branch's overall results, their business unit's results and the employee's performance and subject to approval by BaFin. The Liquidator and its counsel will review these amounts when and if claimed by Toronto Branch employees pursuant to the claims process to be implemented by the Liquidator after receiving approval from the Court.

### **Income Tax Payable**

40. Income tax payable represents the net estimated corporate income tax liability as recorded on Toronto Branch's financial statements in respect of the fiscal years ended September 30, 2009 through to January 31, 2016. Toronto Branch files its own tax returns in Canada with the Canada Revenue Agency ("CRA") and returns have been filed for fiscal years ended 2009 through to 2014. The fiscal year 2015 tax return is due March 31, 2016.
41. The \$5.3 million liability is comprised of approximately \$10.0 million for the estimated 2015-2016 tax liability that is partially set-off by a receivable of approximately \$4.7 million relating to tax reassessments for the period 2009-2012 which Toronto Branch has paid and has filed a notice of objection to appeal the reassessed amounts.
42. On March 3, 2016, Toronto Branch received a reassessment notice in respect of the 2013 fiscal year advising that Toronto Branch's taxable income was approximately \$11 million greater than filed. Management estimates that the additional income tax payable resulting from this reassessment is approximately \$2.9 million.
43. The Liquidator has been advised that in the event that the Toronto Branch is unsuccessful with its appeal of current reassessments and assuming that reassessments are received for

2014 through February 16, 2016 that the total taxes payable to CRA could in the range of \$15.8 million.

44. The Liquidator will work with management, EY (who has prepared Toronto Branch's tax returns since 2002) and the CRA to determine the total net corporate income tax liability for the period 2009 to the Liquidation Date.

#### **Other Third Party Payables**

45. The Toronto Branch also has approximately \$3.5 million of other miscellaneous creditors relating to various costs associated with the mortgage warehouse business of the Toronto Branch, potential HST claims and other operating expenses.

#### **Related Party Liabilities**

46. As at the Winding-Up Date, Toronto Branch has related party payables with Maple Securities UK Inc. ("MSUK") and Maple Securities USA Ltd ("MSUSA") as a result of Reverse Repo transactions. The Liquidator will work with the related parties to reconcile the amounts payable which may result in material movements in these amounts.

#### **Potential Creditors and/or Claims**

47. **Employee Termination and Severance Claims** - in addition to the recorded liabilities detailed above, Toronto Branch is liable to its employees for termination notice and severance pay resulting from their termination pursuant to the Winding-Up Order. These liabilities are not recorded in Toronto Branch's financial records. The Liquidator estimates that the total termination and severance liability due to these employees is approximately \$5.4 million. Toronto Branch's share of this liability may be less than \$5.4 million as some of these employees provided services to Toronto Branch and other Maple Financial Group affiliates. The Liquidator's preliminary estimate is subject to review by its legal counsel, which review will be undertaken when employee claims are filed pursuant to the Claims Process.
48. **Potential Contractual Liabilities** – The results of the Marketing Process (as defined herein) and the liquidation of the structured loan portfolio may give rise to various contractual obligations and/or claims that could be material. As at the date of this report,

the Liquidator is not in a position to estimate the potential magnitude of these potential claims.

## ***5. CHAPTER 15 PROCEEDINGS***

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50. After the commencement of the German Insolvency Proceedings, the GIA filed a petition for recognition of the German Insolvency Proceedings in the U.S. Bankruptcy Court for the Southern District of New York (the “**U.S. Bankruptcy Court**”) under Chapter 15 of the U.S. Bankruptcy Code, (the “**Chapter 15 Proceeding**”).
51. In accordance with its statutory duties, immediately following the issuance of the Winding-Up Order, the Liquidator sought to secure and safeguard all assets listed on the Toronto Branch’s financial books and records, including assets domiciled in the U.S. (the “**U.S. Assets**”). In furtherance of this objective, as noted above, the Liquidator retained Willkie as U.S. Counsel to provide advice with respect to the intended effect of the Proposed Chapter 15 Proceeding on the Liquidator’s statutory and court ordered obligations to secure, safeguard and repatriate the U.S. Assets to Canada. In this regard, the Liquidator considered whether it would be necessary to obtain an order under Chapter 15 of the U.S. Bankruptcy Code (the “**Bankruptcy Code**”) recognizing the Canadian WURA proceeding as either a foreign main or foreign non-main proceeding.
52. The Liquidator was also advised by Canadian counsel to the GIA, that the GIA has a statutory duty under the German Insolvency Act to take into its custody or control all of the assets of Maple Bank regardless of their jurisdiction.
53. Throughout the week of February 22, 2016, in order to address the competing statutory duties of the Liquidator and the GIA, and in the spirit of the Winding-Up Order which provides for consultation and cooperation between the Liquidator and the GIA, the Liquidator, the GIA and their respective Canadian and U.S. Counsel commenced extensive negotiations in order to reach a protocol in respect of the U.S. Assets (the “**Protocol**”).
54. On February 28, 2016, the Liquidator and the GIA reached an agreement on the Protocol which provides for an interim resolution with respect to issues surrounding the interaction between the Proposed Chapter 15 Proceeding and the U.S. Assets. The Liquidator has previously updated the Court with respect to the Protocol as attached in Appendix D of the First Report of the Liquidator dated March 2, 2016.

55. On March 2, 2016, the Liquidator and the GIA entered into a stipulation (the “**Stipulation**”), which embodies the terms of the Protocol. The Stipulation was filed with the U.S. Bankruptcy Court on March 3, 2016 as part of the GIA’s revised proposed recognition order.
56. On March 10, 2016, Judge Glenn of the U.S. Bankruptcy Court held a hearing on the recognition of the German Insolvency Proceeding and the agreed-upon Stipulation. Representatives of the GIA and the Liquidator, along with their respective U.S. counsel, were in attendance. On March 11, 2016, Judge Glenn endorsed the order (i) recognizing the German Insolvency Proceeding as the foreign main proceeding (the “**Recognition Order**”) and (ii) approving the terms of the Stipulation. The Recognition Order and endorsed Stipulation are attached hereto as Appendix C.
57. Pursuant to the Stipulation, the GIA and the Liquidator agreed, among other things, that:
- i. The stay under section 1521 and 362 of the Bankruptcy Code shall not apply to the Liquidator in respect of the U.S. Assets;
  - ii. Solely with respect to the U.S. Assets, the Liquidator has full standing in the Chapter 15 Proceeding;
  - iii. The Liquidator and the GIA will use reasonable efforts to coordinate, cooperate and, to the extent practicable, act jointly with respect to the U.S. Assets, including administering, collecting on, commencing and participating in lawsuits with respect to, and liquidating such U.S. Assets;
  - iv. All cash collections, proceeds or recoveries collected from the U.S. Assets will be placed into an account, which will be under the joint control of both the Liquidator and the GIA (the “**Joint Control Account**”). Any disposition, distribution or directive of any kind related to the proceeds in the Joint Control Account must be mutually agreed upon by both the Liquidator and the GIA. Absent such agreement, no action may be taken with respect to any amounts in the Joint Control Account subject to dispute except in accordance with a final,

non-appealable order of the Bankruptcy Court or other U.S. court of competent jurisdiction resolving such dispute;

- v. To the extent any issue, conflict or disagreement related to the U.S. Assets arises, the Liquidator and the GIA agree, in the first instance, to jointly request that the Bankruptcy Court resolve such issues;
- vi. Notwithstanding the terms of the Stipulation, in the event that recognition of the Canadian WURA Proceeding under Chapter 15 or the Liquidator as a foreign representative of the Toronto Branch is required in order to seek relief, or to preserve any rights, in respect of the U.S. Assets, the Liquidator shall seek such recognition and the GIA reserves all rights to oppose such recognition; and
- vii. The Liquidator and the GIA reserve all of their rights in respect of, the allocation or distribution of the U.S. Assets (including any collections, proceeds or recoveries in respect thereof) or amounts in the Joint Control Account to or for the benefit of their respective estates.



## ***6. CMHC AND THE NHA MBS PROGRAM***

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### **CMHC and the Administration of the NHA MBS Program**

58. As outlined in further detail in the NHA Mortgage-Backed Securities Guide (the “**NHA MBS Guide**”), CMHC is responsible for the administration of the NHA MBS Program. As administrator of the NHA MBS Program and guarantor of all securities issued pursuant to it, CMHC is charged with protecting the interests of: (i) all holders of NHA MBS; and (ii) the taxpayers of Canada, who are ultimately responsible, should any claim be made under the CMHC guarantee. Under the NHA MBS Program:
- i. CMHC administers the NHA MBS Program to contribute to a stable housing finance system by helping eligible lenders (“**Approved Issuers**”) access an adequate supply of funds for housing loans;
  - ii. Lenders, if approved upon application to CMHC, may issue NHA MBS to investors which are fully guaranteed by CMHC, as to timely payment of principal and interest;
  - iii. In connection with each permitted issuance of NHA MBS, Approved Issuers agree to transfer all legal and beneficial title to the corresponding pool of mortgages to CMHC to be held by CMHC, in trust, for investors in NHA MBS and for CMHC, as guarantor, subject to the terms and conditions set out in the NHA MBS Guide;
  - iv. Principal and interest revenues from the pool of mortgages are deposited by the mortgage servicer into a special-purpose trust/custodial account, (the “**SPTC Account**”) which the central payor and transfer agent (the “**CPTA**”) for the Program then debits monthly in order to pay NHA MBS investors principal and interest owing to them;
  - v. All principal and interest cash flow from the mortgage pools is legally owned by CMHC, subject to a trust in favour of NHA MBS investors to pay all amounts owing to them, and may be applied to pay any fees and expenses of

CMHC and for so long as the Approved Issuer is not in default, to pay the Interest Only Spread (as defined in paragraph x below) to the Approved Issuer as provided in the NHA MBS Guide.

- vi. Approved Issuers assemble and administer the mortgage pool themselves, and may service the mortgages themselves or may retain one or more sub-servicers (the “**Mortgage Sub-Servicers**”) to do so;
- vii. CMHC is not bound in any manner by any agreement made between an Approved Issuer and a Mortgage Sub-Servicer. Mortgage Sub-Servicers must expressly acknowledge that their rights vis-à-vis the Approved Issuer, under any contract or otherwise, are subordinate to the rights of CMHC under the NHA MBS Program;
- viii. Pursuant to a Letter of Agreement (the “**Letter Agreement**”) with a deposit-taking financial institution and the Approved Issuer, deposits made in the SPTC Account are subject to withdrawal therefrom by the Approved Issuer, or by or upon the written demand of CMHC;
- ix. Pursuant to the Letter Agreement, the parties have also agreed that the authority of the Approved Issuer with respect to the SPTC Account may be revoked by CMHC and any instruments drawn upon the SPTC Account by the Approved Issuer or any party other than CMHC may not be honoured;
- x. Any balance in the SPCT Account remaining after amounts owing to NHA MBS investors, and to CMHC and NHA MBS Program service providers for unpaid guarantee fees, other fees and expenses, may be withdrawn by the Approved Issuer monthly, as long as the Approved Issuer remains in good-standing under the NHA MBS Program (this positive spread between the interest earned on the NHA MBS pools issued by the Approved Issuer and the interest paid on the corresponding bonds held by such investors (this spread is referred to as the “**Interest Only Spread**” or the “**IO Spread**”));
- xi. If an Approved Issuer is in default, CMHC may become the named account-

holder of the SPTC Account into which payments related to the mortgage pools must be deposited, and may also direct the Mortgage Sub-Servicer(s) to deposit all future principal and interest revenues from the mortgage pools to such new account; and

- xii. CMHC may also, in its sole and absolute discretion, approve a Successor Issuer, which will take on the rights and responsibilities of an Approved Issuer under or in connection with the NHA MBS pools from that point forward after the Approved Issuer's default.

- 59. CMHC's position is that an Approved Issuer has no property right in the IO Spread. When in good standing, an Approved Issuer may have access to the IO Spread. Where an Approved Issuer is in default, pursuant to Chapter 13 of the NHA MBS Guide, an Approved Issuer's rights in the IO Spread are terminated.

#### **CMHC takes control of the NHA MBS business of Maple**

- 60. Prior to February 9, 2016, Maple Bank was an Approved Issuer under the NHA MBS Program. Maple Bank retained a number of mortgage servicers (and, in some cases, permitted mortgage sub-servicers) (collectively, the "**Maple Bank Servicers**") to service the mortgage pools in respect of the NHA MBS issued by the Toronto Branch as at the Winding Up Date (the "**Mortgage Pools**") under mortgage administration agreements.
- 61. On February 9, 2016, CMHC, as administrator for the NHA MBS Program, issued a notice of default suspending the Toronto Branch as an Approved Issuer of NHA MBS. The suspension was the result of restrictions placed on the operations of Maple Bank by BaFin that affected Maple Bank's ability to fulfill its obligations as an Approved Issuer. In addition, CMHC took control of the SPTC Account into which collections from the Mortgage Pools were deposited and arranged for all future principal and interest payments from the Mortgage Pools to be deposited into a CMHC controlled bank account. A copy of the notice of default sent by CMHC dated February 9, 2016 is attached hereto as Appendix D.

62. Upon Maple Bank's default under the NHA MBS Program, it is CMHC's position that all monies arising in respect of the Mortgage Pools were assets of CMHC, as guarantor, in trust for the investors in the NHA MBS issued by Maple Bank and that all Maple Bank Servicers, upon receiving notice of Maple Bank's default by CMHC, were required pursuant to the Mortgage Pool Transfer Agreement (a prescribed form of agreement under the NHA MBS Program) between CMHC and Maple Bank to deposit all monies received from the Mortgage Pools to a custodial account of Computershare Trust Company of Canada, as directed by CMHC.
63. On February 12, 2016, CMHC invited a proposal by, or on behalf of Maple Bank as to a suitable institution to assume Maple Bank's responsibilities as an Approved Issuer under the NHA MBS Program (the "Successor Issuer"). A copy of CMHC's letter to Maple Bank dated February 12, 2016 is attached hereto as Appendix E.

## **7. *NEGOTIATION OF AN MOU WITH CMHC AND THE MARKETING PROCESS***

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64. The Liquidator, pursuant to the Winding-Up Order, is authorized to market any or all of the Assets. In this regard, the Liquidator is of the view that it is appropriate to expose to the market, and ultimately sell, through a traditional, multi-phased process, the following Toronto Branch assets:
- i. Approximately \$35 million of CMHC insured mortgages that have not yet been pooled;
  - ii. Approximately \$117 million of NHA MBS (subject to payment of the guarantee fee to CMHC as required under the NHA MBS Guide);
  - iii. The mortgage originating agreements that Toronto Branch had in place as at the Winding-Up Date;
  - iv. The mortgage servicing agreements that Toronto Branch had in place as at the Winding-Up Date;
  - v. Its mortgage aggregation processes, policies and business; and
  - vi. Its Structured Loan portfolio to the extent certain of the loans are not being unwound.

(All of the assets described above being collectively the “Toronto Branch Assets”).

65. The Liquidator is not proposing to dispose of the various investments comprising Toronto Branch’s Capital Equivalency Deposit through the marketing process outlined below, as these are very liquid instruments that are more appropriately sold through publicly traded capital markets.
66. As a result of the Memorandum of Understanding dated March 16, 2016 (the “MOU”) entered into between CMHC and the Liquidator, as described in further detail in below, the Liquidator will have, on behalf of the estate of the Toronto Branch, an interest in the IO Spread to the extent of funds remaining after deducting all of CMHC’s fees, expenses and other amounts that CMHC is entitled to collect from payment(s) (if any) that each Successor Issuer makes to CMHC for the right to be the Successor Issuer.

67. Immediately after its appointment, the Liquidator requested a meeting with CMHC in order to discuss the prospect of the Liquidator coordinating its anticipated marketing process to sell certain, or all of the Toronto Branch Assets, with CMHC's intended goal of finding the Successor Issuer, acceptable to CMHC with respect to the NHA MBS business of Maple Bank and the disposition of any payment(s) received from the Successor Issuer. After a series of discussions and meetings, CMHC and the Liquidator entered into an MOU, a copy of which is attached as Appendix F. The MOU contemplates, *inter alia*, the following:
- i. exchange of information between CMHC and the Liquidator;
  - ii. consultation and cooperation in connection with a proposed marketing process to be undertaken by the Liquidator to find:
    - a) the Successor Issuer, acceptable to CMHC, for the Mortgage Pools;  
and
    - b) a purchaser for all, or a portion of the Toronto Branch's Assets, which may also be attractive to a Successor Issuer, including its inventory of CMHC insured mortgages that have not yet been pooled, its NHA MBS held as an investor and its mortgage aggregation processes, policies and business.
  - iii. Notwithstanding CMHC's position that it has no obligation to do so, after a Successor Issuer has been selected and approved by CMHC (whether through a marketing process or otherwise), and provided that: a) the Successor Issuer will pay as part of the transaction an amount (if any) to become a Successor Issuer whether at closing or at agreed times thereafter (collectively, the "**Successor Issuer Payment**"), and b) there is a positive amount left from the total of the IO Spread collected by CMHC pre-closing since February 9, 2016 plus the Successor Issuer Payment after any amount required by the Successor Issuer to be paid to it to become the Successor Issuer (other than post-closing IO Spread), and all fees, transaction costs and expenses of CMHC including any expenses related to Toronto Branch's default (the "**Maple Default Costs**")

have been paid in full from such total amounts, the amount remaining will be contributed to the Liquidator by CMHC, as soon as practicable following closing of the Successor Issuer transaction. This provision survives any termination of the MOU by CMHC; and

- iv. Once the transaction with respect to the Successor Issuer(s) has been completed and all Maple Default Costs have been recovered by CMHC, CMHC will no longer have a claim in the estate of Maple Bank.
68. The MOU further provides that notwithstanding any consultation, or agreement by CMHC with the Liquidator with respect to the Marketing Process, CMHC's statutory rights and discretion to select and approve the Successor Issuer are in no way limited or prejudiced.
  69. In furtherance of the MOU, the Liquidator, in consultation with CMHC, has developed a multi-phased marketing process to identify one of more Successor Issuers for the NHA MBS issued by the Toronto Branch (the "**Successor Issuer Marketing Process**") and for the sale of all, or a portion, of the Toronto Branch Assets (the "**Maple Assets Marketing Process**") and with the Successor Issuer Marketing Process, collectively, the "**Marketing Process**"). The Maple Assets Marketing Process will run in tandem with the Successor Issuer Marketing Process.
  70. In the case of the Maple Asset Marketing Process, there will also be a parallel marketing process with respect to the Structured Loan portfolio assets (the "**Structured Loans Marketing Process**").
  71. Proposals made pursuant to the Successor Issuer Marketing Process cannot be made conditional upon being successful on an offer for one or more of the Toronto Branch Assets.
  72. CMHC, in consultation with the Liquidator, will decide those parties that will be allowed to participate in the Successor Issuer Marketing Process, those that proceed from each phase of the Successor Issuer Marketing Process into the next phase, and ultimately to be selected as a Successor Issuer. CMHC agrees to collaborate with the Liquidator for a

period of 80 days following the execution of the MOU in respect of implementing and carrying out the Successor Issuer Marketing Process.

73. The Liquidator will be developing separate lists of parties who will be invited to participate in the Maple Assets Marketing Process and the Structured Loans Marketing Process. Participants in the Successor Issuer Marketing Process will be automatically invited to participate in either the Maple Assets Marketing Process or the Structured Loans Marketing Process.
74. Accordingly, the Liquidator requests that the Court approve the Marketing Process, a copy which is attached hereto as Appendix G. The key milestones and timelines for the Marketing Process are summarized below:



Summary timelines of the Marketing Process		
Phase/Event	Indicative Date	Description of Activities
Marketing Process Order	April 1, 2016	<ul style="list-style-type: none"> <li>If authorized, the Court grants an order approving the marketing process (the “<b>Marketing Process Order</b>”)</li> </ul>
Phase 1	April 13- May 6, 2016	<ul style="list-style-type: none"> <li>To last for a period of approximately 3 weeks after the granting of the Marketing Process Order</li> <li>Solicitation of non-binding letters of intent (“<b>LOI</b>”s) for Successor Issuer or Toronto Branch Assets.</li> </ul>
Phase 1 Bid Deadline	May 6, 2016	<ul style="list-style-type: none"> <li>5:00pm EST on May 6, 2016</li> <li>LOIs will be considered in regard to the requirements of the Marketing Process.</li> </ul>
Assessment of LOIs	By May 17, 2016	<ul style="list-style-type: none"> <li>Within 7 business days following the Phase 1 Bid Deadline, the LOIs received will be assessed to determine which LOIs will be qualified to move onto Phase 2.</li> <li>Decision regarding Successor Issuer will be made by CMHC in consultation with Liquidator.</li> <li>Decision regarding Toronto Branch Assets will be made by the Liquidator.</li> </ul>
Phase 2	May 18, 2016	<ul style="list-style-type: none"> <li>For a period of approximately 4 weeks after the identification of LOIs, Successor Issuer Offeror(s) and/or Toronto Branch Asset Sale Offeror(s) to conduct additional due diligence and prepare irrevocable bids</li> <li>During Phase 2, Successor Issuer Offeror(s) and/or Toronto Branch Asset Sale Offeror(s) will be given access to a more complete data room and the opportunity to meet with management.</li> </ul>
Phase 2 Bid Deadline	June 17, 2016	<ul style="list-style-type: none"> <li>5:00pm EST on June 17, 2016</li> <li>Successor Issuer Offeror(s) and/or Toronto Branch Asset Sale Offeror(s) deliver their Successor Issuer Offer(s) and/or Toronto Branch Asset Sale Proposal(s) prior to the Phase 2 Bid Deadline</li> </ul>
Evaluation and Selection of the Successor Issuer Offer(s) and/or Toronto Branch Asset Sale Proposal(s)	June 28, 2016	<ul style="list-style-type: none"> <li>Terms of all Successor Issuer Offer(s) and/or Toronto Branch Asset Sale Proposal(s) will be clarified</li> <li>CMHC, in consultation with the Liquidator, will select one or more Qualified Successor Offers and complete one or more agreements (the “<b>Accepted Successor Issuer Offer</b>”)</li> <li>The Liquidator will select the most favorable Qualified Sale Proposal(s) and negotiate the terms of the agreement(s) (the “<b>Accepted Toronto Branch Sale Offer(s)</b>”)</li> </ul>

Phase 3 Due Diligence and Court Approval	June 29 – July 27, 2016	<ul style="list-style-type: none"> <li>• Final due diligence on mortgage underwriting and opportunity to meet third party stakeholders (e.g. originators, servicers)</li> <li>• Court approval of Accepted Toronto Branch Sale Offer(s).</li> </ul>
Closing of any Accepted Successor Issuer Offer(s) and Accepted Toronto Branch Asset Sale Offer(s)	August 31, 2016 or later date agreed to by all parties	

75. Based on the proposed timeframe, the final closing of the Accepted Successor Issuer Offer (as defined in the Marketing Process) and the Accepted Toronto Branch Asset Sale Offer(s) (as defined in the Marketing Process) are contemplated to occur by August 31, 2016 but could be subject to an extension should the Liquidator and CMHC be in agreement. The Liquidator is of the view that the timeframe is commercially reasonable given the nature of the Toronto Branch Assets, the MBS Business, the expected number of interested parties in the Marketing Process, the due diligence required by the party that ultimately qualifies as the Successor Issuer under the NHA MBS Program, and/or the parties that ultimately acquire all, or a portion of the Toronto Branch Assets.
76. The Liquidator is of the opinion that the Marketing Process will be mutually advantageous to both CMHC and the Liquidator (and ultimately the creditors of Maple Bank) insofar as:
- i. It will avoid duplication of costs, process and efforts to solicit expressions of interest and offers from suitable institutions to become the Successor Issuer, while enabling the Liquidator to market the Toronto Branch Assets;
  - ii. It will allow CMHC to have access to the Marketing Process, as administered by the Liquidator, and the corresponding expertise of the Liquidator with respect to implementing and carrying out a Marketing Process;
  - iii. It will allow the Liquidator to preserve any entitlement it may have to the IO

Spread in an amount equal to: (i) the Successor Issuer Payment plus the IO Spread collected by CMHC since February 9, 2016 less (ii) the Maple Default Costs;

- iv. Once the transaction with respect to the Successor Issuer(s) has been completed and all Maple Default Costs have been recovered by CMHC, CMHC will no longer have a claim in the estate of Maple Bank;
- v. The value of some of the Toronto Branch Assets may be enhanced by being marketed concurrently with the Successor Issuer process; and,
- vi. It provides a cost effective process by which the Liquidator will be able to seek to maximize realizations to the estate of the Toronto Branch for the benefit of all creditors and stakeholders.

## 8. RECEIPTS AND DISBURSEMENTS

### Summary of Receipts and Disbursements

The following table represents a high level summary of total receipts and disbursements for the period February 16 to March 11, 2016.

In the matter of the Winding Up of Maple Bank (Toronto Branch) Statement of Receipts & Disbursements For the period February 16 to March 11, 2016 Amounts in SCAD and SUSD (M)			
	SCAD	SUSD	SCAD Total <sup>(1)</sup>
<b>Receipts</b>			
Structured Loans	0.8	0.6	1.6
Securitized Products Group	2.2	-	2.2
Securities Finance	26.7	14.6	45.9
<b>Total Receipts</b>	<b>29.8</b>	<b>15.2</b>	<b>49.8</b>
<b>Disbursements</b>			
Payroll	0.3	-	0.3
Occupancy	0.0	-	0.0
Information Technology	-	-	-
Management Fee	-	-	-
Communications	-	-	-
SG&A	-	-	-
<b>Total Disbursements</b>	<b>0.3</b>	<b>-</b>	<b>0.3</b>
Professional Fees	-	-	-
<b>Net Receipts over Disbursements</b>	<b>29.4</b>	<b>15.2</b>	<b>49.5</b>
<b>Opening Cash Balance</b>	<b>282.6</b>	<b>26.0</b>	<b>316.9</b>
<b>Closing Cash Balance</b>	<b>312.1</b>	<b>41.1</b>	<b>366.4</b>

Notes:

(1) \$USD amounts were translated at the closing date of the period (March 11, 2016) at a rate of \$USD = \$CAD 1.3215

### Analysis of Receipts and Disbursements

77. Actual receipts for the period are \$49.8 million, and consist primarily of the settlement on maturity of three Reverse Repo transactions with MSUSA and MSCL. These transactions, valued at \$45.9 million, were in the normal course of business and the failure to execute

these transactions may have resulted in MSUSA and/or MSCL, related parties not subject to any insolvency proceedings, defaulting on third party transactions.

78. Receipts from the securitized products group total approximately \$2.2 million. These relate to receipts from the Toronto Branch's in house mortgage and pool but unsold MBS portfolios. Structured loan receipts make up the remaining receipts of \$1.6 million. This includes receipts from the Lakeview loan, the IIP and Retail Energy loan.
79. Actual disbursements for the period total approximately \$300,000 and consist of: (i) payrolls processed on February 25 and March 20, 2016, totalling approximately \$288,000, and (ii) a rent payment to MSCL of approximately \$23,000 in respect of Toronto Branch's share of February's rent.

## **9. COORDINATION WITH THE GIA**

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80. Immediately prior to the commencement of the Winding-Up proceedings KPMG entered into a dialogue with the GIA through its Canadian counsel, Stikeman Elliott LLP.
81. Among other things, the dialogue lead to the inclusion in the Winding-Up Order of specific provisions which provided for: (a) a pre-determined level of cooperation between the Liquidator and the GIA; and, (b) provided the GIA with access to certain information related to the Assets of Toronto Branch, including, *inter alia*, the following:
- i. Information regarding the Business and Assets of the Toronto Branch that may be reasonably required in order for the GIA to fulfill its statutory obligations under German law;
  - ii. The development, in consultation with the GIA, of an Interim Winding-Up Plan and a Final Winding-Up Plan within 14 days and 60 days, respectively, related to the administration and liquidation of the Business, Assets and Liabilities of the Toronto Branch; and,
  - iii. Consultation and approval by the GIA of any proposed disposition of Assets or settlement of a claim or liability relating to the Business or Assets of the Toronto Branch in excess of \$10 million, excluding normal course business transactions.
82. Although the Liquidator has determined that a certain degree of conflict exists as between the Winding-Up proceedings and the German Insolvency Proceedings, both the GIA and the Liquidator have been and continue to actively work together for the benefits of each estate, recognizing that it appears likely that there may be a significant distribution from the Canadian estate to the German estate upon completion of the Winding-Up proceedings.
83. The Liquidator has spent significant time and resources providing information to the GIA as well as preparing the Interim Winding-Up Plan which, as of the date of this report, continues to be discussed between the Liquidator and the GIA.

84. Based on follow up discussions with GIA, the Liquidator will attempt to commence a claims process as soon as practically possible. Although, as noted in paragraph 48 above, certain potential contingent contractual claims may not yet be quantifiable.

## ***10. REPURCHASE TRANSACTION WITH A FINANCIAL INSTITUTION***

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85. The Liquidator has received a request from a financial institution (“**Fin Co**”) to confirm to Computershare Trust Company of Canada in its capacity as Custodian of approximately \$128.2 million face value of NHA MBS issued by the Toronto Branch under the NHA MBS Program that such securities are owned by the Fin Co. The MBS were the subject of certain repo arrangements entered into between the Toronto Branch and Fin Co in connection with the Toronto Branch’s participation in the CMB Program. The Liquidator and its counsel are still in the process of reviewing the repo arrangements to respond to this request and are working co-operatively with the Fin Co.



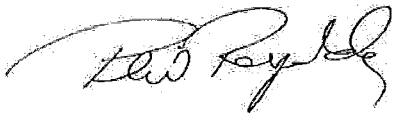
## **11. LIQUIDATOR'S CONCLUSIONS**

86. The Liquidator submits this Second Report to the Court in support of the Liquidator's Motion for the relief as set out in the Notice of Motion filed and requesting that the Court grant an order:
- i. Approving the Second Report, and the activities of the Liquidator described herein;
  - ii. Approving the Marketing Process and authorizing and directing the Liquidator to carry out its obligations as set out therein;
  - iii. Approving the Statement of Receipts and Disbursements for the period February 16, 2016 to March 11, 2016; and
  - iv. Approving the MOU.

All of which is respectfully submitted at Toronto, Ontario this 30<sup>th</sup> day of March, 2016.

**KPMG Inc., in its capacity as Court Appointed Liquidator of the Business in Canada of  
Maple Bank GmbH and its Assets as defined in Section 618 of the *Bank Act***

Per:



Philip J. Reynolds  
Senior Vice President

**This is Appendix "A" to the  
Second Report of the Liquidator**

Court File No. CV-16 - 11290 - 00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE REGIONAL )  
SENIOR JUSTICE MORAWETZ )  
)

TUESDAY, THE 16<sup>TH</sup>  
DAY OF FEBRUARY, 2016



IN THE MATTER OF MAPLE BANK GmbH

AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,  
R.S.C. 1985, C.W-11, AS AMENDED

AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MAPLE BANK GmbH

Respondent

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**WINDING-UP ORDER**

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**THIS APPLICATION** made by the Attorney General of Canada under the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended ("*WURA*"), for the appointment of KPMG Inc. ("KPMG") as liquidator, without security, in respect of the winding up of the business in

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Canada (the "Business") of the Respondent, Maple Bank GmbH ("Maple Bank"), and of the assets, as defined in section 618 of the *Bank Act*, S.C. 1991, c. 46, as amended, (the "*Bank Act*") of Maple Bank was heard this day at Toronto, Ontario.

**ON READING** the Notice of Application and Application Record in the within matter, and on hearing submissions of counsel for each of the Attorney General of Canada, and for KPMG as the proposed Liquidator.

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof, including without limitation, the prescribed notice requirements of section 26 of *WURA*.

**WINDING-UP**

2. **THIS COURT DECLARES** that Maple Bank is an authorized foreign bank subject to *WURA*.
3. **THIS COURT ORDERS** that the Business in Canada of Maple Bank be wound up by this Court under the provisions of *WURA*.

**APPOINTMENT**

4. **THIS COURT ORDERS** that KPMG is appointed as liquidator (the "Liquidator") without security, in respect of the winding up of the Business, and of the assets of Maple Bank, as defined in section 618 of the *Bank Act* namely:

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- a) any assets of Maple Bank in respect of Maple Bank's Business in Canada, including the assets referred to in subsection 582(1) and section 617 of the Bank Act and assets under its administration; and,
  - b) any other assets in Canada of Maple Bank,
- collectively (the "Assets")

5. **THIS COURT ORDERS** that the giving of security by the Liquidator upon its appointment as liquidator be and is hereby dispensed with.
6. **THIS COURT ORDERS** that Maple Bank shall cease to carry on its Business in Canada or deal in any way with its Assets, except in so far as is, in the opinion of the Liquidator, required for the beneficial winding-up of its Business in Canada and liquidation of its Assets.

#### **LIQUIDATOR'S POWERS**

7. **THIS COURT ORDERS** that, in addition to the exercise of the Liquidator's duties under sections 33 and 152 of WURA and the performance of its powers under section 35 of WURA, the Liquidator is hereby expressly empowered and authorized to do any of the following where the Liquidator considers it necessary or desirable:
  - a) take possession of and/or exercise control over the Assets or such part thereof as the Liquidator shall determine, and any and all proceeds, receipts and disbursements arising out of or from the Assets;
  - b) manage, operate and carry on the Business in Canada of Maple Bank so far

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as it is necessary to the beneficial winding up of Maple Bank's Business in Canada and the liquidation of the Assets, 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 or terminate any contracts of Maple Bank in respect of the Assets or Maple Bank's Business;

- c) receive, preserve, and protect the Assets, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Assets to safeguard them, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- d) market any or all of the Assets, including advertising and soliciting offers in respect of the Assets or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;
- e) in respect of the Assets or the Business, initiate, prosecute and continue the prosecution of any and all Proceedings and to defend, to the extent not stayed, all Proceedings now pending or hereafter instituted with respect to Maple Bank, in the Liquidator own name as liquidator or in the name or on behalf of Maple Bank, as the case may be. 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;
- f) sell, convey, transfer, lease, assign or otherwise realize upon the Assets or any part or parts thereof, by public auction or private contract, and to

transfer the whole thereof to any Person, or sell them in parcels:

- A. without the approval of this Court in respect of any transaction not exceeding \$250,000 provided that the aggregate consideration for all such transactions does not exceed \$1 million; and
  - B. 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.
- g) apply for any approval and vesting order or other orders necessary to convey the Assets or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Assets;
  - h) execute, assign, issue and endorse documents of whatever nature in the name of and on behalf of Maple Bank in respect of the Assets or Maple Bank's Business, and for that purpose use, when necessary, the seal of Maple Bank;
  - i) file any election (tax or otherwise), objection or registration, and any renewals thereof, and file any notices, as may be necessary or desirable in the opinion of the Liquidator in respect of the Assets or Maple Bank's Business;
  - j) draw, accept, make and endorse any bill of exchange or promissory note in the name of and on behalf of Maple Bank in respect of the Assets or Maple Bank's Business in Canada;

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- k) mortgage or otherwise encumber the Assets or any part thereof, or give discharges of mortgages and other securities, partial discharges of mortgages and other securities, and pay property taxes and insurance premiums on mortgages and other securities taken in favor of Maple Bank in respect of the Business;
- l) pay such debts of the Maple Bank (whether incurred prior to or after the date of this Order) as may be necessary or desirable to be paid in order to properly preserve and maintain the Assets or to carry on the Business;
- m) surrender possession of any leased premises occupied by the Maple Bank in respect of its Business in Canada and disclaim any leases entered into by Maple Bank in respect of its Business in Canada on not less than 10 calendar days' prior written notice to the lessor affected thereby;
- n) apply for any permits, licenses, approvals or permissions as may be required by any governmental or regulatory authority in respect of the Assets or the Business;
- o) re-direct Maple Bank's mail in respect of the Business;
- p) settle, extend or compromise any indebtedness or contractual or other obligations or liability owing to or by Maple Bank in respect of the Assets or the Business;  
and
- q) do and execute all such other things as are necessary for or incidental to: (i) the winding-up of the Business or the liquidation of the Assets; and (ii) the



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exercise by the Liquidator of its powers hereunder or under any further Order of the Court in the within proceedings or the performance by the Liquidator of any statutory obligations to which it is subject.

**COOPERATION WITH THE GERMAN INSOLVENCY ADMINISTRATOR**

8. **THIS COURT ORDERS** that the Liquidator, in exercise of its powers as enumerated under section 35 of WURA and as set out above:
- (a) shall provide to Dr. Michael C. Frege, as Insolvency Administrator of Maple Bank, as appointed pursuant to the German Insolvency Code (the "German Administrator"), from time to time, such information regarding the Business and Assets of Maple Bank as the German Administrator may reasonably require in order to fulfill his statutory obligations under German law, including, without limitation, information regarding status and location of assets and liabilities, with particulars, including amount, the filing of claims by creditors, valuations and assessments if available, the disposition of Assets and negotiations with counterparties related thereto, the resolution of Liabilities, and reporting for tax and accounting purposes related to the Business and Assets of Maple Bank in Canada;
  - (b) shall, within fourteen (14) days of the date hereof, develop in consultation with the German Administrator an Interim Winding-Up Plan with respect to the administration and liquidation of the Business, Assets and liabilities of Maple Bank in Canada during the first sixty (60) days after the date hereof, and shall

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obtain the prior approval of the German Administrator thereto, and shall thereafter act in accordance therewith as amended in accordance with the terms hereof;

- (c) shall, within sixty (60) days of the date hereof, develop, in consultation with the German Administrator, a Final Winding-Up Plan with respect to the administration and liquidation of the Business, Assets and liabilities of Maple Bank in Canada and shall obtain the prior approval of the German Administrator thereto, and shall thereafter act in accordance therewith, as amended in accordance with the terms hereof;
- (d) may, after consultation with, and with the prior approval of, the German Administrator, propose changes to the Interim Wind-Up Plan or the Final Wind-up Plan and the Final Wind-Up Plan shall be amended in accordance with any such changes approved by the German Administrator;
- (e) shall consult with, and obtain the prior approval of, the German Administrator in respect of any proposed disposition of Assets or groups of Assets which, individually or collectively, would, or would reasonably be expected to, result in net proceeds in excess of \$10 million; and
- (f) shall consult with, and obtain the approval of, the German Administrator with respect to, any proposed settlement of a claim or liability relating to the Business or Assets of Maple Bank in Canada in excess of \$10 million, any claims process or any distribution to the creditors of Maple Bank in Canada,

provided that, if the German Administrator declines to provide its approval in respect of

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any matters contemplated in (b), (c), (d), (e) or (f) above, the Liquidator may, on five (5) days' notice, apply to this Court for such approval, and the approval of this Court (subject to rights of appeal) shall replace any requirement for the approval of the German Administrator.

9. **THIS COURT ORDERS** that: (a) the Liquidator and the German Administrator shall consult and exchange information in respect of the Assets and Business of Maple Bank in Canada and such assets and business of Maple Bank as may be connected thereto, all as may be required for the effective and efficient administration of Maple Bank in Canada and Maple Bank; (b) the German Administrator shall have the right to apply, if it so elects, to be appointed as an Inspector of the estate of Maple Bank in Canada, or, if formed, a member of any committee of creditors, and to exercise the power and rights ordinarily associated with such an appointment; and (c) the Liquidator and the German Administrator (or their respective designees) shall meet at least once in each week, which meeting may be telephonic or in person to exchange information, discuss and coordinate matters related to the administration of the Business, Assets and liabilities of Maple Bank in Canada and such assets and businesses of Maple Bank as relate thereto.

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

10. **THIS COURT ORDERS** that: (i) Maple Bank; (ii) all of Maple Bank's current and former directors, officers, employees, agents, accountants, actuaries, appointed actuary, 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 (all of the foregoing, collectively, being

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"Persons" and each being a "Person") shall forthwith advise the Liquidator of the existence of any Assets in such Person's possession or control, shall grant immediate and continued access to the Assets to the Liquidator, and shall deliver all such Assets to the Liquidator upon the Liquidator's request.

11. **THIS COURT ORDERS** that all Persons shall forthwith advise the Liquidator of the existence of any books, documents, securities, contracts, orders, corporate, actuarial and accounting records, and any other papers, working papers, records and information of any kind related to the Business, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Book and Records") in that Person's possession or control, and shall provide to the Liquidator or permit the Liquidator to make, retain and take away copies thereof and grant to the Liquidator unfettered access to and use of accounting, actuarial, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 10 or in paragraph 11 of this Order shall require the delivery of Books and Records, or the granting of access to Books and Records, which may not be disclosed or provided to the Liquidator due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.
12. **THIS COURT ORDERS** that if any Books and 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 Books and Records shall forthwith give unfettered access to the Liquidator for the purpose of allowing the Liquidator to recover and fully copy all of the information

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

#### **NO INTERFERENCE WITH LIQUIDATOR**

13. **THIS COURT ORDERS** that, subject to subsection 22.1(1.1) of WURA, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favor of or held by Maple Bank in respect of the Assets or the Business, without written consent of the Liquidator or leave of the Court obtained on not less than seven (7) days' notice to the Liquidator.

#### **CONTINUATION OF SERVICES**

14. **THIS COURT ORDERS** that all Persons having oral or written agreements with Maple Bank in respect of the Assets or the Business, or statutory or regulatory mandates for the supply of goods and/or services in respect of the Assets or the Business, including, without limitation, all computer software, hardware, support and data services,

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communication services, centralized banking services, payroll services, insurance and reinsurance, transportation services, utility (including the furnishing of oil, gas, heat, electricity, water, telephone service at present telephone numbers used by Maple Bank) or other services to Maple Bank in respect of the Business, are hereby restrained from terminating, accelerating, suspending, modifying or otherwise interfering with such agreements and the supply of such goods and services without the written consent of the Liquidator or leave of this Court, and all such parties shall continue to comply with their obligations under such agreements or otherwise on terms agreed to by the Liquidator in writing; 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 Liquidator in accordance with normal payment practices of Maple Bank or such other practices as may be agreed upon by the supplier or service provider and the Liquidator, or as may be ordered by this Court.

**PREMISES**

15. **THIS COURT ORDERS** that all Persons are hereby restrained from disturbing or interfering with the occupation, possession or use by the Liquidator of any premises occupied or leased by Maple Bank in Canada or in respect of the Business as at the date of this Order, except upon further Order of this Court. From and after the date hereof, and for such period of time that the Liquidator occupies any leased premises, the Liquidator shall pay occupation rent to each lessor based upon the regular monthly base rent that was previously paid by the Maple Bank in respect of the premises so occupied or as may hereafter be negotiated by the

Liquidator and the applicable lessor from time to time.

**NO PROCEEDINGS AGAINST THE LIQUIDATOR**

16. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Liquidator except with the written consent of the Liquidator or with leave of this Court having been obtained on at least seven (7) days' notice to the Liquidator.

**NO PROCEEDINGS AGAINST MAPLE BANK OR THE BUSINESS AND THE ASSETS**

17. **THIS COURT ORDERS** that no Proceeding against or in respect of Maple Bank in respect of the Business, or in respect of the Assets shall be commenced or continued except with the written consent of the Liquidator or with leave of this Court having been obtained on at least seven (7) days' notice to the Liquidator, and any and all such Proceedings currently under way are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

18. **THIS COURT ORDERS** that all rights and remedies against Maple Bank in respect of the Business, or against the Liquidator, or affecting the Assets, are hereby stayed and suspended except with the written consent of the Liquidator or leave of this Court obtained on at least seven (7) days' notice to the Liquidator; provided, however, that nothing in this paragraph shall: (i) empower the Liquidator or Maple Bank to carry on any business that Maple Bank is not lawfully entitled to carry on; (ii) exempt the

Liquidator or Maple Bank 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.

19. **THIS COURT ORDERS** that, without limiting the foregoing, without the consent of the Liquidator or leave of the Court:

a) all Claimants (as hereinafter defined) are restrained from exercising any extra judicial remedies against Maple Bank in respect of the Business or the Assets, including the registration or re-registration of any securities owned by Maple Bank, into the name of such persons, firms, corporations or entities or their nominees, the exercise of any voting rights attaching to such securities, the retention of any payments or other distributions made in respect of such securities, the retention of any payments or other distributions made in respect of such securities, any right of distress, repossession, or consolidation of accounts in relation to amounts due or accruing due in respect of or arising from any indebtedness or obligation of Maple Bank in respect of the Business as of the date hereof;

b) all Persons be and they are hereby restrained from terminating, canceling or otherwise withdrawing any licenses, permits, approvals or consents with respect to or in connection with Maple Bank in respect of the Assets or the Business, as they were on the date hereof;

c) Any and all Proceedings taken or that may be taken by any person, firm, corporation or entity including without limitation any of the creditors of Maple



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Bank, suppliers, contracting parties, depositors, lessors, tenants, co-venturers or partners (herein "Claimants") against or in respect of Maple Bank in respect of the Assets or the Business shall be stayed and suspended;

- d) the right of any Claimant to make demands for payment on or in respect of any guarantee or similar obligation or to make demand or draw down under any orders of credit, bonds or instruments of similar effect, issued by or on behalf of Maple Bank in respect of the Assets or the Business, to take possession of, to foreclose upon or to otherwise deal with any Assets, or to continue any actions or proceedings in respect of the foregoing, is hereby restrained; and
- e) the right of any Claimant to assert, enforce or exercise any right (including, without limitation, any right of dilution, buy-out, divestiture, forced sale, acceleration, termination, suspension, modification or cancellation or right to revoke any qualification or registration), option or remedy available to it including a right, option or remedy arising under or in respect of any agreement in respect of the Assets or the Business is hereby restrained.

#### **LIQUIDATOR'S ACCOUNTS**

- 20. **THIS COURT ORDERS** that the Liquidator and counsel to the Liquidator shall be paid their reasonable fees and disbursements, incurred both before and after the making of this Order.
- 21. **THIS COURT ORDERS** that the Liquidator and its legal counsel shall pass its

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accounts from time to time, and for this purpose the accounts of the Liquidator and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. **THIS COURT ORDERS** that prior to the passing of its accounts, the Liquidator 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, and such amounts shall constitute advances its remuneration and disbursements, when and as approved by the Court.

#### **CASH MANAGEMENT AND PAYMENTS**

23. **THIS COURT ORDERS** that the Liquidator may deposit all moneys belonging to the Business received by or on behalf of the Liquidator and its agents to and use the bank accounts currently in the name of Maple Bank and may, at its discretion, open accounts in the name of the Liquidator.

#### **EMPLOYEES**

24. **THIS COURT ORDERS** that the employment of each of the employees of the Maple Bank in Canada with respect to the Business is hereby and deemed to be terminated as of the date of this Order. The Liquidator shall be entitled to pay all accrued and unpaid wages and vacation pay of each of such employees, including any remittances relating thereto.
25. **THIS COURT ORDERS** that the Liquidator may retain such employees of Maple Bank in respect of the Business as the Liquidator deems necessary or desirable

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to assist the Liquidator in fulfilling the Liquidator's duties on such terms as may be approved by this Court and all reasonable and proper expenses that the Liquidator may incur in so doing shall be costs of liquidation of the Business and Assets. The Liquidator shall not be liable for any employee-related liabilities, including any successor employer liabilities, other than such amounts as the Liquidator may specifically agree in writing to pay.

26. **THIS COURT ORDERS** that the Liquidator may retain, employ or engage such actuaries, accountants, financial advisors, investment dealers, solicitors, attorneys, valuers or other expert or professional persons as the Liquidator deems necessary or desirable to assist the Liquidator in fulfilling the Liquidator's duties, and all reasonable and proper expenses that the Liquidator may incur in so doing shall be costs of liquidation of the Assets of Maple Bank.

#### **PRIVACY MATTERS**

27. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Liquidator shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Assets (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 Liquidator, or in the alternative destroy all

such information. The purchaser of any Assets shall be entitled to continue to use the personal information provided to it, and related to the Assets purchased, in a manner which is in all material respects identical to the prior use of such information by Maple Bank, and shall return all other personal information to the Liquidator, or ensure that all other personal information is destroyed.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

28. **THIS COURT ORDERS** that nothing herein contained shall require the Liquidator to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Assets 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 Liquidator from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Liquidator shall not, as a result of this Order or anything done in pursuance of the Liquidator's duties and powers under this Order, be deemed to be in Possession of any of the Assets within the meaning of any Environmental Legislation, unless it is actually in

possession.

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

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Liquidator under *WURA* or as an officer of this Court, the Liquidator shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Liquidator by the *WURA* or any applicable legislation.
30. **THIS COURT ORDERS** that the Liquidator may act on the advice or information obtained from any actuary, accountant, financial advisor, investment dealer, solicitor, attorney, valuer or other expert or professional person, and the Liquidator shall not be responsible for any loss, depreciation or damage occasioned by acting in good faith in reliance thereon.

### **CALL FOR CLAIMS**

31. **THIS COURT ORDERS** that the Liquidator shall not be obligated to call for claims or otherwise implement a claims process until a further Order of this Court to this effect is issued.

### **SERVICE AND NOTICE**

- f) **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol

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(which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'www.kpmg.com/ca/maplebank'.

- g) **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Liquidator is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to Maple Bank's creditors or other interested parties at their respective addresses as last shown on the records of Maple Bank and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.
32. **THIS COURT ORDERS AND DIRECTS** that the Liquidator shall publish notice of the Winding-Up Order in respect of the Business and Assets for two (2) consecutive days within five (5) business days of the making of this Order in The Globe and Mail,

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National Edition, and shall also send written notice to every depositor, creditor and employee of Maple Bank in respect of the Business within seven (7) business days of making of this Order to the last known mailing address as provided for in the records of Maple Bank.

### **RECOGNITION**

33. **THIS COURT ORDERS** that this Order and any other orders in these proceedings shall have full force and effect in all Provinces and Territories in Canada.
34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the Republic of Germany, including the Amtsgericht Frankfurt am Main [Insolvency Court] to give effect to this Order and to assist the Liquidator 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 Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Liquidator in any foreign proceeding, or to assist the Liquidator and their respective agents in carrying out the terms of this Order.
35. **THIS COURT HEREBY REQUESTS** the aid and assistance of the German Administrator to assist the Liquidator and its agents in carrying out the terms of this Order
36. **THIS COURT ORDERS** that the Liquidator be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body,

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wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Liquidator 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.

37. **THIS COURT ORDERS** that the Attorney General of Canada shall be entitled to the costs of this application, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Liquidator from the Business and Assets as costs properly incurred in the winding-up of the Business and Assets.

**ADVICE AND DIRECTIONS**

38. **THIS COURT ORDERS** that Liquidator may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
39. **THIS COURT ORDERS** that interested parties may apply to the Court for advice and directions on at least seven (7) days notice to the Liquidator 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.



**C. Irwin**  
Registrar

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

FEB 16 2016





IN THE MATTER OF MAPLE BANK GmbH  
AND IN THE MATTER OF THE WINDING-UP AND RESTRUCTURING ACT,  
R.S.C. 1985, C.W-11, AS AMENDED  
AND IN THE MATTER OF THE BANK ACT, S.C. 1991, C.46, AS AMENDED

Court File No. CV-16-11290-0002

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**WINDING-UP ORDER**

**John J. Lucki**

Department of Justice

Ontario Regional Office The Exchange Tower

130 King Street West

Suite 3400, Box 36

Toronto, Ontario M5X 1K6

Tel: (416) 973-5402

Fax: (416) 973-2319

Law Society No.

Solicitor for the Applicant,

The Attorney General of Canada

**This is Appendix "B" to the  
Second Report of the Liquidator**

**CITATION:** Maple Bank GmbH (Re), 2016 ONSC 1181  
**COURT FILE NO.:** CV-16-11290-00CL  
**DATE:** 2016-02-17

**ONTARIO SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**RE:** IN THE MATTER OF MAPLE BANK GmbH  
AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,  
R.S.C. 1985, C.W-11, AS AMENDED  
AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

**BETWEEN:**

ATTORNEY GENERAL OF CANADA

Applicant

And

MAPLE BANK GmbH

Respondent

**BEFORE:** Regional Senior Justice Morawetz

**COUNSEL:** J.J. Lucki for the Attorney General of Canada

A.L. MacFarlane, M. Karabus and T. Gertner for KPMG Inc., Proposed  
Liquidator

M. Konyukhova for the German Insolvency Administrator

E. Pleet for Paul Lishman

**HEARD**

**and ENDORSED:** February 16, 2016

**REASONS:** February 17, 2016

**ENDORSEMENT**

- [1] This Application was brought by the Attorney General of Canada ("Attorney General"), at the request of the Superintendent of Financial Institutions (the "Superintendent") under section 621 of the *Bank Act*, S.C. 1991, c.46, as amended (the "*Bank Act*") for:
- (a) an order under section 10.1 of the *Winding-up and Restructuring Act*, R.S.C., 1985, c. W-11, as amended (the "*WURA*") for the winding-up of the business in Canada of the respondent Maple Bank, GmbH ("Maple Bank") and for the liquidation of its assets as defined in section 618 of the *Bank Act*;
  - (b) in connection with such winding-up order, an order under section 23 of the *WURA* appointing KPMG Inc. "KPMG" as liquidator of the estate and effects of Maple Bank or, alternatively, provisionally appointing KPMG as liquidator under section 28 of the *WURA* and provisionally granting KPMG all of the powers of a liquidator pending further order of the Court, and providing directions under section 28 of the *WURA* regarding the manner, form and length of notice to be given in respect of the proposed final appointment of KPMG as liquidator;
  - (c) an order restraining further proceedings, in any action, suit or proceeding against Maple Bank, pursuant to Section 17 (and Section 154) of the *WURA*;
  - (d) related relief in connection with the requested winding-up order and appointment of a liquidator, as set out in the draft order attached to the Notice of Application.
- [2] The Application was not opposed.

**A. Overview**

- [3] Maple Bank is a Canadian owned German bank, and is also an "authorized foreign bank" in Canada under section 2 and Part XII.1 of the *Bank Act*. As a German bank, Maple Bank is subject to regulation in Germany by the Federal Financial Supervisory Authority ("BaFin"). As an authorized foreign bank under the *Bank Act*, Maple Bank is regulated, with respect to its business in Canada, by the Office of the Superintendent of Financial Institutions ("OSFI").

- [4] The recent emergence of significant German tax claims against Maple Bank (said to arise from alleged tax evasion in Germany) and resulting over indebtedness on the part of Maple Bank has led, to Maple Bank admitting its insolvency, to BaFin issuing a "Moratorium" order essentially requiring Maple Bank to cease business and then instituting insolvency proceedings in Germany appointing an insolvency administrator, to various financial institutions issuing default notices and terminating agreements in respect of their dealings with Maple Bank's business in Canada, and to the Superintendent issuing orders under section 619 of the *Bank Act* for taking control of the assets of Maple Bank in Canada and in respect of its business in Canada.
- [5] The Superintendent has asked the Attorney General of Canada, pursuant section 621 of the *Bank Act*, to seek a winding-up order under section 10.1 of the *WURA* in respect of Maple Bank's business in Canada.
- [6] Maple Bank's primary business activities in Canada are the securitization of mortgage receivables, fixed income trading, structured finance and securities finance. In addition, some wholesale deposits raised in Germany are booked on the Maple Bank's Canadian balance sheet.
- [7] Maple Bank is not authorized to accept deposits from Canadian sources, but is not prohibited from accepting wholesale deposits from foreign institutional investors.
- [8] At December 31, 2015, Maple Bank's Canadian Branch reported total assets of \$5.3 billion and total liabilities of \$4.8 billion, of which \$563 million were wholesale deposits. At December 31, 2015, the Maple Bank had unencumbered assets on deposit with a Canadian financial institution totalling approximately \$469 million.
- [9] According to Mr. Paul Laverty, Director in the Deposit-Taking Group (Toronto) of OSFI, in September 2015, German authorities commenced an investigation of Maple Bank for alleged tax evasion. As a result, Maple Bank was placed on OSFI's Watch List in December 2015. Maple Bank tried to reach a settlement with German authorities with respect to its tax liabilities, but German authorities turned down a settlement offer from Maple Bank in relation to its taxes owing.

- [10] On February 6, 2016, BaFin imposed a moratorium on Maple Bank's business activities, including its operations in Canada (the "Moratorium"), on the basis of over-indebtedness on Maple Bank's balance sheet taking into consideration German tax liabilities. The Moratorium placed a ban on disposals and payments for Maple Bank, ordered that Maple Bank be closed for business with customers, and prohibited the institution from receiving payments not intended for payment of debts towards it.
- [11] Maple Bank's principal officer of the Canadian branch, Mr. Paul Lishman, advised OSFI that Maple Bank's operations were severely constrained by the Moratorium. In the days immediately following imposition of the Moratorium, numerous financial institutions such as Canadian Imperial Bank of Commerce, Royal Bank of Canada, Bank of Montreal, as well as CMHC, delivered default notices to Maple Bank and terminated their agreements with Maple Bank as a result of the Moratorium.
- [12] During the period February 8 -9, 2016, OSFI advised Maple Bank of OSFI's intention to make, and then proceeded to make, variations to the Order to Commence and Carry on Business, under which Maple Bank had been operating in Canada, to add restrictions prohibiting Maple Bank, without the Superintendent's prior approval, from moving to a foreign jurisdiction any assets in Canada, and from transferring (except pursuant to existing employment contracts) any of its assets in Canada or in respect of its business in Canada if the value of the assets transferred exceeded \$25,000.
- [13] On February 9, 2016, Maple Bank advised BaFin of its impending insolvency and gave its consent to BaFin to initiate liquidation proceedings in respect of Maple Bank in Germany. OSFI learned of this development on February 9, 2016. BaFin subsequently commenced insolvency proceedings in Germany in respect of Maple Bank on February 10, 2016.
- [14] In light of the actions taken by BaFin, and Maple Bank's admission of insolvency and consent to BaFin's insolvency proceedings, Mr. Laverty stated that the Superintendent decided grounds existed under subsections 619(2)(a) and (g) of the *Bank Act* for the Superintendent to take control of Maple Bank's assets in Canada and assets in respect of

its business in Canada, and that such step was necessary to protect the depositors and creditors of Maple Bank in relation to its business in Canada.

- [15] On February 10, 2016, the Superintendent took control of those assets of Maple Bank for a period not exceeding sixteen days pursuant to 619(1)(a) of the *Bank Act*, on the basis of the grounds set out in subsections 619(2)(a) and (g) of the *Bank Act*.
- [16] On February 11, 2016, BaFin informed OSFI that, in the German insolvency proceedings, the German court had appointed an insolvency administrator of Maple Bank, and had assigned to the insolvency administrator the right of disposal of current and future assets of Maple Bank.
- [17] Having regard to all of the foregoing developments and circumstances, Mr. Lavery stated that the Superintendent determined it was reasonable to conclude that grounds existed for extending the Superintendent's control of the relevant assets of Maple Bank under subsection 619(1)(b) of the *Bank Act*. On February 12, 2016, the Superintendent provided notice to Maple Bank of his intention to continue the control of the assets beyond the initial sixteen day period pursuant to subsection 619(1)(b)(ii) of the *Bank Act*, based on the grounds set out in subsections 619(2)(a), (b) and (g). Those subsections provide:

*"619(2) Control by the Superintendent under subsection (1) may be taken in respect of an authorized foreign bank where*

*(a) the authorized foreign bank has failed to pay its liabilities or, in the opinion of the Superintendent, will not be able to pay its liabilities as they become due and payable;*

*(b) the authorized foreign bank in respect of its business in Canada has failed to pay its liabilities or, in the opinion of the Superintendent, will not be able to pay its liabilities as they become due and payable;*

*...*

*(g) in the opinion of the Superintendent, any other state of affairs exists in respect of the authorized foreign bank that may be materially prejudicial to the interests of the authorized foreign bank's depositors or creditors in respect of its business in Canada... Including where proceedings under a law relating to bankruptcy or insolvency have been commenced in Canada*

*or elsewhere in respect of the authorized foreign bank or its holding body corporate."*

- [18] Since issuance of that notice, Canadian counsel for the German insolvency administrator has communicated with KPMG (who the Superintendent appointed on February 12, 2016 as the Superintendent's representative to assist in taking control of the relevant assets of Maple Bank). Canadian counsel for the German insolvency administrator requested information regarding Maple Bank's business in Canada. KPMG responded with the information it had available.
- [19] On February 15, 2016, Canadian counsel for the German insolvency administrator delivered written submissions to the Superintendent in respect of the Superintendent's Notice of February 12, 2016.
- [20] Mr. Lavery stated that following careful consideration of those representations, the Superintendent decided later on February 15, 2016 to continue its control of assets pursuant to subsection 619(1)(b)(ii) of the *Bank Act* and to request, pursuant to section 621 of the *Bank Act*, that the Attorney General of Canada apply for a winding-up order in respect of Maple Bank's business in Canada under section 10.1 of the *WURA*.

#### **B. Issues**

- [21] The principal issues on this Application are whether a winding-up order should be made under the *WURA* in respect of Maple Bank's business in Canada and whether a Liquidator should accordingly be appointed with respect to Maple Bank's assets as defined in section 618 of the *Bank Act*.

#### **C. Analysis**

- [22] The *Bank Act* and the *WURA*, together, provide a complete and comprehensive code governing the establishment, operation, regulation, supervisory intervention, and insolvency and liquidation of authorized foreign banks.

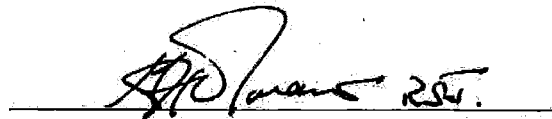


- [23] Part XII.1 of the *Bank Act* includes, in sections 618 through 627, various provisions regarding "Supervisory Intervention" in respect of authorized foreign banks by the Superintendent of Financial Institutions.
- [24] Section 619 of the *Bank Act* gives the Superintendent broad discretionary authority to take control of the "assets" of an authorized foreign bank. Such "assets" are defined in section 618 of the *Bank Act* to include both any asset of the authorized foreign bank "in respect of its business in Canada", and "any other asset in Canada".
- [25] The grounds for exercise of the Superintendent's discretionary authority under subsection 619(2) include grounds which are expressly based upon the Superintendent's "opinion" as to certain matters.
- [26] Counsel to the Superintendent submits that it is apparent in the circumstances of this case that the Superintendent has ample basis to reasonably form the opinions referred to in section 619(2).
- [27] Counsel further submits that consistent with the nature of the Superintendent's function and responsibilities, considerable deference should be accorded to the Superintendent's judgment and discretionary decisions. Further, Courts have been reluctant to question decisions made by the Superintendent or Minister exercising their supervisory powers to take control. In particular, where the governmental authority needed only to form a certain belief in order to intervene in a company's affairs, the Court was of the view that it should only consider if there was arbitrariness in the exercise of discretion and that there was sufficient evidence to form that belief. (See *Attorney General of Canada v. Cardinal Insurance Co.*, (1982) 39 O.R. (2d) 204 (H.C.) and *Canada (Attorney General) v. Security Home Mortgage Co.*, [1996] A.J. No. 1015 (Q.B.)
- [28] Counsel further submits that under subsection 619(1) of the *Bank Act*, the opinions and grounds in subsection 619(2) authorized the Superintendent to either take control of the assets for a period not exceeding 16 days (subsection 619(1)(a)), or take or extend control of the assets for a longer period (unless the Minister of Finance advised that it was not in the public interest to do so). Accordingly, counsel submits that the Superintendent was

clearly authorized both to initially take control of the assets for a period not exceeding 16 days under subsection 619(1)(a), as the Superintendent did pursuant to notice dated February 10, 2016, and to then to continue control beyond 16 days under subsection 619(1)(b).

- [29] In addition, section 621 of the *Bank Act* authorizes the Superintendent to apply for a winding-up order in respect of an authorized foreign bank under section 10.1 of the *WURA* where the Superintendent had control of the assets pursuant to subsection 619(1)(b).
- [30] Having taken control of the assets of Maple Bank under subsection 619(1)(b), counsel submits the Superintendent was clearly authorized under 621 of the *Bank Act* to ask the Attorney General to apply for a winding-up order under section 10.1 of the *WURA*.
- [31] Section 10.1 establishes two categories of grounds upon which the court may make a winding-up order in respect of an authorized foreign bank.
- (a) First, section 10.1 authorizes a winding-up order if the Court is of the opinion that, for any reason, it is just and equitable.
  - (b) Second, section 10.1 authorizes a winding-up order whenever control of the assets of the authorized foreign bank is taken on a ground referred to in any of subsections 619(2)(a), (b), (d) or (f) of the *Bank Act*.
- [32] In this case, based on the Superintendent's opinion set out in unchallenged affidavit of Mr. Lavery and Maple Bank's admission of insolvency, the grounds upon which the Superintendent took control of the assets under subsection 619(1)(b) of the *Bank Act* included the grounds in subsection 619(2)(a) and (g) of the *Bank Act*.
- [33] In my view, based on the evidence, it is both just and equitable to make a winding-up order in these circumstances. Given the admitted insolvency of Maple Bank and the appointment of a German insolvency administrator over Maple Bank, a continuation of the operations of a Canadian branch is neither operationally nor legally viable. The only practicable alternative under the statutory regime applicable to authorized foreign banks is the making of a winding-up order and appointment of a liquidator.

- [34] Once a winding-up order has been made, the *WURA* also permits the Court to appoint a liquidator, or provisionally appoint liquidator, of the estate and effects of a company, and confers various powers and duties on the liquidator.
- [35] These circumstances, given the complexity of the business of Maple Bank in Canada, and given KPMG's involvement in assisting the Superintendent in taking control of assets, in my view it is appropriate to appoint KPMG as Liquidator and to authorize KPMG to exercise the powers set out in the draft order annexed to the Notice of Application. KPMG has given its consent to this appointment.
- [36] Finally, I expect that there will be ongoing communication as between the German insolvency administrator and the Liquidator. It should be noted that this order is without prejudice to the right of any party to raise any issue relative to the application of this order or these proceedings to (i) assets of Maple Bank in respect of Maple Banks business in Canada which are not situate in Canada or (ii) assets of Maple Bank which are not in respect of Maple Banks business in Canada which are situated in Canada. With respect to (ii), any such dispute shall be subject to an order of this court.

A handwritten signature in black ink, appearing to read "G.B. Morawetz", is written over a horizontal line.

Regional Senior Justice G.B. Morawetz

Date: February 17, 2016

**This is Appendix "C" to the  
Second Report of the Liquidator**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

MAPLE BANK GmbH,

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 16-10336 (MG)

Recognition Request Pending

**ORDER GRANTING  
VERIFIED PETITIONS FOR RECOGNITION  
OF FOREIGN PROCEEDING UNDER CHAPTER 15 AND  
MOTION FOR ORDER GRANTING RELATED RELIEF**

Upon the *Verified Petitions for Recognition of Foreign Proceeding Under Chapter 15 and Motion for Order Granting Related Relief* (collectively, the "Verified Petition")<sup>1</sup> filed by the Petitioner, the appointed Insolvency Administrator and duly authorized foreign representative for Maple Bank, GmbH ("Maple Bank" or the "Debtor") and the *Stipulation by and between Dr. Michael C. Frege, as Insolvency Administrator and Proposed Authorized Foreign Representative, and KPMG Inc., as Liquidator in Respect of the Business and Assets of the Debtor's Canadian Branch, Regarding Recognition of Foreign Proceeding under Chapter 15 and Related Relief*, attached as Annex A hereto (the "Stipulation"); and upon consideration of (i) the *Declaration of Dr. Michael C. Frege in Support of Verified Petitions for Recognition of Foreign Proceeding Under Chapter 15 and Motion for Order Granting Related Relief*, and (ii) the *Declaration of Charlotte Schildt in Support of Verified Petitions for Recognition of Foreign Proceeding Under Chapter 15 and Motion for Order Granting Related Relief* (together, the "Declarations"); and the Court having determined that the relief sought in the Verified Petition is in the best interests of the Debtor, its creditors and all parties in interest; and the Court having

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed in the Verified Petition or the Stipulation, as appropriate.

considered the evidence and statements regarding the Verified Petition in the documents filed with the Court and at the hearing on the Verified Petition (the "Hearing"); and the Court having determined that the legal, evidentiary and factual bases set forth in the documents filed with the Court at the Hearing and in the Declarations establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY FOUND AND DETERMINED THAT:**

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to these proceedings pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334. These are core proceedings pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. § 1410.

C. These cases were properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

D. The Verified Petition and associated filings meet the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 2002(q).

E. The German Proceeding is a foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code.

F. The German Proceeding is entitled to recognition by this Court pursuant to sections 1515 and 1517(a) of the Bankruptcy Code.

G. Maple Bank's center of main interests is located in Germany and, therefore, the German Proceeding is entitled to recognition as a foreign main proceeding pursuant to sections 1502(4) and 1517(b)(1) of the Bankruptcy Code.

H. The Petitioner is a person as defined in section 101(41) of the Bankruptcy Code and the duly appointed foreign representative of the Debtor within the meaning of section 101(24) of the Bankruptcy Code.

I. The relief sought in the Verified Petition is necessary to effectuate the purpose of chapter 15, and to protect the Debtor and the interests of its creditors and other parties in interest.

J. The Petitioner is entitled to the additional relief set forth herein pursuant to section 1521(a) of the Bankruptcy Code.

K. Notice of the Verified Petition, the Hearing, and the relief requested in the Verified Petition and at the Hearing was proper, adequate, sufficient and comported with due process under the circumstances, and no other or future notice is or shall be required. Now, therefore, it is hereby **ORDERED, ADJUDGED AND DECREED THAT:**

1. Except to the extent set forth herein or in the Stipulation, the Verified Petition is **GRANTED** in its entirety. The relief granted under this Order is subject in all respects to the terms of the Stipulation, which is hereby approved and shall be deemed incorporated herein. All objections and reservations of rights relating to the Verified Petition that have not been withdrawn, waived, or otherwise resolved are overruled in all respects on the merits and denied.

2. The German Proceeding is granted recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

3. The Petitioner is recognized as the foreign representative (as defined in section 101(24) of the Bankruptcy Code) of the Debtor.

4. Solely with respect to the Subject Assets, the Canadian Liquidator shall have full standing in this Case and any related case or proceeding concerning the Debtor as the Liquidator of Maple Bank Toronto Branch in the Canadian Winding-Up Proceeding on any and all matters arising out of or related to the Subject Assets, including, without limitation, standing under section 1509(b) of the Bankruptcy Code to sue and apply directly this Court for relief with regard to the Subject Assets.

5. Execution against Maple Bank's assets as well as the commencement or continuation of any action or proceeding concerning Maple Bank's assets, rights, obligations or liabilities is hereby stayed—pursuant to sections 1521(a)(1) and (2) of the Bankruptcy Code—to the extent any such action has not been stayed under sections 362 and 1520(a) of the Bankruptcy Code; provided, that the stay shall not apply to the Canadian Liquidator in respect of the Subject Assets.

6. The right to transfer, encumber or otherwise dispose of any assets of the Debtor is hereby suspended —pursuant to section 1521(a)(3) of the Bankruptcy Code—to the extent any such right has not been suspended under sections 362 and 1520(a) of the Bankruptcy Code; provided, that the restrictions hereunder shall not apply to the Canadian Liquidator in respect of the Subject Assets.

7. The Petitioner is entitled to seek or respond to discovery, examine witnesses, seek and take evidence, and deliver or obtain information concerning Maple Bank's assets, affairs, rights, obligations, or liabilities pursuant to section 1521(a)(4) of the Bankruptcy Code.



8. The Petitioner is entrusted with the administration, realization, and distribution through the German Proceeding of all of Maple Bank's Other Assets within or being monetized in the territorial jurisdiction of the United States, pursuant to sections 1521(a)(5) and 1521(b) of the Bankruptcy Code. The administration, realization and distribution of the Subject Assets shall be entrusted jointly to the Petitioner and the Canadian Liquidator in accordance with the terms of the Stipulation.

9. The Petitioner and the Canadian Liquidator are authorized to take all actions necessary to effectuate the relief granted by this Order without notice or further order of the Court.

10. This Court retains jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to this Order (including the Stipulation), its implementation, or otherwise arising from or related to these cases.

11. This Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing.

**IT IS SO ORDERED.**

Dated: March 11, 2016  
New York, New York

/s/Martin Glenn  
MARTIN GLENN  
United States Bankruptcy Judge

**ANNEX A**  
**(Stipulation)**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

MAPLE BANK GmbH,

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 16-10336 (MG)

Recognition Request Pending

**STIPULATION BY AND BETWEEN DR. MICHAEL C. FREGE, AS INSOLVENCY ADMINISTRATOR AND PROPOSED AUTHORIZED FOREIGN REPRESENTATIVE, AND KPMG INC., AS LIQUIDATOR IN RESPECT OF THE BUSINESS AND ASSETS OF THE DEBTOR'S CANADIAN BRANCH, REGARDING RECOGNITION OF FOREIGN PROCEEDING UNDER CHAPTER 15 AND RELATED RELIEF**

This Stipulation is entered into by and between Dr. Michael C. Frege, in his capacity as the Insolvency Administrator and proposed authorized foreign representative for Maple Bank GmbH ("Maple Bank" or the "Debtor") in respect of the German Proceeding (as defined below) (in such capacity, "German Insolvency Administrator"), and KPMG Inc., in its capacity as the Liquidator for the Canadian branch of Maple Bank ("Maple Bank Toronto Branch") in respect of the Canadian Winding-Up Proceeding (as defined below) (in such capacity, the "Canadian Liquidator," and together with the German Insolvency Administrator, the "Parties") regarding the *Verified Petition for Recognition of Foreign Proceeding Under Chapter 15 and Motion for Order Granting Related Relief*.

**RECITALS**

**WHEREAS** Maple Bank is a German bank, regulated by Germany's Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) ("BaFin");

**WHEREAS** pursuant to certain permissions and authorizations from Canada's Secretary of State (International Financial Institutions) and Superintendent of Financial Institutions, Maple

Bank established the Maple Bank Toronto Branch to commence and carry on business in Canada as an Authorized Foreign Bank under Canada's *Bank Act*, S.C. 1991, c.46, as amended;

**WHEREAS** on February 11, 2016, following application by BaFin, the insolvency court at the Frankfurt am Main Lower District Court (*Amtsgericht Frankfurt am Main*) (the "German Court") issued an order (the "February 11 Order") commencing insolvency proceedings in respect of Maple Bank pursuant to Section 11, 16 and 19 of the German Insolvency Act, File No. 810 IN 128/16 M (the "German Proceeding");

**WHEREAS** pursuant to the February 11 Order, the German Court appointed the German Insolvency Administrator as the Insolvency Administrator (*Insolvenzverwalter*) of Maple Bank;

**WHEREAS** on February 15, 2016, at the request of Canada's Superintendent of Financial Institutions, the Attorney General of Canada filed an application with the Ontario Superior Court of Justice (the "Canadian Court") for an order administering the winding-up of Maple Bank (the "Canadian Winding-Up Proceeding") pursuant to section 10.1 of the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended ("WURA");

**WHEREAS** on February 16, 2016, the Canadian Court issued a Winding-Up Order ordering that the business in Canada of Maple Bank be wound up under the provisions of WURA, and appointing the Canadian Liquidator as liquidator, without security, in respect of the winding up of the business in Canada and of the assets as defined in section 618 of the *Bank Act* S.C. 1991, c. 46 of Maple Bank;

**WHEREAS** on February 15, 2016, the German Insolvency Administrator commenced this proceeding (the "Chapter 15 Case") by filing with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") the *Chapter 15 Petition for Recognition of a Foreign Proceeding and Verified Petition for Recognition of Foreign Proceeding under Chapter 15 and Motion for Order Granting Related Relief* seeking recognition

(“Recognition Order”) by the Bankruptcy Court of the German Proceeding as a foreign main proceeding under chapter 15 (“Chapter 15”) of title 11 of the United States Code (the “Bankruptcy Code”);

**WHEREAS** under the German Insolvency Code and the February 11 Order, the German Insolvency Administrator asserts that he is vested with the sole power to administer the assets of the insolvency estate (*Insolvenzmasse*) of Maple Bank and to dispose of any of the assets contained therein, including the assets located in the United States related to Maple Bank Toronto Branch;

**WHEREAS** under WURA, the Winding-Up Order and the endorsement related thereto, the Canadian Liquidator asserts that it has been entrusted with winding-up the business in Canada and assets of Maple Bank Toronto Branch, including assets located in the United States related to Maple Bank Toronto Branch;

**WHEREAS** in order to resolve these disagreements and to maintain the status quo regarding their respective entitlements to the proceeds of such assets, the Parties enter into this Stipulation;

**NOW THEREFORE**, the Parties, by and through their undersigned counsel, hereby stipulate and agree as follows:

1. As used herein:
  - (a) “Subject Assets” means those assets located in the United States set forth on Schedule 1 hereto (which appear on the books of Maple Bank Toronto Branch, as of the date of this Stipulation), any claims arising from or related to the business of Maple Bank Toronto Branch (including, without limitation, any fraudulent transfer, preference or other claims to avoid transfers or obligations of Maple Bank Toronto Branch) asserted before the Bankruptcy

Court or any other U.S. court of competent jurisdiction, and any proceeds, collections or recoveries of any of the foregoing; and

(b) “Other Assets” means any assets of Maple Bank located in the United States other than the Subject Assets;

Provided, with respect to clauses (a) and (b) hereof, within ten (10) days of the date of entry of this Stipulation, the Canadian Liquidator shall confirm in writing to the German Insolvency Administrator that, to the best of its knowledge, information and belief, Schedule 1 represents a complete list of the Subject Assets to be set forth thereon, or to provide a revised Schedule 1 with respect to which it shall provide such a confirmation. The German Insolvency Administrator reserves the right, within ten (10) days thereafter, to assert that any additional assets designated as Subject Assets are not assets arising out of or related to the business of the Maple Bank Toronto Branch. The Parties agree to use commercially reasonable efforts to perform a reconciliation of, and to arrive at, a mutually agreeable Schedule 1.

(c) The terms “claim,” “foreign representative,” and “foreign main proceeding” shall have the respective meanings defined in the Bankruptcy Code.

2. Subject to provisions of this Stipulation being ordered by the Court, the Canadian Liquidator shall not oppose recognition of the German Proceeding as a foreign main proceeding under Chapter 15 and agrees that it shall not at this time seek recognition of the Canadian Winding-Up Proceeding under Chapter 15.

3. Notwithstanding any relief granted in the Recognition Order, or any rights provided under any provision of the Bankruptcy Code, the stay under sections 1521 and 362 of the Bankruptcy Code shall not apply to the Canadian Liquidator in respect of the Subject Assets.

4. Solely with respect to the Subject Assets, the Canadian Liquidator shall have full standing in the Chapter 15 Case and any related case or proceeding concerning the Debtor as the

Liquidator of Maple Bank Toronto Branch in the Canadian Winding-Up Proceeding on any and all matters arising out of or related to the Subject Assets, including, without limitation, standing under section 1509(b) of the Bankruptcy Code to sue and apply directly to this Court for relief with regard to the Subject Assets.

5. The Parties agree to use reasonable efforts to coordinate, cooperate and, to the extent practicable, act jointly with respect to the Subject Assets, including administering, collecting on, commencing and participating in lawsuits (and related settlement negotiations) with respect to, and liquidating such Subject Assets. In connection therewith, the Parties agree to work together cooperatively to maximize efficiency and to avoid duplication of any efforts (including those related to any retained professionals).

6. All cash collections, proceeds or recoveries on account of the Subject Assets shall be placed into an account, which will be under the joint control of both Parties (the "**Joint Control Account**"). Any disposition, distribution or directive of any kind related to the proceeds in the Joint Control Account must be mutually agreed upon by both Parties. Absent such agreement, no action may be taken with respect to any amounts in the Joint Control Account subject to dispute except in accordance with a final, non-appealable order of the Bankruptcy Court or other U.S. court of competent jurisdiction resolving such dispute.

7. To the extent any issue, conflict or disagreement related to the Subject Assets arises, the Parties agree, in the first instance, to jointly request that the Bankruptcy Court resolve such issues.

8. Nothing herein shall be deemed a waiver or otherwise limit the standing, if any, of the Canadian Liquidator in the Chapter 15 Case or any related case or proceeding concerning or related to the Debtor with respect to other matters not arising out of or related to the Subject

Assets, and all of the Parties' rights with respect thereto, including the German Insolvency Administrator's right to contest such standing, are reserved.

9. In the event the Bankruptcy Court (or other court of competent jurisdiction) determines or the Parties mutually agree that, notwithstanding the terms hereof, recognition of the Canadian Winding-Up Proceeding under Chapter 15 or the Canadian Liquidator as a foreign representative of Maple Bank Toronto Branch is required in order to seek relief, or to preserve any rights, in respect of the Subject Assets, the Canadian Liquidator shall be authorized to seek such recognition and the German Insolvency Administrator reserves all rights to oppose such recognition absent mutual agreement otherwise.

10. The terms of this Stipulation are without prejudice to, and the Parties reserve all of their rights in respect of, the allocation or distribution of the Subject Assets (including any collections, proceeds or recoveries in respect thereof) or amounts in the Joint Control Account to or for the benefit of their respective estates.

11. Nothing contained herein shall be construed to limit, modify, or impair the rights or obligations of Maple Bank, Maple Bank Toronto Branch, the German Insolvency Administrator or the Canadian Liquidator as against any third party.

12. If approval of this Stipulation is adjourned by the Bankruptcy Court to a hearing date after March 10, 2016, the Parties agree that (a) the Recognition Order shall not provide any relief with respect to the Subject Assets (including recognition of the foreign proceeding or foreign representative); and (b) the Parties will cooperate to seek provisional relief under section 1519 of the Bankruptcy Code with respect to the Subject Assets on an expedited basis.

13. If the Bankruptcy Court denies approval of this Stipulation, (a) the Recognition Order shall not provide any relief with respect to the Subject Assets (including recognition of the foreign proceeding or foreign representative); (b) this Stipulation shall be of no force and effect



and none of its provisions will be deemed to prejudice or impair any of the Parties' respective rights and remedies, which are expressly reserved; (c) the Canadian Liquidator reserves all rights to seek recognition of the Canadian Winding-Up Proceeding under Chapter 15 with respect to the Subject Assets, the German Insolvency Administrator reserves all rights to seek recognition of the German Proceeding under Chapter 15 with respect to the Subject Assets, and both the Canadian Liquidator and the German Insolvency Administrator, respectively, reserve all rights to oppose any such petitions for recognition.

*[The rest of this page left intentionally blank]*

Dated: March 3, 2016  
New York, New York

DENTONS US LLP

/s/ D. Farrington Yates

D. Farrington Yates

Giorgio Bovenzi

James A. Copeland

1221 Avenue of the Americas

New York, New York 10020

Telephone: (212) 768-6700

Facsimile: (212) 768-6800

*Counsel for Dr. Michael C. Frege*

Dated: March 3, 2016  
New York, New York

WILLKIE FARR & GALLAGHER LLP

/s/ Benjamin P. McCallan

Marc Abrams

Benjamin P. McCallan

Weston T. Eguchi

787 Seventh Avenue

New York, New York 10019-6099

Telephone: (212) 728-8000

Facsimile: (212) 728-8111

*Counsel for KPMG Inc.*

**Schedule 1**  
**(Subject Assets)**

**Maple Bank Toronto Branch  
Summary of U.S. Assets****Asset** **Type of transactions****Loans / Repos**

Retail Energy Holdings	Loans receivable
Genie Energy Holdings	Loans receivable
Global One Funding VI	Loans receivable
SG Americas Securities LLC	Repo
State Street Bank and Trust	Stock loan

**Derivatives Transactions**

Citibank	Derivative clearing
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**This is Appendix "D" to the  
Second Report of the Liquidator**



February 9, 2016

Maple Bank GmbH – Toronto Branch  
 3500-79 Wellington St. W.  
 Toronto, Ontario  
 M5K 1K7

Attention: Paul Lishman  
 General Manager

E-mail: [plishman@maplefinancial.com](mailto:plishman@maplefinancial.com)

**Re: Default Under the NHA Mortgage-Backed Securities Program**

Dear Sirs and Mesdames:

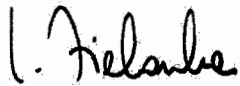
We are writing to you in our capacity as guarantor under the *National Housing Act* (Canada) Mortgage-Backed Securities Program Guide (the “**Guide**”) and your agreements with us under or in connection with the Guide, including without limitation the Mortgage Pools Transfer Agreement dated August 27, 2003 and all related Schedules of Subscribers and Contractual Agreements (collectively, the “**Agreements**”). Pursuant to the Agreements, the Agreements are governed by, subject to and incorporate by reference the terms and conditions of the Guide. Capitalized terms that are used but not defined in this letter have the meanings defined in the Guide and the Agreements.

We are aware that the German banking regulator, known as BaFin, has ordered a halt to financial transactions and other business activities by Maple Bank GmbH. We are very seriously concerned with this situation and we consider it to materially adversely affect Maple Bank's ability to act as an issuer and our liability and rights as guarantor and under terms of the Guide. Accordingly, we hereby give you notice that this situation constitutes a default under Section 4 of chapter 13 of the Guide. We are exercising our rights and remedies in this regard and have, therefore, suspended Maple Bank from acting as an issuer.

The terms of the Guide and the other Agreements remain in full force and effect without amendment and we expressly reserve all of our rights as a result of this default, including without limitation all of our rights and remedies set forth in Chapter 13 of the Guide and at law. No delay on our part in the

exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by us of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy. Please govern yourself accordingly.

Yours very truly,



CANADA MORTGAGE AND HOUSING CORPORATION

Wojciech (Wojo) Zielonka  
Senior Vice-president,  
Capital Markets

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**This is Appendix "E" to the  
Second Report of the Liquidator**



Maple Bank, Toronto Branch  
Suite 3500 Maritime Life Tower  
TD Centre, 79 Wellington Street West  
Toronto, Ontario  
M4K 1K7

February 12, 2016

Attention: Don Scott

Dear Sirs/Mesdames:

Re: Appointment of Successor Issuer to Maple Bank under NHA MBS Program

Further to our recent discussions, this will confirm that CMHC, as guarantor under the NHA MBS Program, has determined that a successor to Maple Bank as issuer under that program must be appointed as soon as possible.

CMHC would be pleased to consider a proposal by or on behalf of Maple Bank as to a suitable institution to assume Maple Bank's responsibilities as issuer. In light of the urgency of the current situation, we would respectfully request that CMHC be advised (via email to Karen Bailey, Director, Securitization Operations at [kbailey@cmhc.ca](mailto:kbailey@cmhc.ca)) of a proposed successor together with any additional relevant information Maple Bank is able to provide by no later than 5 p.m. on Tuesday, February 16, 2016. If a suitable successor issuer is not found by that time, CMHC plans to launch a process to choose a successor issuer.

CMHC has retained Deloitte to assist it and act in connection with all financial aspects of the NHA MBS Pools involved and Maple Bank's role under both the NHA MBS Program and the CMB Program, including the review and verification of Maple's related financial records and data provided by the mortgage loan servicers appointed by Maple Bank, as well as in connection with the selection of and transition to a successor issuer.

We appreciate Maple Bank's most helpful cooperation to date, and look forward to maintaining daily contact with you in order to be briefed regarding all relevant developments.

Yours very truly,

CANADA MORTGAGE AND HOUSING CORPORATION

Per: Wojciech (Wojo) Zielonka  
Senior Vice-President, Capital Markets

**This is Appendix "F" to the  
Second Report of the Liquidator**

**MEMORANDUM OF UNDERSTANDING  
CONCERNING THE EXCHANGE OF INFORMATION, AND CONCERNING THE PROCESS TO APPOINT AN  
APPROVED ISSUER TO SUCCEED MAPLE BANK, GmbH UNDER THE NHA MBS PROGRAM, IN THE  
CONTEXT OF THE LIQUIDATION OF MAPLE BANK GmbH**

**BETWEEN**

**CANADA MORTGAGE AND HOUSING CORPORATION**

**-AND-**

**KPMG INC., AS LIQUIDATOR OF MAPLE BANK GmbH IN CANADA**

**1. BACKGROUND**

**A. CMHC and the NHA MBS Program**

- a) Canada Mortgage and Housing Corporation (CMHC) is a federal Crown corporation that provides housing loan related insurance and guarantees, enabling eligible lenders to provide financing for both homeowner and rental housing. CMHC Insurance Programs and CMHC Securitization Programs contribute to a stable housing finance system by helping eligible lenders access an adequate supply of funds for housing loans. CMHC is an agent of Her Majesty the Queen in right of Canada, and as such its obligations are those of the federal Government of Canada and a charge on the Consolidated Revenue Fund.
- b) CMHC is responsible for the administration of the *National Housing Act* Mortgage-Backed Securities Program (NHA MBS Program). Under the NHA MBS Program:
  - i) Lenders, if approved upon application to CMHC, may issue mortgage-backed securities (NHA MBS) fully guaranteed by CMHC as to timely payment of principal and interest.
  - ii) In connection with each permitted issuance of NHA MBS, approved Issuers agree to transfer all legal and beneficial title to a pool of mortgages to CMHC to be held in trust for investors in NHA MBS and for CMHC as Guarantor subject to the terms and conditions set out in the NHA MBS Program Guide published by CMHC (NHA MBS Guide).
  - iii) Principal and interest revenues from the pool of mortgages are deposited by the mortgage servicer into a special-purpose trust/custodial account, which the central payor and transfer agent (CPTA) for the Program then debits monthly in order to pay NHA MBS investors principal and interest owing to them. Pursuant to a Letter of Agreement with the deposit-taking financial institution and the NHA MBS Issuer, deposits made in such account are subject to withdrawal therefrom by the Issuer or by or upon the written demand of CMHC. Through the Letter of Agreement the parties have agreed that the authority of the Issuer with respect to the trust/custodial account may be revoked by CMHC and any instruments drawn upon such account by the Issuer or any party other than CMHC may not be honoured.

- iv) Any balance in the special purpose trust/custodial account remaining after amounts owing to NHA MBS investors, and to CMHC and Program service providers for unpaid guarantee fees, other fees and expenses are fully paid, may be withdrawn by the NHA MBS issuer monthly as long as it remains in good-standing under the NHA MBS program (such excess amounts, the "Spread").
  - v) Issuers may service the mortgages themselves or may retain one or more sub-servicers to do so.
- c) The rights and obligations of all participants in the NHA MBS Program are governed by the *National Housing Act*, the NHA MBS Guide, and various standard agreements entered into, as required by the NHA MBS Guide. In particular:
- i) CMHC is not bound in any manner by any agreement made between an issuer and a sub-servicer. Mortgage sub-servicers must expressly acknowledge that their rights vis-à-vis the Issuer under any contract or otherwise are subordinate to the rights of CMHC under the NHA MBS Program.
  - ii) Where an approved issuer is in default, CMHC may become the named account-holder of the special-purpose trust/custodial account into which payments related to the mortgages must be deposited, may require the account institution to transfer the balance of the account to a new account established by CMHC, and may direct the mortgage sub-servicer to deposit all future principal and interest revenues from the mortgage pool to the new account.
  - iii) All principal and interest cash flow from the mortgage pool is legally owned by CMHC, subject to a trust in favour of NHA MBS investors to pay all amounts owing to them, and may be applied to pay any unpaid guarantee fees to CMHC and to defray any and all fees and expenses of CMHC and Program service providers (such as the CPTA) in connection with the Program, including all expenses related to any issuer default.
  - iv) Where an issuer is in default, pursuant to Chapter 13 of the NHA MBS Guide, an issuer's contingent rights in the spread are terminated and CMHC may, in its sole and absolute discretion, approve a Successor Issuer, which will take on the rights and responsibilities of an Issuer for the NHA MBS pools from that point forward.
- d) CMHC's position is that an issuer has no property right in the excess cash flow constituting the Spread. When in good standing, an issuer can have access to the Spread, which can be used by such Issuer for its benefit, but more importantly, will be available to the issuer to satisfy its obligations under the MBS Program to make the required payments to the investors, should the monies arising from the mortgage pools be insufficient to effect such payment at any given time. Where an issuer is in default, pursuant to Chapter 13 of the NHA MBS Guide, an issuer's rights in the Spread are terminated.

**B. Maple Bank, KPMG and WURA Order**

- a) Maple Bank, GmbH (Maple Bank) is a Canadian-owned German bank, and an "authorized foreign bank" in Canada under section 2 and Part XII.1 of the *Bank Act*. As a German bank, Maple Bank is subject to regulation in Germany by the Federal Financial Supervisory Authority (BaFin). As an authorized foreign bank under the *Bank Act*, Maple Bank is

regulated with respect to its business in Canada by the Office of the Superintendent of Financial Institutions (OSFI). Maple Bank was, until the occurrence of the events described in paragraph b) below, an approved issuer under the NHA MBS Program.

- b) On February 6, 2016, BaFin issued an order of moratorium on Maple Bank's business activities by reason of over-indebtedness. On February 9, 2016, CMHC issued a notice of default to Maple Bank as issuer under the NHA MBS Program.
- c) On February 10, 2016, BaFin advised OSFI that it had commenced insolvency proceedings in Germany in respect of Maple Bank based on the admission by Maple Bank of its impending insolvency and with Maple Bank's consent. On February 11, 2016, the German courts initiated insolvency proceedings in respect of Maple Bank.
- d) Upon *inter alia* BaFin's advisement of impending insolvency proceeding, on February 10, 2016, the Superintendent took control of the assets in respect of Maple Bank's business in Canada for a period not exceeding sixteen days pursuant to paragraph 619(1)(a) of the *Bank Act*.
- e) On February 12, 2016, the Superintendent provided notice to Maple Bank of its intention to continue control of the assets beyond this sixteen day period. The Superintendent also appointed KPMG Inc. (KPMG) as its representative, pursuant to subsection 619(5) of the *Bank Act*, to assist in relation to the Superintendent's control of Maple Bank's assets in Canada and in respect of its business in Canada.
- f) On February 15<sup>th</sup>, 2016 the Superintendent decided to proceed to continue its control of the assets of Maple Bank in Canada and in respect of its business in Canada and to request, that the Attorney General of Canada apply for a winding-up order under the *Winding-up and Restructuring Act*. In this regard the Superintendent sent a letter to KPMG appointing KPMG to assist in the management of the affected assets of Maple Bank under subsection 619(6) of the *Bank Act*.
- g) Upon application by the Attorney General of Canada, pursuant to section 10.1 of the *Winding Up and Restructuring Act (WURA)*, on February 16, 2016 the Ontario Superior Court of Justice (Commercial List) (the Court) made a winding-up order (the "Winding-Up Order"):
  - i) that the business of Maple Bank in Canada (the Business) be wound up and that its assets, as defined under section 618 of the *Bank Act* (the Assets) be liquidated; and
  - ii) appointing KPMG as the liquidator (Liquidator) of the estate of Maple Bank under section 23 of WURA.
- h) Under WURA and the Winding-Up Order, the Liquidator has certain statutory and court-ordered duties, obligations and powers, which include, *inter alia*, upon appointment by the Court, to take into custody or control all of the Assets of Maple Bank, which are related to the Business.

- i) The Winding-Up Order does not apply to the mortgage pools or restrict in any manner the statutory right of CMHC to administer the NHA MBS Program, including, without limitation, the right to approve a lender's eligibility to become an issuer under the Program, to appoint a new issuer to assume the responsibilities of any issuer in default, or to determine when and under what circumstances to grant its guarantee.

## 2. PURPOSE AND UNDERLYING PRINCIPLES

- a) CMHC has a mandate to promote and contribute to the stability of the financial system in Canada. As administrator of the NHA MBS Program and guarantor of all securities issued pursuant to it, CMHC is particularly charged with protecting the interests of all holders of NHA MBS securities and of the taxpayers of Canada, who are ultimately responsible, should any claim be made under the CMHC guarantee. Those mandates are and will remain CMHC's primary objectives in the exercise of its statutory responsibility and discretion to appoint a new issuer to assume the obligations of Maple Bank under the NHA MBS Program.
- b) The Liquidator, as appointed by the Court, is required to carry out and discharge its statutory and corresponding Court-ordered obligations and duties under WURA and the Winding Up Order, respectively, which include, *inter alia*, its duty to (a) wind-up the Business; and, (b) secure, safeguard and liquidate the Assets in order to maximize the realizable value of the Assets to satisfy the claims of creditors of Maple Bank.
- c) In light of the above, this Memorandum of Understanding (MOU) is a statement of intent to (i) exchange information; (ii) consult and cooperate in connection with the proposed marketing process as further set-out in Section 4(a) (i) (the Marketing Process) to be undertaken by the Liquidator to find (a) a successor issuer acceptable to CMHC (the Successor Issuer) under the NHA MBS Program for the mortgage pools in relation to NHA MBS issued by Maple Bank; (b) a purchaser for Maple Bank's Assets which may also be attractive to a Successor Issuer, including its inventory of CMHC insured mortgages that have not yet been pooled), its mortgage aggregation processes, policies and business.
- d) In connection with the Maple Bank's inventory of un-pooled CMHC insured mortgages, to the extent possible, CMHC will pre-qualify such mortgages under the NHA MBS Program and permit the Successor Issuer to issue NHA MBS based on those pools for sale to CHT (in addition to such Successor Issuer's allocation).
- e) This MOU is entered into with a view to enhancing the efficient discharge of each party's statutory responsibilities and obligations, with the goal of reducing transaction expenses and delay to the mutual benefit of those constituents to whom each party is responsible, by cooperating and participating in the Marketing Process to be undertaken by the Liquidator.
- f) CMHC undertakes to collaborate with KPMG towards establishing such joint process for a period of 55 days following the execution of this MOU after which time it will be entitled at any time to withdraw from any such process (notwithstanding any prior submission to or approval by the Court) and to implement its own issuer replacement process in discharge of its statutory mandate. During this collaboration period, any disagreement arising in the course of the discussions may be disclosed to the Judge in charge of the management of the WURA case on an

informal basis with a view to resolving such difference, it being understood that no ruling on this matter will be requested from the Judge.

- g) Nothing in paragraph f) in any way limits or restricts CMHC's ability to withdraw from the Marketing Process and this MOU prior to the expiry of the time period set out in f) above if CMHC's Board of Directors, pass a resolution requiring that CMHC should withdraw from the Marketing Process and the MOU, in its sole and absolute discretion, or if CMHC is directed by the Government of Canada to withdraw from the Marketing Process and the MOU and any acknowledgements made or agreed to in this MOU shall have no further force or effect (other than CMHC's agreement as set out in paragraph 4 (a) (iv)).
- h) This MOU shall in no manner restrict the rights or responsibilities of either party, nor bind it to accept any decision made by the other party, or to continue with any cooperative process or activity commenced pursuant to this MOU.

### 3. EXCHANGE OF INFORMATION

- (a) CMHC and the Liquidator recognize that communication and coordination can play an important role in promoting efficiency and managing exposure in an NHA MBS Issuer default, the Winding Up proceedings of Maple Bank and the Marketing Process to be undertaken by the Liquidator. Therefore, CMHC and the Liquidator will exchange information and documents in order to facilitate coordination in relation to Maple Bank's default under the NHA MBS Program, the Winding Up Proceedings of Maple Bank and the Marketing Process.
- (b) In particular, CMHC and the Liquidator agree that the following shall further their respective and mutual objectives:
  - i. timely sharing of information;
  - ii. the mutual confidential disclosure of all material documents and agreements to which Maple Bank is a party relating to its role as Issuer, the NHA MBS or related mortgage pools and their servicing, together with (A) all banking and financial information relating to Maple Bank to which CMHC has access under the NHA MBS Program and to which the Liquidator has access pursuant to the provisions of the Winding Up Order, and (B) all other documentation and information related to the foregoing, which is in the possession or control of one of the parties, and to which the other party may from time to time reasonably request;
  - iii. mutual cooperation and consultation during the Marketing Process in order to find a Successor Issuer for the MBS Business suitable to CMHC; and,
  - iv. timely notice of any proposed motion or application to the Court, draft proposed orders, liquidator's reports or other proposed filings or proceedings, including the Marketing Process, that may relate to or involve Maple Bank's role as Issuer, the NHA MBS or the related mortgage pools and their servicing, prior to formal service of notice thereof on any party or filing with the Court; each party reserves its right to dispute, oppose or otherwise take such separate position as it may elect in connection with any such proceeding, filing or other initiative.



#### 4. MATTERS FOR COLLABORATION AND CONSULTATION

In carrying out their respective roles, CMHC and the Liquidator acknowledge the following key matters under this MOU:

**(a) Process to Select a Successor Issuer under the NHA MBS Program and a Purchaser of Assets under the WURA Liquidation**

- i. CMHC and the Liquidator will consult and cooperate with a view to agreeing upon the Marketing Process that will be (a) mutually satisfactory to both CMHC and the Liquidator; (b) avoid duplication of process and efforts to solicit expressions of interest and bids from suitable Institutions to become the Successor Issuer, acceptable to CMHC. The Marketing Process is subject to the prior review and approval by CMHC's responsible executives, legal counsel and other advisors. This process shall not create an obligation for prospective successor issuers ("Successor Issuers") to purchase any Assets in order to be selected as Successor Issuer by CMHC. If the parties agree upon the Marketing Process, the parties agree that the Marketing Process and this MOU will be submitted to the Court for approval in the Winding-Up proceedings of Maple Bank.
- ii. The Liquidator acknowledges and recognizes that any consultation with respect to or ultimate agreement upon the Marketing Process in no way limits or prejudices the statutory rights and discretion of CMHC to select and approve the Successor Issuer. Neither CMHC nor the Liquidator shall be obligated under the Marketing Process to accept any bidder (including without limitation the highest bidder). Should either party exercise its rights under this MOU, to withdraw from the Marketing Process and this MOU (including without limitation, should CMHC disagree with the Liquidator's recommendation as to the proposed Successor Issuer upon the completion of Marketing Process any such disagreement may be disclosed to the presiding case management Judge for the Winding Up proceedings of Maple Bank on an informal basis by way of case conference or otherwise, with a view of resolving such difference, it being understood that no ruling on this matter will be requested from the said Judge. Such meeting or case conference before the presiding Judge shall be non-binding on CMHC and the Liquidator. In addition, CMHC's agreement to participate in the meeting or case conference shall not in any way limit or prejudice the statutory rights and discretion of CMHC to select and approve the Successor Issuer. Should the parties fail to agree upon a workable solution during the case conference, the withdrawing party shall remain entitled to immediately withdraw from the Marketing Process. Upon withdrawal of either party, CMHC shall retain its right to implement its own Successor Issuer process in furtherance of discharging its statutory mandate and the Liquidator shall retain the right to implement a separate process to market and sell the Maple Bank Assets.
- iii. While only CMHC approved issuers ("Approved Issuers") can qualify to become a Successor Issuer of Maple Bank under the NHA MBS Program, CMHC shall also consider the candidacy of non-CMHC Approved Issuers to become the Successor Issuer to Maple Bank if such party submits to CMHC an application to become an Approved Issuer under Chapter 3 of the NHA MBS Guide and becomes an Approved Issuer within thirty (30)

days from such candidate's offer being accepted by CMHC (conditional upon becoming an Approved Issuer) as Successor Issuer.

- iv. Notwithstanding that it is CMHC's position that it has no obligation to do so, after a Successor Issuer has been selected and approved by CMHC (whether through the Marketing Process or otherwise), and provided that a) the Successor Issuer will pay as part of the transaction an amount (if any) to become a Successor Issuer whether at closing or at agreed times thereafter (collectively, "Successor Issuer Payment"), and b) there is a positive amount left from the total of the Spread collected by CMHC pre-closing since February 9, 2016 plus the Successor Issuer Payment after any amount required by the Successor Issuer to be paid to it to become the Successor Issuer (other than post-closing Spread), all fees owing to CMHC (guarantee fees or otherwise) and transaction costs and expenses of CMHC including any expenses related to Maple Bank's default, (the "Maple Default Costs") have been paid in full from such total amounts, the amount remaining will be contributed to the Liquidator by CMHC as soon as practicable following closing of the Successor Issuer transaction. Future Spread collected after the closing will be available to the Successor Issuer as an Issuer in good standing in accordance with the NHA MBS Guide.
- v. When and if all Maple Default Costs have been recovered by CMHC, CMHC will release all of its claims as against the estate of Maple Bank and accordingly, will not file a proof of claim in the liquidation proceedings of Maple Bank, and will continue to cooperate with the Liquidator in the winding up of the Maple estate.

**(b) Recognition of Ownership Rights in Mortgage Pools and related Revenue, and Rights as Administrator and Guarantor under the NHA MBS Program and the Obligations of the Liquidator in the Winding-Up Proceedings of Maple Bank.**

In connection with the proposed Marketing Process to be considered and agreed upon as outlined above, and in connection with the liquidation process under WURA generally and in any related court proceedings and submissions, the Liquidator shall at all times recognize CMHC's legal rights and interests (whether contractual, statutory or otherwise) pursuant to the NHA MBS Program, including but not limited to CMHC's rights as guarantor, owner (whether legal, beneficial, as trustee, or otherwise) and/or administrator. Without limiting the generality of the foregoing, CMHC shall not be required to take any steps to take possession, register title, or take any other legal action in relation to any NHA MBS security or mortgage pool. Any transfer, sale, assignment or other disposition of the opportunity to succeed to Maple Bank's role as NHA MBS issuer shall only be made on terms and conditions that reflect and confirm CMHC's exclusive right and discretion to approve such issuer, and subject to the terms and conditions of the NHA MBS Guide, its right, title and interest in and to the mortgage pools, the Spread, fees, expenses, including any expenses related to any issuer default, and costs payable to it and other Program service providers. CMHC acknowledges that the Liquidator in the Winding-Up Proceedings of Maple Bank has certain statutory and court-ordered duties and obligations to secure, safeguard and liquidate the Assets in order to maximize the realizable value of the Assets to satisfy the claims of creditors of Maple Bank advanced against the estate of Maple Bank.

**(c) ADMINISTRATIVE SUPPORT TO CMHC.**

During the course of the Marketing Process and while this MOU is in effect, the Liquidator will provide ongoing administrative services in relation to the mortgage pools as may be mutually agreed to, which will include, without limitation, detailed cheque verification services, monitoring the reconciliation of accounts and the management of discharges and assignment of mortgages as well as other accounting services.

In addition, the Liquidator shall cooperate to ensure that any funds received by the Liquidator from the mortgage pools are deposited in the newly established custodial account with Computershare at The Bank of Nova-Scotia.

**5. CONFIDENTIALITY**

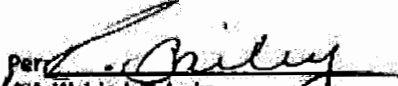
- (a) All Confidential Information (as defined below) will be kept confidential by each of the Liquidator and CMHC to the extent permitted by applicable law and will be used only for the purposes hereunder or in connection with their respective statutory and court ordered responsibilities except (i) for disclosure as provided for in Sections 5b); and (ii) for disclosure by the Liquidator to the German Insolvency Administrator (the "GIA") appointed in the German Insolvency proceedings of Maple Bank, provided that the Liquidator has satisfied itself that the GIA will be bound by substantially the same confidentiality requirements as the Liquidator under this MOU. Furthermore, information can also be made available by the Liquidator and or the GIA, on a confidential basis, to (i) BaFin; (ii) the members of the creditors committee; (iii) any person entitled to receive such information in the German insolvency proceeding; and (iv) their respective legal counsel, accountants and other advisors. Any Confidential Information provided by CMHC shall be maintained as confidential information in accordance with the terms of this MOU and on terms satisfactory to CMHC.
- (b) In the event that either party is required by statute or legal process (including, without limitation, access to information legislation and discovery process relating to judicial or administrative proceedings) to disclose Confidential Information, the party will, to the extent permitted by applicable law, inform the other party and seek its prior written consent. If such consent is not obtained, the party from whom disclosure is required will assert all available legal exceptions from or privileges against disclosure. If, despite such efforts, disclosure of the Confidential Information is required by law, the party from whom disclosure is required will, to the extent permitted by law, inform the other party in advance of such disclosure.
- (c) The confidentiality obligations provided for herein shall survive the termination of this MOU by either party.
- (d) "Confidential Information" means any non-public information received by the parties in their respective roles through participation in this MOU, including, without limitation, requests for information pursuant to Section 3.

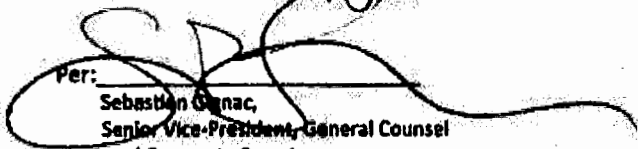
**6. MISCELLANEOUS**

- (a) This MOU does not confer any rights upon any third party, including any right or ability to directly or indirectly obtain, suppress, or exclude any information or to challenge the execution of this MOU or to challenge the execution of a request for assistance under this MOU.
- (b) Nothing in this MOU restricts either of CMHC or KPMG from carrying out its respective statutory responsibilities or fulfilling its respective legal obligations.
- (c) Cooperation in accordance with this MOU will commence as of the date written below and continue indefinitely, subject to modification by written agreement of both parties, or termination by written notice to the other party.
- (d) This MOU may be executed and delivered by the parties in one or more counterparts, each of which when so executed and delivered will be deemed to be the original, and those counterparts will together constitute one and the same instrument.

Signed at Toronto, Ontario, this 16<sup>th</sup> day of March, 2016.

**CANADA MORTGAGE AND HOUSING  
CORPORATION**

Per:   
Wojciech Zielonka,  
Senior Vice-President, Capital Markets

Per:   
Sebastian Gagnac,  
Senior Vice-President, General Counsel  
and Corporate Secretary

**KPMG INC., in its capacity as Court Appointed  
Liquidator of the business in Canada of MAPLE  
BANK, GmbH**

Per:   
Nicholas Brearton,  
President

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**This is Appendix "G" to the  
Second Report of the Liquidator**



**MARKETING PROCESS TO IDENTIFY A SUCCESSOR ISSUER OF MAPLE BANK GMBH, TORONTO BRANCH, UNDER THE NHA MBS PROGRAM AND THE SALE OF THE MAPLE BANK GMBH ASSETS**

**INTRODUCTION**

1. Maple Bank GmbH (“**Maple Bank**”) is a Canadian-owned German bank and an “authorized foreign bank” in Canada under section 2 and Part XII.1 of the *Bank Act*. As a German bank, Maple Bank is subject to regulation in Germany by the Federal Financial Supervisory Authority (“**BaFin**”). As an authorized foreign bank under the *Bank Act*, Maple Bank is regulated with respect to its business in Canada by the Office of the Superintendent of Financial Institutions (“**OSFI**”). Maple Bank was an approved issuer under the *National Housing Act* Mortgage-Backed Securities Program (the “**NHA MBS Program**”) as administered by Canada Mortgage and Housing Corporation (“**CMHC**”).
2. CMHC is a federal Crown corporation that provides housing loan related insurance and guarantees, enabling eligible lenders to provide financing for both homeowner and rental housing. CMHC Insurance Programs and CMHC Securitization Programs contribute to a stable housing finance system by helping eligible lenders access an adequate supply of funds for housing loans. CMHC is an agent of Her Majesty the Queen in right of Canada, and as such its obligations are those of the federal Government of Canada and a charge on the Consolidated Revenue Fund.
3. Under the NHA MBS Program, lenders, if approved, upon application to CMHC (the “**Approved Issuer**”), may issue mortgage-backed securities (“**NHA MBS**”) fully guaranteed by CMHC as to timely payment of principal and interest. In connection with each permitted issuance of NHA MBS, Approved Issuers agree to transfer all legal and beneficial title to a pool of mortgages to CMHC to be held, in trust, for investors in NHA MBS and for CMHC, as guarantor, subject to the terms and conditions set out in the NHA MBS Program Guide published by CMHC (the “**NHA MBS Guide**”).
4. On February 6, 2016, BaFin issued an order of moratorium on Maple Bank’s business activities by reason of over-indebtedness. On February 9, 2016, CMHC took the following steps: (i) issued a notice of default to Maple Bank as issuer under the NHA MBS Program; (ii) suspended Maple Bank as an issuer under the NHA MBS Program; (iii) directed Bank of Montreal (“**BMO**”) to immediately transfer the entire balance in the P&I Custodial/Trust Account with BMO to the NHA MBS Central Payor and Transfer Agent account of Computershare Trust Company of Canada (“**Computershare**”); (iv) directed Computershare to establish a Custodial/Trust Account (the “**Computershare Account**”) for revenues related to the mortgages underlying the NHA MBS issued by Maple Bank and to withdraw amounts from the Computershare Account as needed to pay amounts due to holders of NHA MBS issued by Maple Bank; and (v) directed the servicers to Maple Bank’s MBS business to pay to the Computershare Account, all amounts that would otherwise have been paid to the P&I Custodial/Trust Account with BMO and advised the servicers that the servicing arrangements are subject to the NHA MBS Guide.

5. On February 10, 2016 BaFin advised OSFI that it commenced insolvency proceedings in Germany in respect of Maple Bank based on the admission of Maple Bank of its impending insolvency and with Maple Bank's consent. On February 11, 2016 the German Court issued an order appointing an Insolvency Administrator over Maple Bank, Frankfurt.
6. Upon application by the Attorney General of Canada, pursuant to section 10.1 of the *Winding Up and Restructuring Act (WURA)*, on February 16, 2016 the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made a winding-up order (the "**Winding-Up Order**"): (a) that the business in Canada of Maple Bank (the "**Business**") be wound up and that its assets, as defined under section 618 of the *Bank Act* (the "**Assets**") be liquidated; and, (b) appointing KPMG Inc. ("**KPMG**") as the liquidator (the "**Liquidator**") of the estate of Maple Bank under section 23 of WURA.
7. Upon Maple Bank's default, pursuant to Chapter 13 of the NHA MBS Guide, CMHC may, *inter alia*, in its sole and absolute discretion, approve a successor issuer to Maple Bank (the "**Successor Issuer**"), which will take on the rights and responsibilities of Maple Bank for the NHA MBS pools from that point forward.
8. In furtherance of the marketing process, more particularly described in the following sections (the "**Marketing Process**"), the Liquidator and CMHC have agreed, pursuant to the terms of a Memorandum of Understanding dated March 16, 2016 (the "**MOU**"), to: (i) exchange information; (ii) consult and cooperate in connection with the Marketing Process to be undertaken by the Liquidator to find: (a) the Successor Issuer (acceptable to CMHC) under the NHA MBS Program for the mortgage pools in relation to NHA MBS issued by Maple Bank; and, (b) a purchaser for Maple Bank's Assets, which may also be attractive to the Successor Issuer, including its inventory of CMHC insured mortgages that have not yet been pooled, NHA MBS mortgage pools that Maple Bank owns as an investor and its mortgage aggregation processes, policies and business (collectively, the "**Maple Assets**").
9. The purpose of this Marketing Process is to seek LOIs and Offers (each as defined below) and to implement an Accepted Successor Issuer Offer (as defined below) and one or more Accepted Sale Offers (as defined below), the whole as more fully detailed below.
10. Capitalized terms used in this Marketing Process shall have the meanings given to them herein.

#### Marketing Process Order

11. Pursuant to an Order dated April 1, 2016, the Court approved: (a) the Marketing Process (the "**Marketing Process Order**"); (b) that the Liquidator implement and carry out the terms of this Marketing Process in accordance with the terms of the MOU; and, (c) the solicitation process pursuant to which the Liquidator and CMHC will solicit offers for: (i) the Successor Issuer, and/or (ii) the sale of the Maple Assets, in accordance with the terms of the Marketing Process.

12. This Marketing Process shall govern the solicitation by the Liquidator for LOIs and Offers for the Successor Issuer and/or the Maple Assets and the selection by CMHC of the Successor Issuer.

Selection of a Successor Issuer

13. Pursuant to the Marketing Process Order, the Liquidator will be solely responsible for implementation of the Marketing Process. Nothing in this Marketing Process is intended to limit the exclusive right of CMHC to select the Successor Issuer. Accordingly, CMHC, in consultation with the Liquidator, shall retain its authority to select the Successor Issuer and in furtherance of this objective the Liquidator and CMHC will cooperate and consult during the Marketing Process with the objective of selecting the Successor Issuer, acceptable to CMHC, and a purchaser for the Maple Assets.
14. In the event that there is disagreement or clarification required as to the interpretation or application of this Marketing Process, as between the Liquidator and CMHC, the applicable provisions of the MOU shall govern.

Selection of the Successor Issuer and/or Sale Proposal for the Maple Assets

15. A Prospective Offeror (as defined below) may, at the option of such Prospective Offeror, submit an LOI, or an Offer for one or more of the following:
- (a) An offer to be selected as the Successor Issuer for some or all of the NHA MBS business of Maple Bank, as acceptable to CMHC (a "**Successor Issuer Offer**"); and/or
  - (b) The purchase of all, or substantially all, or any portion of the Maple Assets (the "**Sale Proposal**"). For greater certainty, the Sale Proposal shall not include an offer to auction or liquidate any of the Maple Assets.

(and collectively, the Successor Issuer Offer and the Sale Proposal, the "**Offers**")

Selection of the Successor Issuer

16. With respect to a Successor Issuer Offer, CMHC shall have the sole and exclusive right to select the Successor Issuer.

Maple Assets Subject to Sale

17. With respect to a Sale Proposal, the assets available to be sold include all, or substantially all, of the Maple Assets. Interested parties will need to indicate whether, or not they are seeking to become the Successor Issuer, and if so, whether their offer is partially, or fully conditional on being selected as the Successor Issuer Offer.
18. Notwithstanding anything else contained in this Marketing Process, at any time after entry of the Marketing Process Order, the Liquidator, in the exercise of its reasonable business judgment and in accordance with the applicable provisions of the MOU, after consulting with CMHC, and upon notice to any Prospective Offeror, if any, may, from time to time, withdraw any Maple Assets from this Marketing Process.

As is, where is

19. Any sale of the Maple Assets shall be on an “**as is, where is**” basis and without representations, warranties, covenants or indemnities of any kind, nature, or description by the Liquidator, or any of its respective agents, directors, officers, employees, professionals, advisors, or otherwise, except to the extent set forth in the executed definitive sale agreement(s) with the Accepted Sale Offeror(s) (as defined below) and any orders of the Court.

Free of Any And All Claims and Interests

20. All of the rights, title and interests of Maple Bank in and to any or all of the Maple Assets to be acquired under a Sale Proposal, may be sold free and clear of all security, charges, pledges, liens, encumbrances, claims or other restrictions thereon and there against including, for greater certainty, any charges or encumbrances created by the Winding-Up Order, subsequent orders of the Court in the Winding-Up proceedings, or as provided for under WURA (collectively, the “**Encumbrances**”), except for those liens and encumbrances expressly to be assumed by the Accepted Sale Offeror(s) and permitted pursuant to an Approval and Vesting Order(s) in a form satisfactory to the Accepted Sale Offeror(s), the Liquidator, and as may be granted by the Court. The Encumbrances shall attach to the net proceeds of the sale of the Maple Assets, as applicable, without prejudice to any claims or causes of action regarding priority, validity or enforceability thereof.

Solicitation

21. As soon as reasonably practicable, the Liquidator will prepare, in consultation with CMHC: (a) a list of potential offerors who may be interested in submitting a Successor Issuer Offer and/or a Sale Proposal (collectively, the “**Prospect List**”), including both existing CMHC approved issuers (the “**Approved Issuers**”) and non-CMHC approved issuers (the “**Non-Approved Issuers**”) who, in the Liquidator’s judgment, (after consultation with CMHC), may have a reasonable prospect of becoming the Successor Issuer and/or concluding a transaction in respect of a Sale Proposal; (b) an initial offering summary (the “**Teaser Letter**”) to notify each party on the Prospect List of the solicitation process under this Marketing Process and to invite each potential offeror to submit an LOI in respect of a Successor Issuer Offer and/or a Sale Proposal and; (c) a form of confidentiality agreement, which shall include an agreement to be bound by the provisions of this Marketing Process (the “**Confidentiality Agreement**”).
22. As soon as reasonably practicable, but in any event no later than April 13, 2016 (the “**Phase 1 Commencement Date**”), the Liquidator shall send the Teaser Letter, a copy of the Marketing Process Order and the form of Confidentiality Agreement to those persons on the Prospect List and, as soon as reasonably practicable thereafter, after consulting with CMHC, to any other person who expresses an interest in this Marketing Process and who requests a copy of the Teaser Letter, or who is identified to the Liquidator or CMHC as a potential offeror.

### MARKETING PROCESS- PHASE 1

23. For a period of twenty-four (24) calendar days following the Phase 1 Commencement Date, or for such longer period as agreed to by the Liquidator and CMHC ("**Phase 1**"), the Liquidator, after consulting with CMHC, will solicit non-binding indications of interest in the form of non-binding letters of intent (each an "**LOI**") from each potential offeror on the Prospect List, as well as any other interested party who has communicated an interest to either the Liquidator or CMHC in respect of submitting a Successor Issuer Offer or a Sale Proposal (collectively, a "**Prospective Offeror**").
24. Prospective Offerors that execute and deliver to the Liquidator, the Confidentiality Agreement, shall receive a detailed confidential information memorandum prepared by the Liquidator, in consultation with CMHC, describing the opportunity to complete a transaction to become the Successor Issuer and/or effect a Sale Proposal. Such parties shall also receive access to an electronic due diligence database (the "**Due Diligence Access**"). The Due Diligence Access for each party shall terminate: (a) upon the Phase 1 LOI Deadline (as defined below) in the event that such party fails to deliver an LOI in accordance with the instructions contained in the "**Phase 1 Timing**" section below; (b) in the event that such party does not progress to Phase 2 (as defined below).
25. The Liquidator will designate a representative to coordinate all reasonable requests for Due Diligence Access for all parties eligible to receive such access in accordance with this section. The Liquidator and CMHC are not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the NHA MBS Program, the Business or the Maple Assets, and do not make any representations or warranties as to the information or materials provided.
26. In respect of information requests, or any other matters concerning the Successor Issuer Offer and/or a Sale Proposal, Prospective Offerors must communicate with KPMG, and to the extent that such requests relate to the NHA MBS Program, with CMHC, or with such other individual or individuals, as KPMG and CMHC may authorize in writing. Without the prior written consent of the Liquidator, no Prospective Offeror, or representatives of a Prospective Offeror, may initiate or cause to be initiated or maintain any communication with any officer, director, agent, employee, affiliate, creditor, shareholder, customer or supplier of Maple Bank concerning the NHA MBS business, the Business, the Maple Assets, operations, prospects or finances, or any matters relating to a Successor Issuer Offer and/or a Sale Proposal. For greater certainty, the restrictions set out in paragraph 26 herein shall not apply to CMHC, who shall be at liberty to communicate with any officer, director, agent, employee, affiliate, creditor, shareholder, customer or supplier of Maple Bank concerning the NHA MBS business, the Business, the Maple Assets, operations, prospects or finances, or any matters relating to a Successor Issuer Offer.

#### Phase 1 Timing

27. Prospective Offerors that wish to pursue a Successor Issuer Offer and/or a Sale Proposal must deliver a non-binding LOI in writing, via email or by personal delivery to the Liquidator and CMHC in respect of a Successor Issuer Offer, and to the Liquidator only in respect of a Sale Proposal, so that they are actually received by no later than 5:00 PM

(Toronto time) on or before May 6, 2016, or such later date as determined by CMHC, in consultation with the Liquidator, with regard to a Successor Issuer Offer, and by the Liquidator with regard to a Sale Proposal (the “Phase 1 LOI Deadline”).

28. All Successor Issuer Offers should be delivered to:

Canada Mortgage and Housing Corporation  
700 Montreal Road, C2-214  
Ottawa, Ontario  
K1A 0P7

Attention: Reem Hindieh and Karen Bailey  
Email: rhindieh@cmhc-schl.gc.ca; kbailey@cmhc-schl.gc.ca

With a copy to counsel to CMHC:

Borden Ladner Gervais LLP  
Scotia Plaza  
40 King St. W.  
Toronto, ON M5H 3Y4

Attention: Rosalind Morrow, Marc Duchesne and Roger Jaipargas  
Email: rmorrow@blg.com; mduchesne@blg.com; rjaipargas@blg.com

With a copy to the Liquidator:

KPMG Inc.  
Bay Adelaide Centre  
333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5

Attention: Philip J. Reynolds, Nick Brearton and Ryan Adlington  
Email: pjreynolds@kpmg.ca; nbrearton@kpmg.ca; radlington@kpmg.ca

With a copy to counsel to the Liquidator:

Gowling WLG  
1 First Canadian Place,  
100 King St. W., Suite 1600  
Toronto, ON M5J 2T3

Attention: Alex MacFarlane and Lilly Wong  
Email: alex.macfarlane@gowlingwlg.com; lilly.wong@gowlingwlg.com

29. All Sale Proposal Offers should be delivered to:

KPMG Inc.  
Bay Adelaide Centre  
333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5

Attention: Philip J. Reynolds, Nick Brearton and Ryan Adlington  
Email: pjreynolds@kpmg.ca; nbrearton@kpmg.ca; radlington@kpmg.ca

With a copy to counsel to the Liquidator:

Gowling WLG  
1 First Canadian Place,  
100 King St. W., Suite 1600  
Toronto, ON M5J 2T3

Attention: Alex MacFarlane and Lilly Wong  
Email: alex.macfarlane@gowlingwlg.com; lilly.wong@gowlingwlg.com

Non-Binding Letters of Intent Requirements

30. An LOI will be considered a qualified LOI (a “**Qualified LOI**”) only if it:
- (a) is submitted on or before the Phase 1 LOI Deadline;
  - (b) contains an executed Confidentiality Agreement (if not already delivered);
  - (c) indicates whether the LOI involves a Successor Issuer Offer and/or a Sale Proposal;
  - (d) identifies the Prospective Offeror and representatives thereof who are authorized to appear and act on behalf of the Prospective Offeror for all purposes regarding the contemplated transaction, and it must fully disclose the identity of each entity that will be sponsoring, participating in, or benefiting from the transaction contemplated by the LOI, and the complete terms of such participation, including, in the case of an entity formed or to be formed for the purpose of entering into the transaction contemplated by the LOI, the identity of each actual or anticipated direct or indirect equity holder or beneficiary of such entity and the percentage of such equity holder or beneficiary’s interest in the transaction contemplated by the LOI;
  - (e) describes the structure and financing of the proposed transaction (including, but not limited to, a specific indication of the sources of financing for the purchase price, and preliminary evidence of the availability of such financing and the steps necessary and associated timing to obtain such financing and consummate the proposed transaction in each case in sufficient detail to permit the Liquidator and CMHC to make a reasonable business or professional judgment as to the

Prospective Offeror's financial or other capabilities to consummate the transaction);

- (f) describes the conditions and approvals required for a final and binding offer, including the approval by CMHC to become an Approved Issuer, if applicable, and any anticipated corporate, security holder, internal or regulatory approvals required to close the transaction, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such approvals;
- (g) describes any additional due diligence required to be conducted during Phase 2 (as defined below);
- (h) identifies all conditions to closing to be imposed by the Prospective Offeror including, without limitation, any form of agreement required from CMHC, or any other government body, stakeholder or other third party;
- (i) contains such other information reasonably requested by the Liquidator, or CMHC;
- (j) sets out the purchase price (or range thereof) in Canadian dollars, including details of any liabilities to be assumed by the Prospective Offeror;
- (k) in the case of a Successor Issuer Offer, is an offer for all or certain of the NHA MBS mortgage pools for which Maple Bank was the Approved Issuer; provided that no offer for a part of a mortgage pool will be accepted;
- (l) in the case of a Successor Issuer Offer, if it is not already an Approved Issuer, each offeror must confirm that it will provide within 15 days after the Phase 2 Commencement Date (as defined in paragraph 34) the relevant documentation to demonstrate that it meets all of the requirements, prerequisites and criteria set out under the NHA MBS Guide to be an issuer of NHA MBS (including but not limited to current net worth requirements) and, for parties, other than federally regulated banks, trust companies and insurance companies, proof of licensing or exemption from licensing to trade in mortgages and act as an MBS Issuer in all provinces (and for loan administration if they will service any of the mortgage loans, as well as proof of being a NHA Approved Lender or Genworth or Canada Guaranty Qualified Mortgage Lender);
- (m) in the case of a Successor Issuer Offer, the offer must indicate whether, or not the proposed Successor Issuer intends to assume the existing mortgage servicing and/or mortgage originating agreements entered into with Maple Bank; and,
- (n) includes any other terms or conditions that the Prospective Offeror believes are material to the transaction.

In the case of a Sale Proposal, a Qualified LOI must also identify or contain the following information:



- (i) identifies the Maple Assets that are to be purchased as part of the transaction;
  - (ii) identifies the Maple Assets that are to be excluded from the transaction;
  - (iii) describes the intended use of the Maple Assets that are to be purchased as part of the transaction;
  - (iv) whether the Sale Proposal is partially, or entirely conditional upon the Successor Issuer Offer; and,
  - (v) any other terms or conditions of the Sale Proposal that the Prospective Offeror believes are material to the transaction.
31. An LOI received by the Liquidator and CMHC after the Phase 1 LOI Deadline shall not constitute a Qualified LOI, it being understood that, with respect to a Successor Issuer Offer, CMHC, in consultation with the Liquidator, and with respect to a Sale Proposal, the Liquidator, in its sole discretion, shall have the right to deem an LOI received after the Phase 1 LOI Deadline as a Qualified LOI.

Assessment of Qualified LOIs and Continuation or Termination of Solicitation Process

32. Following the Phase 1 LOI Deadline, CMHC and the Liquidator will assess the Qualified LOIs received during Phase 1, if any, and will determine whether there is a reasonable prospect of obtaining a Successor Issuer Offer, and the Liquidator will assess the Qualified LOIs to determine whether there is a reasonable prospect of obtaining a Sale Proposal. For the purpose of such consultations and evaluations, CMHC and the Liquidator may request clarification of the terms of any Qualified LOI submitted by a Prospective Offeror.
33. In assessing the Qualified LOIs submitted in Phase 1, CMHC and the Liquidator may consider, among other things, the following:
- (a) the form and amount of consideration being offered and the net value to Maple Bank (including any assumed liabilities or other obligations to be performed by the Prospective Offeror);
  - (b) in respect of a Sale Proposal, whether the Qualified LOI maximizes value for the Maple Assets;
  - (c) in respect of a Successor Issuer Offer, that a Successor Issuer must be chosen for each of the NHA MBS mortgage pools for which Maple Bank was the Approved Issuer;
  - (d) the demonstrated financial capability of the Prospective Offeror to consummate the proposed transaction;
  - (e) the identity of the Prospective Offeror;

- (f) the costs and risks associated with entering into a transaction with a Prospective Offeror;
  - (g) any transition services required in respect of the transaction contemplated by the Qualified LOI;
  - (h) any monetary value that may reasonably be attributed to any non-cash consideration provided by a Prospective Offeror;
  - (i) the conditions to closing of the proposed transaction (including any required regulatory approvals and any other factors affecting the speed, certainty and value of the transaction);
  - (j) the treatment of Maple Bank employees, where hired by the Liquidator (whether active or inactive);
  - (k) whether a claim is likely to be created by the Qualified LOI, and a comparison of any such claims to claims likely to be created by any other Qualified LOI;
  - (l) the terms of the Qualified LOI (including, but not limited to, the anticipated counterparties to the transaction, and the anticipated closing date);
  - (m) the estimated time required to complete the proposed transaction and whether, in respect of a Successor Issuer Offer, CMHC, in consultation with the Liquidator, is of the opinion, and with respect to a Sale Proposal, the Liquidator is of the opinion, that the anticipated transaction is reasonably likely to close on or before the Outside Termination Date (as defined below); and
  - (n) such other criteria as CMHC and the Liquidator may determine as appropriate.
34. If one or more Qualified LOIs are received in respect of a Successor Issuer Offer, and CMHC, in consultation with the Liquidator, determines that there is a reasonable prospect of obtaining a Successor Issuer Offer, the Liquidator shall notify the Prospective Offerors that the Marketing Process shall progress to phase 2 (the date of such notification being the "**Phase 2 Commencement Date**") and the solicitation process shall be continued in accordance with this Marketing Process for a further thirty (30) calendar days following the Phase 2 Commencement Date or for such longer period as CMHC, in consultation with the Liquidator, may determine ("**Phase 2**").
35. If one or more Qualified LOIs are received in respect of a Sale Proposal and the Liquidator determines that there is a reasonable prospect of obtaining one or more Sale Proposal Offer(s), the Liquidator shall notify the Prospective Offerors that the Marketing Process shall progress to Phase 2 and notify such Prospective Offerors of the Phase 2 Commencement Date.
36. In respect of a Successor Issuer Offer, if CMHC, in consultation with the Liquidator, determines that there is at least one Qualified LOI received by the Phase 1 LOI Deadline, and CMHC determines that the Prospective Offerer would qualify as an Approved Issuer under the NHA MBS Program, CMHC shall be authorized to negotiate with such

Prospective Offeror to consummate a transaction for a Successor Issuer (and notwithstanding anything contained herein, such Prospective Offeror shall thereafter be deemed to be the Accepted Successor Issuer Offeror (as defined below)), following which the Liquidator shall report to the Court on the selection by CMHC of a Successor Issuer without this Marketing Process progressing to Phase 2.

37. In respect of a Sale Proposal, if the Liquidator determines that there is at least one Qualified LOI received by the Phase 1 LOI Deadline, and the Liquidator, in its reasonable business judgment, determines that such Qualified LOI maximizes the recovery on the Maple Assets, in the circumstances, then the Liquidator shall be authorized to negotiate with such Prospective Offeror to consummate a sale transaction with respect to the Maple Assets (and notwithstanding anything contained herein, such Prospective Offeror shall thereafter be deemed to be the Accepted Sale Offeror (as defined below)), following which the Liquidator shall seek Court approval of such agreement at an Authorization/Approval Motion (as defined below) without having this Marketing Process progress to Phase 2.

### MARKETING PROCESS – PHASE 2

38. In respect of a Successor Issuer Offer, in the event that CMHC, in consultation with the Liquidator, determines that this Marketing Process shall progress to Phase 2, each Prospective Offeror that: (a) submits a Qualified LOI; and (b) is not eliminated from the solicitation process by CMHC, after the assessment of whether such Qualified LOI meets the criteria outlined above, will be invited to participate in Phase 2 (a “**Successor Issuer Offeror**”).
39. In respect of a Sale Proposal, in the event that the Liquidator, determines that this Marketing Process shall progress to Phase 2, each Prospective Offeror that: (a) submits a Qualified LOI; and (b) is not eliminated from the solicitation process by the Liquidator, after the assessment of whether such Qualified LOI meets the criteria outlined above, will be invited to participate in Phase 2 (a “**Sale Offeror**”).
40. With respect to the Due Diligence Access referenced above, each Successor Issuer Offeror’s and each Sale Offeror’s Due Diligence Access shall continue into Phase 2 and shall terminate upon the earliest of the following events to occur:
- (a) such party does not submit an Offer by the Phase 2 Offer Deadline (as defined below);
  - (b) in respect of a Successor Issuer Offer, such party submits an Offer by the Phase 2 Offer Deadline but CMHC, in consultation with the Liquidator, determines that such party does not constitute a Qualified Successor Issuer Offeror (as defined below);
  - (c) in respect of a Sale Proposal, such party submits an Offer by the Phase 2 Offer Deadline, but the Liquidator determines that such party does not constitute a Qualified Sale Offeror (as defined below); or

- (d) the closing of the transaction contemplated by the Accepted Successor Issuer Offer and/or the Accepted Sale Offer.
41. On the Phase 2 Commencement Date, or as soon as practicable thereafter, Successor Issuer Offerors shall contact CMHC in order to become eligible to be: (a) an Approved Issuer, if not so at the time of the Phase 2 Commencement Date; and, (b) the Successor Issuer. Notwithstanding the foregoing, if a party has submitted a Successor Issuer Offer, CMHC and such party shall be at liberty to begin the process for that party to become an Approved Issuer, (having regard to the criteria established in the NHA MBS Guide to be become an Approved Issuer), at any time after the Phase 1 Commencement Date.
42. On the Phase 2 Commencement Date or as soon as practicable thereafter, the Liquidator shall post: (a) a form of asset purchase agreement/assumption agreement on the Due Diligence Access site (the "APA") for Prospective Offerors who wish to submit a Sale Proposal(s); and (b) the form of agreement to become a Successor Issuer, which would include the consideration payable on closing, together with copies of the relevant documentation, as established by the NHA MBS Guide, for a party to become an approved NHA MBS issuer, as well as the documentation to be entered into once approved by CMHC, which documentation can also be found on the CMHC website.

#### Phase 2 Timing

43. All Successor Issuer Offers and Sale Proposals must be delivered in writing, by email or personal delivery so that they are actually received by CMHC and the Liquidator, with respect to Successor Issuer Offers, and received by the Liquidator, with respect to Sale Proposals, by no later than 5:00 p.m. (Toronto time) on the day that is thirty (30) calendar days following the Phase 2 Commencement Date, or such later date or time as may be determined by the CMHC, in consultation with the Liquidator (in respect of Successor Issuer Offers), and the Liquidator, or the Court (in respect of Sale Proposals), in accordance with the terms of this Marketing Process (the "**Phase 2 Offer Deadline**") at the addresses specified above in the section entitled "**Phase 1 Timing**".
44. A Successor Issuer Offer, or a Sale Proposal received by CMHC and/or the Liquidator after the Phase 2 Offer Deadline shall not constitute a Qualified Successor Issuer Offer (as defined below), or a Qualified Sale Offer (as defined below), as the case may be, unless CMHC, in consultation with the Liquidator (with respect to a Successor Issuer Offer) and the Liquidator (in respect of a Sale Proposal), in their respective discretion, deem a Successor Issuer Offer and/or a Sale Proposal received after the Phase 2 Offer Deadline to be a Qualified Successor Issuer Offer or a Qualified Sale Offer, as the case may be.

#### Offer Requirements

45. To be eligible to be a Qualified Successor Issuer Offeror (as defined below) and/or a Qualified Sale Offeror (as defined below), a Successor Issuer Offeror and/or a Sale Offeror must deliver either a Successor Issuer Offer to CMHC and the Liquidator, and/or a Sale Proposal to the Liquidator by the Phase 2 Offer Deadline, which satisfies each of the following applicable conditions (a "**Qualified Successor Issuer Offer**") or (a "**Qualified Sale Offer**") and collectively a "**Qualified Offer**") and the party submitting

such Qualified Successor Issuer Offer and/or Qualified Sale Offer, (a “**Qualified Successor Issuer Offeror**” or a “**Qualified Sale Offeror**” and collectively, a “**Qualified Offeror**”):

- (a) Confidentiality. The Successor Issuer Offeror and the Sale Offeror must deliver an executed Confidentiality Agreement (if not already delivered);
- (b) Identification. The Successor Issuer Offer and/or the Sale Proposal must identify the Successor Issuer Offeror and/or the Sale Offeror, as may be applicable, and their respective representatives thereof who are authorized to appear and act on behalf of the Successor Issuer Offeror and/or the Sale Offeror for all purposes regarding the contemplated transaction, and it must fully disclose the identity of each entity that will be sponsoring, participating or benefiting from the transaction contemplated in either the Successor Issuer Offer and/or the Sale Proposal, and the complete terms of such participation, including, in the case of an entity formed or to be formed for the purpose of entering into the transaction contemplated by the Successor Issuer Offer and/or the Sale Proposal, the identity of each actual or anticipated direct or indirect equity holder or beneficiary of such entity and the percentage of such equity holder or beneficiary’s interest in the transaction contemplated by either the Successor Issuer Offer and/or the Sale Proposal;
- (c) Subject Assets. In the case of a Successor Issuer Offer, if the offer is to become the Successor Issuer for less than all of the NHA MBS mortgage pools for which Maple Bank was the Approved Issuer, then the offer must include a list of the NHA MBS mortgage pools covered by the Successor Issuer Offer. In the case of a Sale Proposal, the offer must include a description of the Maple Assets proposed to be purchased and an allocation of the purchase price amongst those assets.
- (d) Form and Content. In the case of a Successor Issuer Offer, the Successor Issuer Offer must be in a form acceptable to CMHC, in order to qualify as a Successor Issuer (the “**Successor Issuer Form**”) and executed by the Successor Issuer Offeror (each, a “**Proposed Successor Issuer Agreement**”) together with all exhibits and schedules thereto and such ancillary agreements as may be required by CMHC, in consultation with the Liquidator. Any changes and modifications to the Successor Issuer Form are to be indicated on a blackline to the Successor Issuer Form. In the case of a Sale Proposal, the Sale Proposal must be in the same form as the APA and executed by the Sale Offeror (each, a “**Proposed Purchase Agreement**”), together with all exhibits and schedules thereto and such ancillary agreements as may be required by the Sale Offeror. Any changes and modifications to the APA shall be indicated on a blackline to the APA including, if applicable, any modifications made to reflect the Maple Assets, or parts thereof, sought to be purchased;
- (e) Treatment of Contracts. The Successor Issuer Offer and/or the Sale Proposal must identify, with particularity, the contracts, permits, licenses and/or leases the Successor Issuer Offeror and/or the Sale Offeror wishes to assume and those it wishes to reject and must contain full details of either the Successor Issuer

Offeror's and/or the Sale Offeror's proposal for the treatment of related cure costs, if applicable;

- (f) Approvals. The Successor Issuer Offer and/or the Sale Proposal must outline any anticipated regulatory and other approvals required, in addition to the required approval from CMHC to become the Successor Issuer, in order to close the respective transaction(s) and the anticipated timeframe and any anticipated impediments for obtaining such approvals;
- (g) Corporate Authorizations. The Successor Issuer Offer and/or the Sale Proposal must include evidence, in form and substance reasonably satisfactory to: (a) CMHC and the Liquidator (in the case of a Successor Issuer Offer); and (b) the Liquidator (in the case of a Sale Proposal) the authorization and approval from the Successor Issuer Offeror's and/or Sale Offeror's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction(s) contemplated by the Offers;
- (h) Deposit. The Sale Proposal must be accompanied by a cash deposit equal to ten percent (10%) of the total value of the consideration contemplated by the Offer, to a maximum of \$5 million, (the "**Deposit**" and collectively, the "**Deposits**"), and the Deposits shall be paid to the Liquidator in accordance with wire instructions provided by the Liquidator, and shall be held by the Liquidator in accordance with this Marketing Process;
- (i) Financial Wherewithal. The Successor Issuer Offer and/or the Sale Proposal must include evidence satisfactory to CMHC and the Liquidator (in respect of a Successor Issuer Offer) and the Liquidator (in respect of a Sale Proposal) of the respective offeror's financial ability to complete the Successor Issuer Offer and/or the Sale Proposal and close the transaction(s) on a closing date (the "**Closing Date**");
- (j) Closing Date. The Successor Issuer Offer and/or the Sale Proposal must contain a binding commitment by the Successor Issuer Offeror and/or the Sale Offeror to close on the terms and conditions set forth in the proposed Successor Issuer Agreement, or the Proposed Purchase Agreement, as applicable, as soon as practicable after satisfaction or waiver of all conditions; provided that the Closing Date must take place by no later than August 31, 2016, or such later date as agreed to by CMHC, in consultation with the Liquidator, (in respect of a Successor Issuer Offer) and the Liquidator (in respect of a Sale Proposal) and the respective offeror(s) (the "**Outside Termination Date**");
- (k) Closing Timeline. The Successor Issuer Offer and/or the Sale Proposal must provide a timeline for the closing of the transaction, which includes critical milestones;
- (l) Irrevocable. The Successor Issuer Offer and/or the Sale Proposal must be accompanied by a letter which confirms that the Offers: (i) may be accepted by CMHC (in respect of a Successor Issuer Offer), and the Liquidator, (in respect of a Sale Offer), by countersigning the Proposed Successor Issuer Agreement, or the

Proposed Purchase Agreement, as may be applicable, and (ii) is irrevocable and capable of acceptance until the earlier of (A) the day on which the Successor Issuer Offeror, or the Sale Offeror is notified that their respective offer is not a Qualified Offer; (B) if a Qualified Successor Issuer Offeror, or a Qualified Sale Offeror; (i) the date on which the CMHC and the Liquidator and the Accepted Successor Issuer Offeror have executed a binding agreement in respect of the transaction for a Successor Issuer; or (ii) the date on which the Liquidator and the Accepted Sale Offeror(s) have executed a binding agreement in respect of the transaction(s) for the Sale Proposal(s);

- (m) No Representations and Warranties. The Successor Issuer Offer and/or the Sale Proposal shall include an "as is, where is" clause substantially on the same terms as the "as is, where is" clause set out in the APA and the Successor Issuer Form;
  - (n) Acknowledgment. The Successor Issuer Offer and/or the Sale Proposal shall include an acknowledgment and representation that the Successor Issuer Offeror and the Sale Offeror, as applicable: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Maple Assets to be acquired and liabilities to be assumed in making its offer; and (ii) did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied (by operation of law or otherwise), regarding the rights and responsibilities of Maple Bank for the NHA MBS and/or the Maple Assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the Proposed Successor Issuer Agreement, or the Proposed Purchase Agreement, as applicable;
  - (o) Contingencies. The Successor Issuer Offer and/or the Sale Proposal shall not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence;
  - (p) No Fees Payable to Offeror. The Successor Issuer Offer and/or the Sale Proposal shall not request or entitle the Successor Issuer Offeror and/or the Sale Offeror to any break-up fee, expense reimbursement, termination or similar type of fee or payment. Further, by submitting a Successor Issuer Offer and/or a Sale Proposal, a Successor Issuer Offeror and a Sale Offeror shall be deemed to irrevocably waive any right to pursue a claim in any way related to this Marketing Process; and
  - (q) Other Information. Successor Issuer Offer and/or the Sale Proposal shall contain such other information reasonably requested by CMHC, or the Liquidator, as may be applicable.
46. Each Successor Issuer Offeror and Sale Offeror shall comply with all reasonable requests for additional information by CMHC or the Liquidator regarding each corresponding offer and its contemplated transaction. Failure by a Successor Issuer Offeror and/or a Sale Offeror to comply with requests for additional information will be a basis for CMHC, in consultation with the Liquidator (in respect of a Successor Issuer Offer) and

the Liquidator (in respect of a Sale Proposal), to determine that the applicable offeror is not a Qualified Successor Issuer Offeror, or Qualified Sale Offeror.

47. CMHC and the Liquidator may discuss, negotiate or seek clarification of any Successor Issuer Offer and/or the Sale Proposal. A Successor Issuer Offeror and/or a Sale Offeror may not modify, amend or withdraw their respective offers without the written consent of CMHC, in consultation with the Liquidator, (with respect to a Successor Issuer Offer) and the Liquidator (with respect to a Sale Proposal). Any such modification, amendment or withdrawal of an offer by an offeror without the written consent of CMHC and the Liquidator, as applicable, shall result in a forfeiture of such offeror's Deposit as liquidated damages and not as a penalty.

### MARKETING PROCESS – PHASE 3

48. If one or more Qualified Successor Issuer Offers, or Qualified Sale Offers are received in accordance with this Marketing Process, in the case of a Qualified Successor Issuer Offer, CMHC, in consultation with the Liquidator, may choose to:

- (a) accept one or more than one non-overlapping Qualified Successor Issuer Offer(s) (the "**Accepted Successor Issuer Offer(s)**") and the party, or parties submitting the Accepted Successor Issuer Offer(s) (the "**Accepted Successor Issuer Offeror(s)**") shall proceed to finalize and complete an agreement for the Accepted Successor Issuer Offer(s) with the Qualified Successor Issuer Offeror(s); or,
- (b) continue negotiations with a selected number of Qualified Successor Issuer Offerors with a view to finalizing an agreement with one, or more Qualified Successor Issuer Offeror(s), such that such Qualified Successor Issuer Offeror(s) becomes the Accepted Successor Issuer Offeror(s).

In the case of a Qualified Sale Offer, the Liquidator may choose to:

- (c) accept one Qualified Sale Offer, or multiple sets of non-overlapping Qualified Sale Offers with respect to the Maple Assets (the "**Accepted Sale Offer(s)**", and the party or parties submitting such Accepted Sale Offer(s), the "**Accepted Sale Offeror(s)**") and take such steps as are necessary to finalize and complete an agreement for the Accepted Sale Offer(s) with the selected Qualified Sale Offeror(s); or,
  - (d) continue negotiations with a selected number of Qualified Sale Offerors with a view to finalizing an agreement with one, or more Qualified Sale Offeror(s) such that such Qualified Sale Offeror(s) becomes the Accepted Sale Offeror(s).
49. Evaluation criteria for the Accepted Successor Issuer Offer(s) and/or Accepted Sale Offer(s) may include, but are not limited to, the factors listed in the section above regarding the "**Assessment of Qualified LOIs and Continuation or Termination of Solicitation Process**" (except such factors will be applied to an evaluation of the Qualified Offers, as opposed to the Qualified LOIs).



## OTHER TERMS

### CMHC's and the Liquidator' Reservation of Rights

50. In addition to the other reservation of rights set out herein, in respect of a Successor Issuer Offer, CMHC, in consultation with the Liquidator, shall have the right in its discretion to: (a) waive strict compliance with any one or more of the LOI Requirements or Offer Requirements, as specified herein, and deem such non-compliant LOIs to be Qualified LOIs or non-compliant Successor Issuer Offers to be Qualified Successor Issuer Offers, as the case may be, provided that such non-compliance is not material in nature; (b) reject any or all LOIs or Successor Issuer Offers if, in CMHC's opinion, in consultation with the Liquidator, no LOI or Successor Issuer Offer complies with the minimum requirements or for any other reasons; (c) adopt such ancillary and procedural rules not otherwise set out herein (including rules that may depart from those set forth herein) that in the CMHC's opinion, in consultation with the Liquidator, will better promote the goal of finding a Successor Issuer(s); and/or (d) truncate or terminate this Marketing Process with regard to identifying a Successor Issuer(s), after consultation with the Liquidator, at any point in time.
51. In addition to the other reservation of rights set out herein, in respect of a Sale Proposal, the Liquidator shall have the right in its discretion to: (a) waive strict compliance with any one or more of the LOI Requirements or Offer Requirements, as specified herein, and deem such non-compliant LOIs to be Qualified LOIs or non-compliant Sale Proposals to be Qualified Sale Offers, as the case may be, provided that such non-compliance is not material in nature; (b) reject any or all LOIs, or Sale Proposals if, in the Liquidator's judgement, no LOI or Sale Proposal complies with the minimum requirements or for any other reasons; (c) adopt such ancillary and procedural rules not otherwise set out herein (including rules that may depart from those set forth herein) that in the Liquidator's judgement, will better promote the goal of this Marketing Process; and/or (d) truncate or terminate this Marketing Process, after consultation with CMHC, at any point in time.
52. To the extent that any notice of changes to this Marketing Process or related dates, times, or locations is required or otherwise appropriate, the Liquidator may publish such notice on the Liquidator's public website and such notice shall be deemed satisfactory, subject to any other notice requirements specifically set forth herein, or as required by the Court.

### Discussions with Third Party Stakeholders

53. If it is determined by CMHC, in consultation with the Liquidator, in respect of a Successor Issuer Offer, that it would be worthwhile to facilitate a discussion between a prospective Successor Issuer Offeror, or a Qualified Successor Issuer Offerer, as applicable, and a stakeholder (including any originators or servicers to Maple Bank's MBS business), or other third party (such as a governmental or regulatory authority) as a consequence of a condition to a potential transaction or potential closing condition identified by such prospective Successor Issuer Offeror, or Qualified Successor Issuer Offerer, CMHC may provide such prospective Successor Issuer Offeror, or Qualified Successor Issuer Offerer, with the opportunity to meet with the relevant stakeholder or third party to discuss such condition or potential condition, with a view to enabling such prospective Successor Issuer Offeror, or Qualified Successor Issuer Offerer, to seek to

satisfy the condition or assess whether the condition is not required or can be waived. Any such meetings or other form of communication will take place on terms and conditions considered appropriate by CMHC, in consultation with the Liquidator.

54. If it is determined by the Liquidator, in respect of a Sale Proposal, that it would be worthwhile to facilitate a discussion between a prospective Sale Offeror or a Qualified Sale Offeror, as applicable, and a stakeholder (including any originators or servicers to Maple Bank's MBS business), or other third party (such as a governmental or regulatory authority) as a consequence of a condition to a potential transaction or potential closing condition identified by such prospective Sale Offeror, or Qualified Sale Offeror, the Liquidator may provide such prospective Sale Offeror, or Qualified Sale Offeror with the opportunity to meet with the relevant stakeholder or third party to discuss such condition or potential condition, with a view to enabling such prospective Sale Offeror, or Qualified Sale Offeror to seek to satisfy the condition or assess whether the condition is not required or can be waived. Any such meetings or other form of communication will take place on terms and conditions considered appropriate by the Liquidator.

#### Authorization/Approval Motion

The Liquidator may apply to the Court for an order approving the Accepted Sale Offer(s) of the sale of the applicable Maple Assets to the Accepted Sale Offeror(s) free and clear of all liens and encumbrances, other than those liens and encumbrances expressly to be assumed by the Accepted Sale Offeror(s) (the "**Authorization/Approval Motion**"). The Authorization/Approval Motion may be scheduled with the Court as soon as possible thereafter at 330 University Avenue, Toronto, Ontario before Regional Senior Justice Morawetz. The Authorization/Approval Motion may be adjourned, or re-scheduled by the Liquidator, after consulting with CMHC, without further notice, but by an announcement of the adjourned date at the Authorization/ Approval Motion. Notwithstanding the foregoing, in the event that there is more than one Accepted Sale Offer, the Liquidator, reserves the right to impose a condition in each Accepted Sale Offer that the Authorization/Approval Sale Motion for such Accepted Sale Offer be heard on the same day as any other Authorization/Approval Motion(s).

#### Consent to Jurisdiction as Condition to make an Offer

55. All prospective Successor Issuer Offerors, prospective Sale Offerors and all Qualified Offerors shall be deemed to have consented to the exclusive jurisdiction of the Court with respect to any disputes relating to this Marketing Process and the construction and enforcement of the relevant transaction documents, as applicable.

#### Marketing Process Participant Fees

56. Participants in the Marketing Process are responsible for all costs, expenses and liabilities incurred by them for any reason whatsoever, including, but not limited to, in connection with the submission of any LOI, Successor Issuer Offer, Sale Proposal, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

### Closing the Successful Offer(s)

57. In respect of the Accepted Successor Issuer Offer(s), CMHC, in consultation with the Liquidator and the Accepted Successor Issuer Offeror(s), will take all reasonable steps to complete the transaction contemplated by the Accepted Successor Issuer Offer(s), as soon as possible.
58. In respect of the Accepted Sale Offer(s), the Liquidator and the Accepted Sale Offeror(s) will take all reasonable steps to complete the transaction contemplated by the Accepted Sale Offer(s) as soon as possible after the Accepted Sale Offer(s) is approved by the Court.
59. If the transaction(s) contemplated by the Accepted Successor Issuer Offer(s) and the Accepted Sale Offer(s) has/have not closed by the Outside Termination Date, or such Accepted Successor Issuer Offer(s) and/or Accepted Sale Offer(s) is/are terminated for any reason prior to the Outside Termination Date, then this Marketing Process shall be terminated with respect to either the process to find a Successor Issuer and/or the process to sell the Maple Assets, as applicable.

### Return of Deposit

60. All Deposits shall be held by the Liquidator in an interest-bearing account until returned to the applicable offeror or otherwise dealt with in accordance with this Marketing Process. Deposits of all offerors who are determined not to be a Qualified Offeror shall be returned to such offeror ten (10) business days after the day on which the offeror is notified that it is not a Qualified Offeror. Deposits of all Qualified Offerors, other than the Accepted Sale Offeror(s), shall be returned to such Qualified Offerors ten (10) business days after the day on which the Liquidator and the Accepted Sale Offeror(s) have executed a binding agreement in respect of the transaction(s) for the Sale Proposal(s).
61. The Deposit with respect to the Accepted Sale Offeror(s) shall be applied to the purchase price of the applicable transaction(s) at closing. If the Accepted Sale Offer(s) fail(s) to close by the Outside Termination Date because of a breach or failure to perform on the part of the Accepted Sale Offeror(s), the Liquidator shall be entitled to retain the Deposit of the applicable Accepted Sale Offeror(s) as part of the liquidated damages resulting from the breach or failure to perform by the applicable Accepted Sale Offeror(s) (and not as a penalty). The Deposit of the Accepted Sale Offeror(s) shall otherwise be returned to the Accepted Sale Offeror(s) in accordance with the terms of the Accepted Sale Offer(s).

### No Amendment

62. There will be no amendments to this Marketing Process without the written consent of CMHC and the Liquidator, each acting reasonably, or, in the absence of consent, the approval of the Court. This Marketing Process does not, and will not, be interpreted to create any contractual or other legal relationship between CMHC, the Liquidator, and any prospective Successor Issuer Offeror, prospective Sale Offeror, Successor Issuer Offeror, or a Sale Offeror. At any time during the implementation of this Marketing Process, and subject to the terms of the MOU, CMHC and the Liquidator may apply to the Court for

advice and directions with respect to the implementation of this Marketing Process, and in the case of the Liquidator, in respect of the discharge of its powers and duties hereunder.

No Acceptance Obligation

63. In the case of a Successor Issuer Offer, CMHC shall be under no obligation to accept the highest Qualified LOI and/or the highest Qualified Successor Issuer Offer, or any Qualified LOI and/or Qualified Successor Issuer Offer, and reserves the right to reject, after consulting with the Liquidator, any or all Qualified LOIs and/or Qualified Successor Issuer Offers. The selection of the Accepted Successor Issuer Offer(s) shall be in the sole discretion of CMHC, after consulting with the Liquidator.
64. In the case of a Sale Offer, the Liquidator, shall be under no obligation to accept the highest Qualified LOI and/or the highest Qualified Sale Offer, or any Qualified LOI and/or Qualified Sale Offer, and reserves the right to reject any or all Qualified LOIs and/or Qualified Sale Offers. The selection of the Accepted Sale Offer(s) shall be in the sole discretion of the Liquidator.

Summary of Key Dates

65. The following chart summarizes the key dates provided for in this Marketing Process, which dates are subject to extension, or modification, with agreement of both the Liquidator and CMHC.

Phase 1 Commencement Date / Teaser Letters sent to Prospect List	April 13, 2016
Phase 1 LOI Deadline	May 6, 2016
Phase 2 Commencement Date / APA posted to Due Diligence Access site	May 18, 2016
Phase 2 Offer Deadline	June 17, 2016
Outside Termination Date	August 31, 2016



**IN THE MATTER OF MAPLE BANK GmbH**  
**AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*, R.S.C. 1985, C.W-11, AS AMENDED**  
**AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED**

**ATTORNEY GENERAL OF CANADA**

- and - **MAPLE BANK GmbH**  
Applicant

Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**SECOND REPORT OF THE**  
**LIQUIDATOR, KPMG INC.**  
**Dated March 30, 2016**

**GOWLING WLG (CANADA) LLP**  
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Lawyers for KPMG Inc., in its capacity as Liquidator of  
the business in Canada of Maple Bank GmbH and its  
assets.

**IN THE MATTER OF MAPLE BANK GmbH  
AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*, R.S.C. 1985, C.W-11, AS AMENDED  
AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED**

**ATTORNEY GENERAL OF CANADA**

- and - **MAPLE BANK GmbH**

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceeding commenced at Toronto**

**MOTION RECORD  
(returnable April 1, 2016)**

**GOWLING WLG (CANADA) LLP**  
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100 King Street West  
Toronto, Ontario M5X 1G5

**Alex MacFarlane** (LSUC No.: 28133Q)  
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Lawyers for KPMG Inc., in its capacity as Liquidator of the business in Canada of Maple Bank GmbH and its assets.

**This is Appendix “D” to the  
Sixth Report of the Liquidator Dated September 19, 2016**



## **EQUITABLE BANK ASSUMES ISSUER RIGHTS FOR \$3.1 BILLION OF NHA MBS, EXPECTS EPS ACCRETION FOR 2016 THROUGH 2019**

Toronto, Ontario (September 12, 2016): Equitable Bank (“Equitable” or the “Bank”), a subsidiary of Equitable Group Inc. (*TSX:EQB and EQB.PR.C*), today announced that it has entered into an agreement with Canada Mortgage and Housing Corporation (“CMHC”) to become the successor issuer on \$3.1 billion of outstanding National Housing Act (“NHA”) Mortgage Backed Security (“MBS”) pools originally issued by Maple Bank GmbH’s Toronto Branch (“Maple” or “MB-Tor”).

As the successor issuer, Equitable will assume Maple Bank’s payment and other responsibilities related to the MBS pools going forward and in exchange will receive the excess interest spread generated (the difference between the mortgage interest revenue and MBS interest expense). This excess interest spread, net of servicing costs and purchase price amortization, is expected to be accretive to Equitable’s earnings per share in 2016 to 2019.

The transaction will be financed through Equitable’s existing sources of liquidity. The transaction is not expected to affect the Bank’s capital ratios and as a result Equitable will not raise any new capital.

In a related development, Equitable was also the successful bidder in a Marketing Process previously approved by the Ontario Superior Court of Justice [Commercial List] (the “Court”) which was administered by KMPG Inc. , in its capacity as the Court appointed Liquidator of MB-Tor, to acquire approximately \$146 million of other assets, the entire amount of which is collateralized by insured residential mortgages.

“This transaction is an excellent use of cash in that it delivers earnings accretion immediately and over time without diminishing the Bank’s strong capital ratios that support our ongoing asset growth,” said Andrew Moor, President and CEO of Equitable. “Strategically, it meets our key requirement of creating meaningful shareholder value and the risk assumed is low and well mitigated.”

All of these transactions are subject to approval of the Court, which is expected to occur by the end of the third quarter of 2016, and customary closing conditions.

### **Key Transaction Highlights**

- Equitable will acquire the Successor Issuer rights on the \$3.1 billion of issued and outstanding MBS
- Approximately \$3.0 billion of the MBS have already been sold to third-party investors. Equitable will not report those MBS liabilities or the related mortgages on its Balance Sheet.
- Equitable will also acquire \$113 million of unsold MBS (subject to adjustment in certain circumstances) and a \$33 million credit facility secured by residential mortgages. These assets will be reported on Equitable’s Balance Sheet.
- Based on an October 2<sup>nd</sup> effective date, earnings accretion associated with the transaction is estimated to be in the range of \$0.06-\$0.08 per share in 2016 and \$0.25-\$0.30 per share in 2017, and will then diminish by approximately 10 cents each year through to the end of 2020
- The excess spread income net of related costs will be reported as Other Income on Equitable’s Statement of Operations

- The assumption of the Successor Issuer obligations does not provide Equitable with any renewal rights over the underlying mortgages in the MBS

## **ABOUT EQUITABLE BANK**

Equitable Bank is Canada's ninth largest independent Schedule I bank, serving Canadians coast to coast. It offers a diverse suite of residential lending, commercial lending and savings solutions, including high-interest savings products and GICs. Through its proven branchless approach and customer service focus, Equitable Bank has grown to approximately \$20 billion in assets under management. Most recently, Equitable Bank launched a digital banking operation, *EQ Bank*, and introduced the *EQ Bank Savings Plus Account*. Equitable Bank currently employs over 500 employees across the country, and was named one of Canada's best employers for 2016 by Aon. For more information about Equitable Bank and its products, please visit [equitablebank.ca](http://equitablebank.ca).

## **CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

Statements made by the Company in this news release, in other filings with Canadian securities regulators and in other communications include forward-looking statements within the meaning of applicable securities laws ("forward-looking statements"). These statements include, but are not limited to, statements about the Company's objectives, strategies and initiatives, financial result expectations and other statements made herein, whether with respect to the Company's businesses or the Canadian economy. Generally, forward-looking statements can be identified by the use of forward-looking terminology such as "plans", "expects" or "does not expect", "is expected", "budget", "scheduled", "planned", "estimates", "forecasts", "intends", "anticipates" or "does not anticipate", or "believes", or variations of such words and phrases which state that certain actions, events or results "may", "could", "would", "might" or "will be taken", "occur" or "be achieved." Forward-looking statements are subject to known and unknown risks, uncertainties and other factors that may cause the actual results, level of activity, closing of transactions, performance or achievements of the Company to be materially different from those expressed or implied by such forward-looking statements, including but not limited to risks related to capital markets and additional funding requirements, fluctuating interest rates and general economic conditions, legislative and regulatory developments, the nature of our customers and rates of default, and competition as well as those factors discussed under the heading "Risk Management" in the Management's Discussion and Analysis and in the Company's documents filed on SEDAR at [www.sedar.com](http://www.sedar.com). All material assumptions used in making forward-looking statements are based on management's knowledge of current business conditions and expectations of future business conditions and trends, including their knowledge of the current credit, interest rate and liquidity conditions affecting the Company and the Canadian economy. Although the Company believes the assumptions used to make such statements are reasonable at this time and has attempted to identify in its continuous disclosure documents important factors that could cause actual results to differ materially from those contained in forward-looking statements, there may be other factors that cause results not to be as anticipated, estimated or intended. Certain material assumptions are applied by the Company in making forward-looking statements, including without limitation, assumptions regarding its continued ability to fund its mortgage business at current levels, a continuation of the current level of economic uncertainty that affects real estate market conditions, continued acceptance of its products in the marketplace, as well as no material changes in its operating cost structure and the current tax regime. There can be no assurance that such statements will prove to be accurate, as actual results and future events could differ materially from those anticipated in such statements. Accordingly, readers should not place undue reliance on forward-looking statements. The Company does not undertake to update

any forward-looking statements that are contained herein, except in accordance with applicable securities laws.

SOURCE Equitable Group Inc.

For further information: Andrew Moor, President and Chief Executive Officer, 416-515-7000

**This is Appendix “E” to the  
Sixth Report of the Liquidator Dated September 19, 2016**

**Successor Issuer Agreement**

SUCCESSOR ISSUER AGREEMENT

Dated this 12<sup>TH</sup> day of September, 2016

BETWEEN:

EQUITABLE BANK  
(the "SI Corp.")

CANADA MORTGAGE AND HOUSING CORPORATION  
(“CMHC”)

WHEREAS:

Maple Bank was an issuer of NHA MBS guaranteed by CMHC under the terms and provisions of the Guide, with respect to the Pools.

Upon application by the Attorney General of Canada, pursuant to section 10.1 of the *Winding Up and Restructuring Act* (“WURA”), on February 16, 2016 the Ontario Superior Court of Justice (Commercial List) (the “Court”) made a winding-up order: (a) that the business in Canada of Maple Bank (the “Toronto Branch”) be wound up and that its assets, as defined under section 618 of the *Bank Act* (Canada) be liquidated; and, (b) appointing KPMG Inc. as the liquidator of the Toronto Branch under section 23 of WURA (the “Liquidator”).

Pursuant to letters dated February 9 and 12, 2016 CMHC advised Maple Bank that it was in default under the Guide, that it was suspended from acting as an Issuer of NHA MBS and that CMHC had determined that a successor to Maple Bank as Issuer of the Maple Bank NHA MBS must be appointed as soon as possible.

Pursuant to an Order dated April 5, 2016, the Court approved a marketing process (the “Marketing Process”) providing for, *inter alia*, the solicitation of expressions of interest to assume the responsibilities and acquire the rights of Maple Bank as Issuer of the Maple Bank NHA MBS.

SI Corp. has agreed with the Liquidator pursuant to the terms of the Maple Assets PSA to, among other things, become the assignee of the rights and to assume the obligations of Maple Bank under the origination and servicing agreements related to the Pools.

Pursuant to the Marketing Process, SI Corp. has proposed to become the successor issuer to Maple Bank with respect to the Pools, the Mortgages and the Maple Bank NHA MBS, and CMHC is prepared to appoint SI Corp. as such (following which appointment, Maple Bank will have no further liability as Issuer with respect to the Pools, the Mortgages and the Maple Bank NHA MBS), all in accordance and subject to compliance with the terms and conditions of this Agreement.

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

## 1. INTERPRETATION

### 1.01 General

All capitalized terms shall have the meanings ascribed thereto in this Agreement, and any capitalized term not defined herein shall have the meaning ascribed thereto in the Guide.

### 1.02 Definitions

In this Agreement (including the Recitals, and all Schedules and Exhibits), the following terms shall have the following meanings:

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

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

“**Arrears Reimbursement Amount**” means 100% of the aggregate amount of arrears of principal, interest, indemnity and other payments under the Mortgages outstanding as of the Effective Date as shown in the mortgage pool data file generated by Maple Bank with respect to the Pools as part of the Base IO Spread Data and which have been funded from “excess spread”.

“**Base IO Spread Data**” means, as of the Effective Date:

- (a) the mortgage pool data file generated by Maple Bank with respect to the Pools providing the following information for each Mortgage as of the close of business on the date immediately prior to the Effective Date: outstanding principal balance, applicable interest rate, applicable servicing fees, frequency of scheduled principal and interest payments, maturity date, remaining amortization, all arrears of principal, interest, indemnity and other payments and whether it is a Mortgage in Collection; and
- (b) the NHA MBS data file generated by Computershare with respect to the Maple Bank NHA MBS providing the following information for each Pool as of the close of business on the date immediately prior to the Effective Date: principal balance outstanding, the applicable interest rate, and maturity dates;

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

“**Central P&I Trust/Custodial Account**” means the account with the Bank of Nova Scotia administered in trust by the Computershare Trust Company of Canada for the NHA MBS Pools being the sole P & I Custodial/Trust Account for such Pools (as such term is used in the Guide).

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

“**Closing Date**” means:

- (a) the seventeenth (17th) Business Day of the month in which the Court Order is granted as required pursuant to Section 10.03(a) unless the Court Order is granted after the fifth (5th) Business Day of such month, in which case the Closing Date shall be the seventeenth (17th) Business Day of the immediately following month; or
- (b) such other date as may be agreed between the Parties in writing;

provided that:

- (i) if the SI Price is referred to an Expert for determination pursuant to Section 4.02, then the Closing Date shall be the twentieth (20th) Business Day of such month, unless such determination is received on or after the fifteenth (15th) Business Day of such month, in which case the Closing Date shall be the seventeenth (17th) Business Day of the immediately following month or such other date as may be agreed between the Parties (a “**Delayed Closing Date**”); and
- (ii) if all of the conditions precedent set out in Section 10.03 are not satisfied or waived on the Closing Date determined in accordance with subsection (a) of this definition or the Delayed Closing Date determined in accordance with clause (i) of this definition, then the Closing Date shall be the seventeenth (17th) Business Day of the month in which (A) all of such conditions precedent have been or will be satisfied or waived, and (B) each of the Parties have performed their obligations under Section 4.01 in such month, or such other date as may be agreed by the Parties (also a “**Delayed Closing Date**”).

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

“**Computershare**” means Computershare Trust Company of Canada.



**“Confidentiality Agreement”** means the confidentiality agreement dated April 15, 2016 between SI Corp, the Liquidator and CMHC.

**“Court”** is defined in the recitals to this Agreement.

**“Court Order”** means an order, substantially in the form of the order attached as Exhibit A, with such changes as may be acceptable to SI Corp. and CMHC, granted by the Court (or if appealed on appeal), confirming that Maple Bank has no right, title or interest in the Pools, the Mortgages, or the Maple Bank NHA MBS except for the Mortgages in Collection and except as owner of the Maple Bank NHA MBS and Defaulted Mortgages (as defined in the Maple Assets PSA) that are the subject of the Maple Assets PSA.

**“Custodian”** means Computershare.

**“Delayed Closing Date”** is defined in the definition of Closing Date.

**“Deposit”** is defined in Section 4.03(a).

**“Effective Date”** means the second calendar day of the month in which the Closing Date occurs.

**“Entire Agreement”** is defined in Section 1.03

**“Escrow Agreement”** is defined in Section 5.02.

**“Evaluation Materials”** has the meaning set out in the Confidentiality Agreement.

**“Expert”** is defined in Section 4.02.

**“Governmental Authority”** means:

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

**“Guide”** means the NHA Mortgage-Backed Securities Guide 2013 published by CMHC.

**“HST”** means harmonized tax exigible pursuant to Part IX of the Excise Tax Act (Canada) as applicable in the Province of Ontario.

**“Issuer”** means a party approved by CMHC to issue NHA MBS.

**“Liquidator”** is defined in the recitals to this Agreement.

“**Maple Assets PSA**” means the agreement of purchase and sale (Maple Assets) dated the date hereof made between the Liquidator (as seller) and SI Corp (as buyer), as the same may be amended, supplemented or restated from time to time.

“**Maple Bank**” means Maple Bank GmbH.

“**Maple Bank NHA MBS**” means, at any time, the NHA MBS previously issued by Maple Bank relating to the Pools and outstanding at such time.

“**Marketing Process**” is defined in the recitals to this Agreement.

“**Mortgages**” has the meaning provided for in Section 3.01.

“**Mortgage in Collection**” means, at any time, a Mortgage which at such time (a) is in default and under which collection proceedings have been commenced, (b) has been transferred by Computershare to, and title to which has been registered in the name of, the originator or servicer of such Mortgage for the purposes of collection proceedings under such Mortgage through legal action and (c) is no longer part of a Pool; and “**Mortgages in Collection**” means all such Mortgages collectively.

“**NHA MBS**” means National Housing Act Mortgage-Backed Securities guaranteed by CMHC pursuant to the *National Housing Act* (Canada) in accordance with the Guide.

“**Outside Date**”



“**Parties**” means, collectively, CMHC and SI Corp.

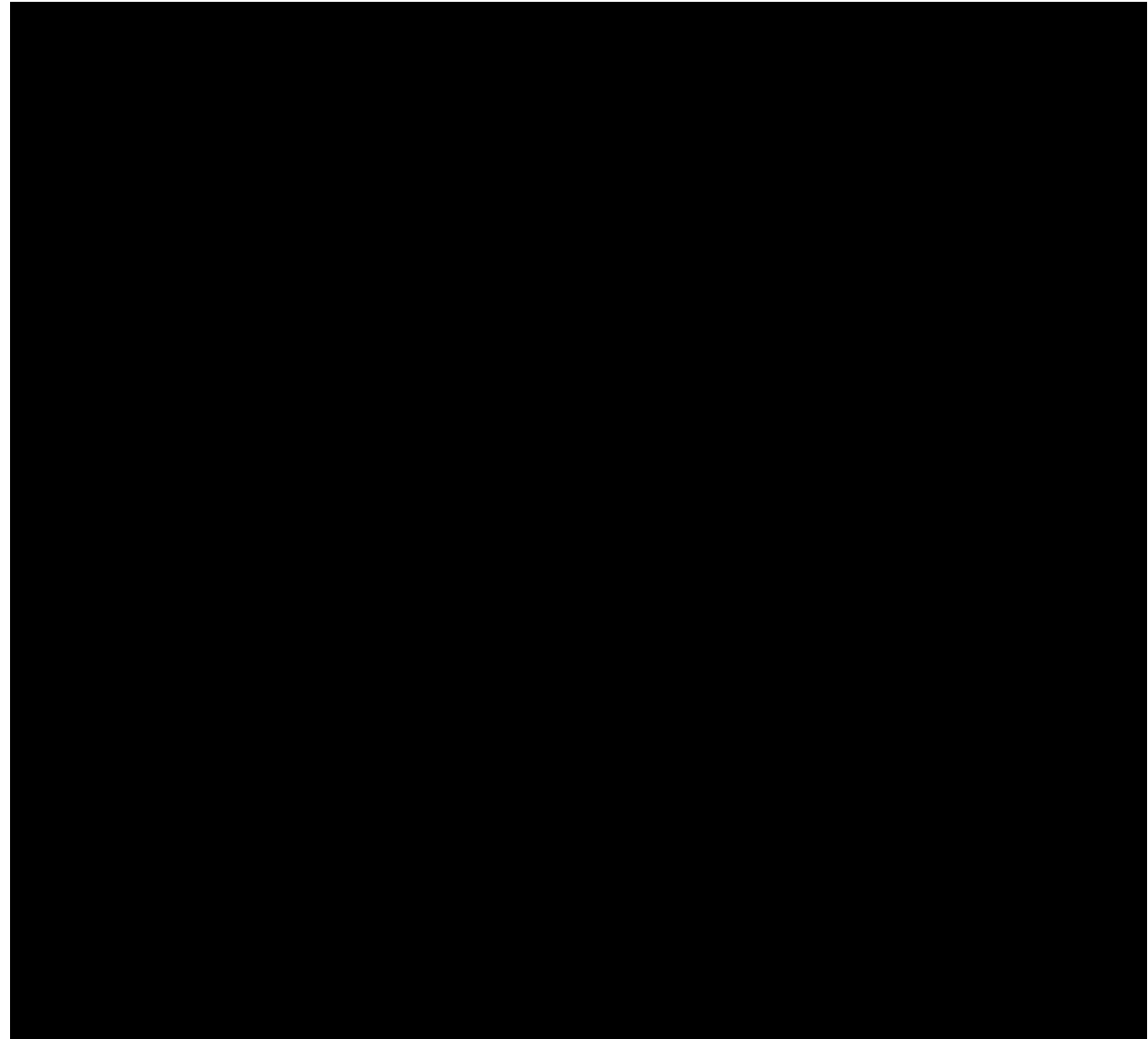
“**Person**” means an individual, body corporate, sole proprietorship, partnership or trust or unincorporated association, unincorporated syndicate, unincorporated organization, or another entity, and a natural person, acting in his or her individual capacity or in his or her capacity as executor, trustee,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

“**Pools**” means, as of any date, the mortgage pools identified on CMHC’s records as the pools numbered as set forth on the attached Exhibit B, as of the Business Day immediately preceding such date.

“**SI Corp.**” means Equitable Bank.

“**SI Price**”





“**Taxes**” means all taxes (including withholding taxes), duties and other charges levied on or measured by, or referred to as transfer, land transfer, registration charges, gross receipt, sales, retail sales, use, consumption, HST, value-added, and excise or stamp duty.

“**Time of Closing**” means 10:00 a.m. (EDT) on the Closing Date or such other time on the Closing Date as the Parties may mutually agree.

“**Toronto Branch**” is defined in the recitals to this Agreement.

“**Transaction**” means the appointment of SI Corp. and assumption by SI Corp. as the successor Issuer to Maple Bank in respect of the Pools, Mortgages and Maple NHA MBS as contemplated under this Agreement.

“**WURA**” is defined in the recitals to this Agreement.

### 1.03 **Entire Agreement**

This Agreement, the Confidentiality Agreement, the Guide, and the agreements and instruments previously entered into by the Parties pursuant to the Guide, together with any other agreement or agreements and other documents to be delivered under this Agreement, and the Court Order as and when issued, constitute the entire agreement between the Parties (all of the aforesaid collectively, the “**Entire Agreement**”) pertaining to the subject matter of this Agreement, and supersede all other prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties not included in the Entire Agreement as hereinbefore defined, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in the Entire Agreement.

### 1.04 **Governing Law**

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province.

### 1.05 **Certain Rules of Interpretation**

- (a) In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word “including” in this Agreement is to be construed as meaning “including, without limitation”.
- (b) The division of this Agreement into Articles and Sections, the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.
- (d) Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends.
- (e) Unless otherwise specified, any reference in this Agreement to any statute includes all regulations made under or in connection with that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced.

## 1.06 Schedules and Exhibits

The following is a list of Schedules and Exhibits:

<u>Schedule</u>	<u>Subject Matter</u>
Schedule A	Calculation of Indicative SI Price

<u>Exhibit</u>	<u>Subject Matter</u>
Exhibit A	Form of Court Order
Exhibit B	Pools
Exhibit C	Form of Release
Exhibit D	Form of Escrow Agreement

## 2. REPRESENTATIONS AND WARRANTIES

2.01 SI Corp. represents, warrants and agrees that as of the date of this Agreement and as of the Closing Date:

- (a) It is duly organized validly existing, and in good standing under the laws of its jurisdiction of organization, and has the requisite power and authority to enter into this Agreement and the agreements to which it is a party contemplated by this Agreement.
- (b) This Agreement has been duly authorized, executed and delivered by it to the other party and constitutes a valid and legally binding agreement of it enforceable in accordance with its terms, upon being signed by both Parties hereto.
- (c) As of the date of this Agreement, there is no action, proceeding, or investigation pending or threatened, nor any basis therefor known to it, which questions the validity or prospective validity of this Agreement insofar as the Agreement relates to it, or any essential element upon which this Agreement depends, or any action to be taken by it pursuant to this Agreement.
- (d) Insofar as its capacity to carry out any obligation under this Agreement is concerned, it is not in violation of any provision of:
  - (i) any charter, certificate of incorporation or by-law of SI Corp; or
  - (ii) any Applicable Law; or

- (iii) any mortgage, indenture, indebtedness, agreement, or instrument, which could materially adversely affect its capacity to carry out any such obligation,

and its execution of, and performance pursuant to, this Agreement will not result in such violation.

- (e) It is an Issuer.

2.02 CMHC represents, warrants and agrees that as of the date of this Agreement and as of Closing Date:

- (a) the guarantee as to timely payment of the Maple Bank NHA MBS provided by CMHC pursuant to the NHA MBS program remains in full force and effect; and
- (b) it is not a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada).

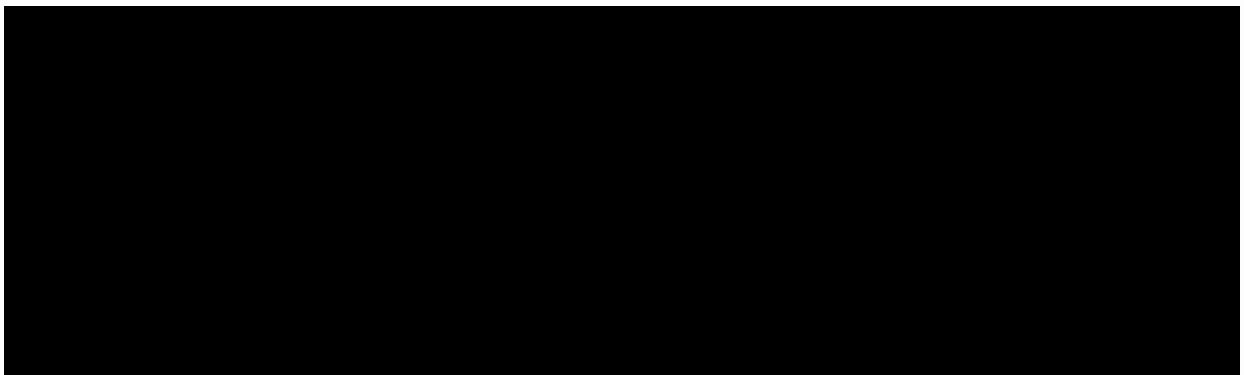
2.03 The representations and warranties of each of the Parties provided in this Agreement shall not survive Closing.

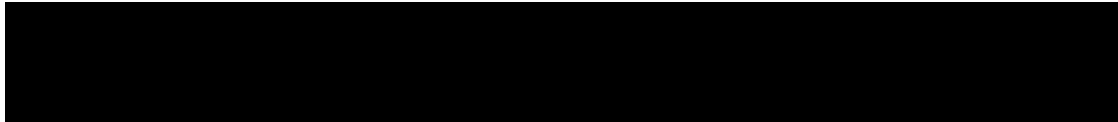
### **3. CUSTODIAL TITLE TO MORTGAGES**

3.01 CMHC hereby confirms that (i) Maple Bank, pursuant to the Guide and written transfer agreement, has previously assigned to CMHC as Guarantor of the Maple Bank NHA MBS and on behalf of the Maple Bank NHA MBS investors all right, title and interest to the mortgage loans and related security which are identified and described in the Schedule(s) of Mortgages respecting the Pools (the "**Mortgages**"), and the Custodian holds nominal title to the Mortgages (other than the Mortgages in Collection), in its capacity as title custodian only; and (ii) the Maple Bank NHA MBS outstanding as of the Closing Date will represent all of the issued and outstanding NHA MBS of Maple Bank. By executing this Agreement, SI Corp. acknowledges and affirms that all right, title and interest in and to the Mortgages is vested in CMHC as Guarantor of the Maple Bank NHA MBS and on behalf of the Maple Bank NHA MBS investors.

### **4. SI PRICE**

#### **4.01 Calculation of SI Price**



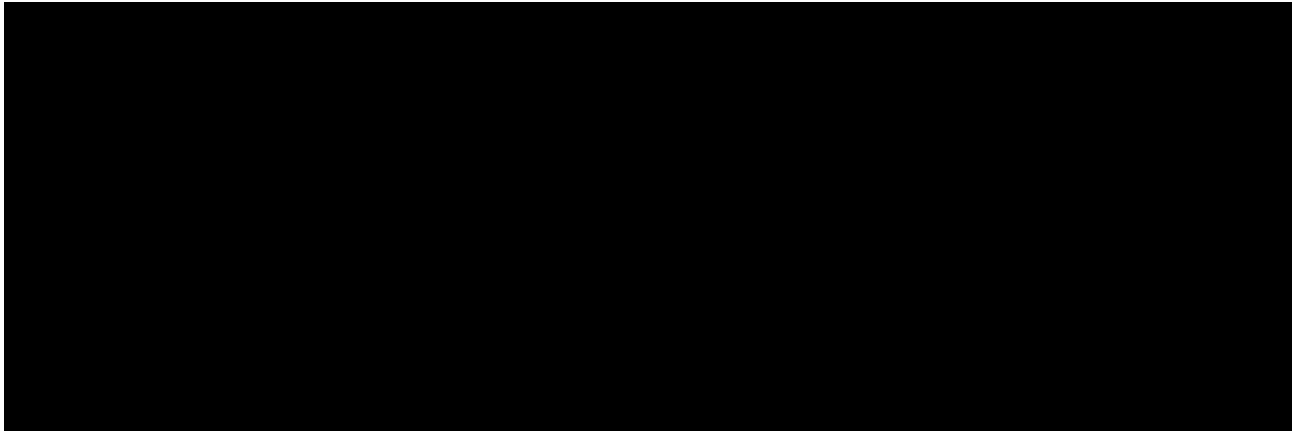


#### **4.02 Determination of SI Price by Expert**

In the event CMHC notifies SI Corp. that it does not agree with SI Corp.'s calculation of the SI Price in accordance with Section 4.01(c), CMHC shall concurrently provide SI Corp. with its reasonably detailed calculation of the SI Price. Within two (2) Business Days of receipt of CMHC's calculation of the SI Price, SI Corp. shall either confirm its agreement with such calculation or notify CMHC in writing that it does not agree with such calculation, in which case the calculation of the SI Price shall be determined by [REDACTED], or such other Person upon whom the Parties agree (the "Expert"). For greater certainty, the Expert will use the formula and methodology defined in the SI Price in its calculation of the SI Price. The Parties agree that CMHC will retain the Expert and that the determination of the SI Price by the Expert pursuant to this Section 4.02 will be final and binding on the Parties, and there will be no appeal therefrom, including, without limitation, no appeal to a court on a question of law, a question of fact or a question of mixed fact and law, absent manifest error. Each of the Parties shall have the opportunity to present to the Expert with respect to the SI Price. One-half of the fees and expenses for the determination of the SI Price pursuant to this Section 4.02 will be borne by SI Corp., and the remaining half thereof will be paid out of the excess interest spread generated by the Pools prior to the Effective Date.

If the referral to the Expert of the determination of the SI Price results in a Delayed Closing Date, then a new Effective Date shall apply. For certainty, in such case, the provisions of Section 4.01 shall apply for such new Effective Date and all findings of the Expert as to the methodology and/or principle(s) and/or the application thereof in calculating the SI Price shall be applied.

#### **4.03 Payment of SI Price**



#### **4.04 No Set-off**

The SI Price and all other payments to be made under this Agreement will be made without set-off or counterclaim and without deduction for any Taxes, levies, duties, fees, deductions, withholdings, restrictions, or conditions of any nature whatsoever.

## 5. DEPOSIT

### 5.01 Application of Deposit

On Closing the Deposit shall be remitted by the Liquidator to the Central P&I Trust/Custodial Account and applied towards the SI Price payable by SI Corp. Interest accrued on the Deposit prior to Closing shall be paid to SI Corp. within three (3) Business Days after Closing by cheque or wire transfer of funds to an account designated by SI Corp. If the Agreement is terminated by CMHC, or the Closing does not occur by the Outside Date:

- (a) solely as a result of SI Corp's failure to satisfy the conditions in Section 10.02(a), 10.02(b), 10.02(c), or 10.02(e) at Closing; or
- (b) CMHC terminating this Agreement pursuant to Section 10.04(b) or 10.06, or this Agreement terminating on the Outside Date pursuant to Section 10.05(a), in each case solely as a result of a breach by the Buyer,

then the Deposit, together with interest or other proceeds earned thereon, shall be forthwith forfeited, and remitted by the Liquidator to the Central P&I Trust/Custodial Account without any set-off, abatement or deduction whatsoever. CMHC will not be entitled to assert or institute any other claim, action, right or remedy against SI Corp. as a result of the non-completion of the Transaction.

If the Agreement is terminated or fails to Close by the Outside Date in any other circumstances, then the Deposit and all interest or other proceeds earned thereon shall forthwith be delivered to SI Corp. upon termination of the Agreement without any set-off, abatement or deduction whatsoever, and thereafter, neither Party shall be entitled to assert or institute any other claim, action, right or remedy against the other as a result of the non-completion of the Transaction.

### 5.02 Escrow Agreement with Liquidator

The Parties hereby agree to enter into an escrow agreement (the "Escrow Agreement") with the Liquidator substantially in the form attached as Exhibit D concurrently with the execution and delivery of this Agreement. CMHC and SI Corp. shall jointly direct the Liquidator under the Escrow Agreement to make any payments to be made by the Liquidator in respect of the Deposit in accordance with the terms of this Agreement in a timely manner.

## 6. COVENANTS, POST CLOSING COLLECTIONS AND PAYMENTS

6.01 From the date of this Agreement until the earlier of (x) Closing, and (y) termination of this Agreement:

- (a) CMHC shall cause to be provided to SI Corp., its accountants, legal advisors and other representatives, access to such books and records, agreements, instruments and documents, and information, in respect of the Pools, the Mortgages and the Maple Bank NHA MBS which is in CMHC's possession or control as SI Corp. may reasonably request, and shall cause to be provided to SI Corp. on or before



the eighth (8th) Business Day of each month following the date of this Agreement, the Base IO Spread Data as of the last day of the preceding month;

- (b) CMHC shall not cause to be taken, or consent to, any action in respect of the Pools, the Mortgages or the Maple Bank NHA MBS outside of the ordinary course ("ordinary course" being determined by reference to the period since Maple Bank was suspended from acting as an Issuer by CMHC). For certainty, this covenant shall not apply to any IO Spread received prior to the Effective Date.
- (c) CMHC shall not, directly or indirectly, solicit, initiate or encourage the submission of any proposal or offer from, or participate in any discussions or negotiations or enter into any agreement or understanding, with any Person (other than SI Corp) relating to such Person becoming a successor to Maple Bank with respect to the Pools, the Mortgages or the Maple Bank NHA MBS.

6.02 The Parties hereby agree that there will be no adjustments to the SI Price at Closing.

6.03 CMHC shall cause all payments and collections in relation to the Pools to be, and SI Corp acknowledges and agrees that all payments and collections in relation to the Pools shall continue to be, deposited to the Central P&I Trust/Custodial Account until the Closing Date. SI Corp agrees that all such payments shall not be required to be held in another account. CMHC shall cause the principal and interest payments due under the Maple Bank NHA MBS and for servicing fees, customary payments, deductions, and expenses permitted or required under the Guide for the period up to the Effective Date (whether payable before or after the Closing Date) to be made from collections under the Pools relating to the period up to the Effective Date and from its own funds (as guarantor of the Maple Bank NHA MBS) if such amounts are insufficient to make such payments. For certainty, SI Corp is responsible for the principal and interest payments required under the Maple Bank NHA MBS relating to the period from and after the Effective Date and is responsible for any defaulted Mortgages in any of the Pools during the period from and after the Effective Date.

6.04 CMHC agrees that it will cause to be paid to SI Corp from the Central P&I Custodial/Trust Account as soon as practicable and in any event within ten (10 Business Days following Closing:

- (a) all collections from the Pools received by Computershare under the NHA MBS Program and deposited into Central P&I Custodial/Trust Account relating to the period from and after the Effective Date, net of servicing fees, and net of other customary payments, deductions, and expenses permitted or required under the Guide in respect of the period from and after the Effective Date, provided such amounts are consistent with such amounts withheld, paid or deducted prior to Closing; and
- (b) the aggregate amount of all unscheduled payments under the Mortgages received in the Central P&I Custodial/Trust Account on the first day of the month in which

the Closing Date occurs; provided that this payment is based on the assumption that the Base IO Spread Data provided by Computershare will reflect all unscheduled principal payments received from each Pool as of the last day of each month (rather than up to the Effective Date).

6.05 Concurrent with receipt by SI Corp. of the first payment of net collections pursuant to Section 6.04, SI Corp shall pay the Arrears Reimbursement Amount into the Central P&I Custodial/Trust Account.

## 7. TAXES

7.01 SI Corp. will pay upon Closing, in addition to the SI Price, all Taxes applicable to, or payable by, SI Corp. (if any) under Applicable Law exigible directly in connection with the Transaction.

7.02 SI Corp. agrees to indemnify and save CMHC harmless from and against all claims and demands for payment of all Taxes required to be paid by SI Corp. under section 7.01 and not paid in connection with the Transaction, including HST, penalties and interest and any liability or costs incurred as a result of any failure to pay those taxes when due. This indemnity shall survive the Closing and any termination or repudiation of this Agreement.

7.03 If applicable, SI Corp. shall not be responsible for unpaid Taxes related to servicing expenses incurred by Maple Bank prior to the Effective Date.

## 8. APPOINTMENT AND ENTITLEMENT

8.01 At Closing, subject to the satisfaction (or, if applicable waiver) of all conditions precedent to Closing in Article 10 to this Agreement:

(a) as of the Closing Date, CMHC hereby appoints SI Corp. as the Issuer with respect to the Pools, the Mortgages and the Maple Bank NHA MBS (in each case, as they exist as of the Closing Date) in the place and stead of Maple Bank in the same manner as if the Maple Bank NHA MBS had been issued originally by SI Corp. in its capacity as an Issuer; and

(b) as of the Closing Date (except as expressly provided for in this Agreement, including, without limitation, Sections 6.03 and 6.04), SI Corp hereby:

(i) assumes and agrees to discharge all of the obligations, and

(ii) shall be entitled to all of the rights and benefits,

of an Issuer with respect to the Pools, the Mortgages and the Maple Bank NHA MBS (in each case as they exist as of the Closing Date), in the same manner as if the Maple Bank NHA MBS had been issued originally by SI Corp. in its capacity as an Issuer.

8.02 For greater certainty, and except as otherwise expressly provided for in this Agreement (including, without limitation, Sections 6.03 and 6.04), the Parties acknowledge and agree that SI Corp. shall have no liability or responsibility as Issuer, and shall not be entitled to any of the benefits of an Issuer, with respect to any of the Pools, the Mortgages or the Maple Bank NHA MBS, relating to or arising out of any matter occurring or attributable to any period prior to the Closing Date.

**9. NO RELIANCE ON REPRESENTATIONS, ETC.**

9.01 SI Corp. acknowledges that the Transaction is on an “as is” basis and it has entered into this Agreement and will complete the Transaction on the basis that none of CMHC, the Liquidator or Maple Bank make any representation or warranty (except as expressly set out herein) with respect to any of the Pools, the Mortgages or the Maple Bank NHA MBS, or assume any responsibility (except as expressly set out herein) for any statements, warranties, or representations made in connection with, or any of the books and records relating to, any of the Pools, the Mortgages or the Maple Bank NHA MBS including as to (a) the legality, validity, enforceability, priority, genuineness, sufficiency, value, assignability or condition of, related to, or in respect of any of the Mortgages or the Maple Bank NHA MBS, or any deed, agreement, instrument or document furnished under or in connection therewith, (b) the solvency, financial condition or statements of or the existence of defaults by any of the mortgagors, borrowers, guarantors or other obligors, covenantors or counterparties under any of the Mortgages or (c) any withholding tax, HST or other Taxes of any nature or kind exigible, deductible or payable in connection with or arising out of the Transaction. For certainty, the foregoing does not derogate from the (a) confirmation(s) of insurance of the Mortgages against mortgagor default provided by CMHC and each of the other insurers of the Mortgages posted or to be posted to the dataroom established by the Liquidator for the Marketing Process, or (b) the guarantee as to timely payment of the Maple Bank NHA MBS provided by CMHC pursuant to the NHA MBS Program), (c) any covenants or rights expressly set out in the Guide as they apply to SI Corp, the Pools, Mortgages or Maple Bank NHA MBS following the Closing Date.

For certainty, the foregoing shall not extend to or affect any representations, warranties or covenants made by the Liquidator in the Maple Assets PSA or the Escrow Agreement for the purposes of those agreements.

9.02 Any and all conditions, warranties or representations expressed or implied pursuant to the Sale of Goods Act (Ontario), if otherwise applicable, or under any other applicable law in Canada, the Province of Ontario or any other jurisdiction in which the Maple Bank NHA MBS or the Mortgages are located do not apply to the Transaction and have been waived by the Parties. The description of the Pools contained in the Schedules is for purposes of identification only. No representation, warranty or condition has or will be given by CMHC concerning the completeness or accuracy of those descriptions.

9.03 SI Corp acknowledges and agrees that it has conducted all due diligence with respect to or in connection with the Transaction (including with respect to the Pools, the Maple Bank NHA MBS and the Mortgages) that it deemed appropriate, has satisfied itself with

regard to all matters relating to the Transaction that it deemed necessary or desirable and has made its own independent credit and legal analysis and decision to enter into this Agreement and consummate the Transaction.

## **10. CONDITIONS PRECEDENT**

### **10.01 Conditions of SI Corp.**

The obligation of SI Corp. to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Time of Closing:

- (a) All acknowledgements, representations and warranties of CMHC contained in this Agreement will be true as of the Closing Date with the same effect as though made on and as of that date;
- (b) CMHC will have performed its obligations under this Agreement to the extent required to be performed on or before the Closing Date; and
- (c) Confirmation(s) of insurance of the Mortgages against mortgagor default provided by CMHC and each of the other insurers of the Mortgages has been posted to the dataroom established by the Liquidator for the Marketing Process.

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

### **10.02 Conditions of CMHC**

The obligation of CMHC to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Time of Closing:

- (a) All acknowledgements, representations and warranties of SI Corp. contained in this Agreement will be true as of the Closing Date with the same effect as though made on and as of that date;
- (b) SI Corp. shall not be suspended as an Issuer under the NHA MBS Program in accordance with the Guide at the Closing Date;
- (c) SI Corp. shall have executed and delivered a release of all actions and claims of any nature or kind it has, or may now or in the future have, against any of Maple Bank or the Liquidator except for any such claims under the Maple Assets PSA that survive the closing of the transactions thereunder, in substantially the form attached as Exhibit C;
- (d) SI Corp. shall have made arrangements for the servicing of the Mortgages satisfactory to CMHC in its sole and absolute discretion; and

- (e) SI Corp. will have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date.

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

#### 10.03 Conditions – Mutual

The obligations of CMHC and SI Corp. to complete the Transaction are subject to the following conditions being fulfilled or performed at or prior to the Time of Closing:

- (a) The Court Order shall have been made by the Court;
- (b) The Court Order will not have been stayed, varied or vacated and no appeal of the Court Order will be pending; and
- (c) No order will have been issued restraining or prohibiting or declaring all or any part of this Agreement to be invalid, and no action or proceeding will be pending or threatened to restrain or prohibit, the completion of the Transaction or challenging the validity of all or any part of this Agreement.

The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of CMHC and SI Corp. Any condition may be waived by CMHC and SI Corp. in whole or in part but any such waiver will only be effective and binding on the Parties if it is made in writing and signed by both CMHC and SI Corp.

CMHC hereby confirms that it has procured from the Liquidator an agreement to (i) diligently pursue the motion for the Court Order, (ii) provide SI Corp. and its counsel a reasonable opportunity to review and comment upon drafts of the notice of motion relating to the motion for, the service list for the motion for, and the form of, Court Order and give reasonable consideration to any comments made by SI Corp. and its counsel, (iii) provide SI Corp.'s counsel on a timely basis with copies of any notice of appearance and evidence served on the Liquidator or Maple Bank, as applicable, or their respective legal counsel in respect of the motion for the Court Order, and (iv) not object to SI Corp.'s counsel making such submissions on the hearing of the motion for the Court Order as such counsel considers appropriate, provided that Liquidator is advised of the nature of any submissions within a reasonable period prior to the hearing and such submissions are consistent with this Agreement, the Maple Assets PSA and the submissions of the Liquidator.

CMHC agrees to provide SI Corp.'s counsel on a timely basis with copies of any notice of appearance and evidence served on CMHC or its legal counsel in respect of the motion for the Court Order.

CMHC further agrees to provide a certificate to the Liquidator confirming Closing upon occurrence of the Closing.

SI Corp agrees, at its own expense, to promptly provide CMHC or the Liquidator with all information and assistance as CMHC or the Liquidator may reasonably require to obtain the Court Order.

#### **10.04 Non-Satisfaction of Conditions**

If any condition set out in this Section 10 is not satisfied or performed prior to the latest time specified therefor, a Party for whose benefit the condition is inserted may in writing:

- (a) waive compliance with the condition in whole or in part in its sole discretion by written notice to the other Party and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; provided that, for certainty, in the case of the conditions set out in Section 10.03, such conditions can only be waived if both Parties agree to do so; or
- (b) elect on written notice to the other Party to terminate this Agreement before the Closing Date or the Outside Date; provided such Party is not in default of any material obligation under this Agreement. For certainty, in the case of a breach under this Agreement by a Party, this Agreement may be terminated in accordance with Section 10.06 or otherwise.

#### **10.05 Termination**

- (a) If this Agreement has not Closed on or before the Outside Date, this Agreement will automatically terminate on the Outside Date without requirement for notice or other action by any Party.
- (b) If either Party validly terminates this Agreement under the provisions of Section 10.04(b) or 10.06 or this Agreement is automatically terminated under the provisions of Section 10.05(a):
  - (i) all the obligations of CMHC, on the one hand, and SI Corp., on the other hand, under this Agreement will be at an end; and
  - (ii) neither Party will have any right to specific performance or other remedy against, or any right to recover damages or expenses from, the other, but this provision shall not derogate from any right of SI Corp. to the return of the deposit and accrued interest or the right of CMHC to retain the deposit and accrued interest thereon as liquidated damages, in each case, pursuant to Section 5.01.
- (c) For certainty, upon termination of this Agreement, CMHC may thereafter appoint another Person as the successor Issuer for the Maple Bank NHA MBS.

#### **10.06 Notice of Breach and Termination.**

If either Party fails to comply with the terms of this Agreement, the non-breaching Party may, where such failure to comply has not been cured within ten (10) days of notice thereof having

been given to the breaching party (or such longer period as the non-breaching Party may agree or such shorter period as may be available due to the occurrence of the Outside Date) by notice to the breaching Party terminate this Agreement (provided such non-breaching Party is not also in default of any material obligation under this Agreement).

#### **11. FURTHER ASSURANCES**

Each Party shall, at the requesting Party's cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the other Party to give effect to this Agreement and, without limiting the generality of the foregoing, shall do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide all assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies.

#### **12. CONFIDENTIALITY**

All information exchanged between CMHC and SI Corp. in connection with the Transaction will be considered Evaluation Materials, and subject to the Confidentiality Agreement. Any publicity relating to the Transaction and the manner of releasing any information regarding the Transaction will be mutually agreed upon in advance in writing by the Parties, both acting reasonably; provided that if a Party is bound by Applicable Law or the rules of any applicable exchange to make a press release or other public announcement, such Party may do so, notwithstanding the failure of the other Party to approve same, provided the other Party is (a) given a reasonable opportunity to comment having regard to the circumstances and (b) the announcement merely relates to the facts and then only to the extent necessary to satisfy such requirements. Nothing in this provision or the Confidentiality Agreement shall preclude CMHC from using or distributing the form of this Agreement (excluding the name of SI Corp., pricing and all other Transaction-specific data), in its sole and absolute discretion.

#### **13. COSTS AND EXPENSES**

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

#### **14. TIME OF ESSENCE**

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

#### **15. AMENDMENT AND WAIVER**

No supplement, modification, amendment, waiver, discharge or termination of this Agreement is binding unless it is executed in writing by the Party to be bound. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other

provision (whether or not similar) nor does such waiver constitute a continuing waiver unless otherwise expressly provided.

## **16. ASSIGNMENT AND ENUREMENT**

Neither this Agreement nor any right or obligation under this Agreement may be assigned by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

## **17. NOTICE**

### **17.01 Communications**

Any Communication must be in writing and either:

- (a) personally delivered;
- (b) sent by prepaid registered mail; or
- (c) sent by facsimile, email or functionally equivalent electronic means of communication, charges (if any) prepaid.

### **17.02 Addresses**

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

to SI Corp. at:  
Equitable Bank  
30 St. Clair Avenue West, Suite 700  
Toronto, Ontario, M4V 3A1  
Attention: Mahima Poddar  
Facsimile No.: 416-515-7001  
Email: [mpoddar@eqbank.ca](mailto:mpoddar@eqbank.ca)

with a copy to:

Attention: Michael Mignardi, Senior Counsel  
Facsimile No.: 416-515-7001  
Email: [mmignardi@eqbank.ca](mailto:mmignardi@eqbank.ca)



To CMHC at:

Canada Mortgage and Housing Corporation  
700 Montreal Road,  
Ottawa, ON  
K1A 0P7

Attention: Sébastien Gignac/Wojciech (Wojo) Zielonka/Reem Hindieh  
Facsimile No: (613) 748-4098  
Email: [sgignac@cmhc-schl.gc.ca](mailto:sgignac@cmhc-schl.gc.ca); [wzielonk@cmhc-schl.gc.ca](mailto:wzielonk@cmhc-schl.gc.ca); [rhindieh@cmhc-schl.gc.ca](mailto:rhindieh@cmhc-schl.gc.ca)

with a copy to:

Borden Ladner Gervais LLP  
40 King Street West, Suite 4400,  
Toronto, Ontario, M5H 3Y4

Attention: Rosalind Morrow/Roger Jaipargas /Marc Duchesne  
Facsimile No.: (416) 361-7323  
Email: [rmorrow@blg.com](mailto:rmorrow@blg.com) / [rjaipargas@blg.com](mailto:rjaipargas@blg.com); [mduchesne@blg.com](mailto:mduchesne@blg.com)

#### **18. NO THIRD PARTY BENEFICIARIES**

This Agreement is not intended to confer on any person other than the Parties, any rights or remedies.

#### **19. COUNTERPARTS & FACSIMILE OR PDF SIGNATURES**

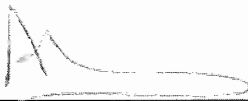
This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be an original and such counterparts will together constitute one and the same instrument. Delivery of this Agreement by facsimile or PDF transmission constitutes valid and effective delivery.

**IN WITNESS WHEREOF**, on the day and year first hereinabove written, the Parties have executed this Agreement.

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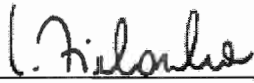
IN WITNESS WHEREOF, on the day and year first hereinabove written, the Parties have executed this Agreement.

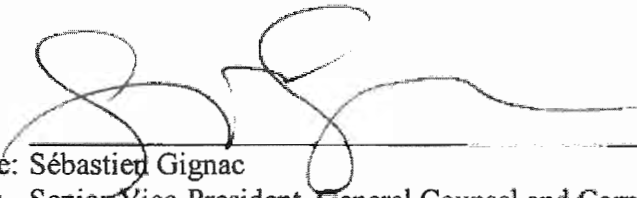
**EQUITABLE BANK**

By:   
Name: Andrew Moor  
Title: President and Chief Executive Officer

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

**CANADA MORTGAGE AND HOUSING CORPORATION**

By:   
Name: Wojciech Zielonka  
Title: Chief Financial Officer and Senior Vice-President, Capital Markets

By:   
Name: Sébastien Gignac  
Title: Senior Vice-President, General Counsel and Corporate Secretary

**SCHEDULE A**

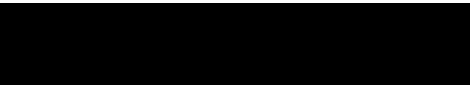
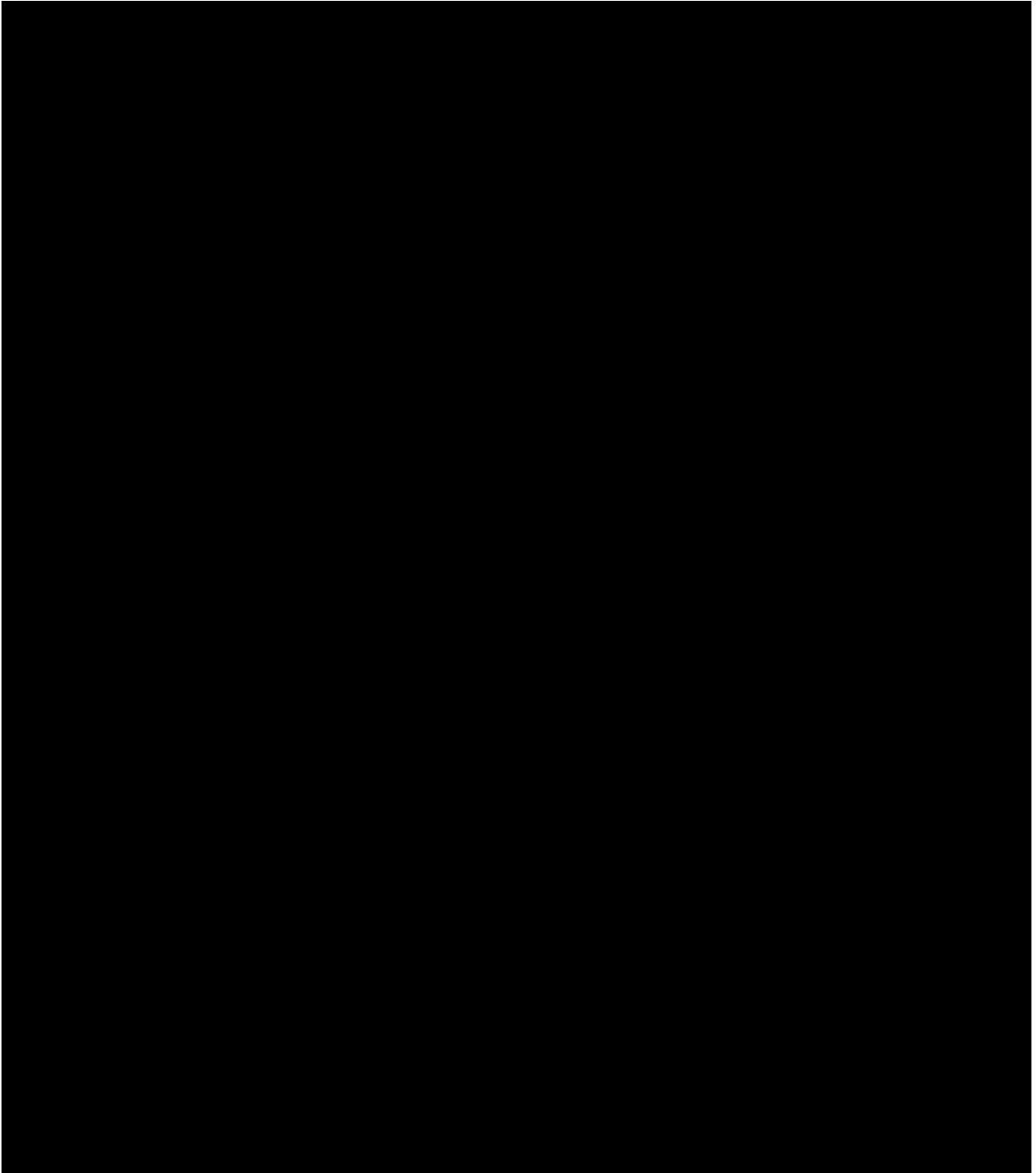
**CALCULATION OF INDICATIVE SI PRICE**

[REDACTED]

[REDACTED]

**SCHEDULE A**

**CALCULATION OF INDICATIVE SI PRICE**



**EXHIBIT A  
FORM OF COURT ORDER**

Court File No.: CV-16-11290-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE REGIONAL ) [ X ] DAY, THE  
 )  
SENIOR JUSTICE MORAWETZ ) [X ] DAY OF [ X ] , 2016

**IN THE MATTER OF MAPLE BANK GmbH**

**AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,  
R.S.C. 1985, c. W.-11, AS AMENDED**

**AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, c. B. 46, AS AMENDED**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

Applicant

- and -

**MAPLE BANK GmbH**

Respondent

**ORDER**

**THIS MOTION**, made by KPMG Inc. (“KPMG”), in its capacity as the Court-appointed Liquidator (the “**Liquidator**”) in respect of the winding up of the business in Canada (the “**Business**”) of Maple Bank GmbH (“**Maple Bank**”) and its assets as defined in section 618 of the *Bank Act*, S.C. 1991, as amended (the “**Bank Act**”) for an order:

- confirming by declaration that Maple Bank has no right, title, or interest in the Pools, the Mortgages, the Maple Bank NHA MBS, or as an Issuer of NHA MBS such declaration to be effective upon the delivery by the Liquidator of a certificate

substantially in the form attached as Schedule A hereto (the “**Liquidator’s Certificate**”) confirming that the closing of the transaction for the selection of a Successor Issuer to Maple Bank under the NHA Mortgage-Backed Securities Guide 2013 (the “**SI Transaction**”), in respect of the Pools, the Mortgages and the Maple Bank NHA MBS, as contemplated by the Successor Issuer Agreement substantially in the form of the agreement attached as Appendix “●” to the ● report of the Liquidator dated ●, 2016 (the “**Report**”) between Equitable Bank (“**SI Corp.**”), as the Successor Issuer, and Canada Mortgage and Housing Corporation (“**CMHC**”) dated September 12, 2016, (the “**SI Agreement**”) has closed.

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and ON HEARING the submissions of counsel for the Liquidator, the German Insolvency Administrator, CMHC, and SI Corp., no one appearing for any other person on the service list, although properly served as appears from the affidavit of Frances Dunne sworn ● ●, 2016 filed:

### **Effect of This Order**

### **Definitions**

1. **THIS COURT ORDERS** that any capitalized terms used but not defined herein shall have the meaning ascribed thereto in the SI Agreement, as applicable.

### **SI Transaction**

2. **THIS COURT ORDERS AND DECLARES** that Maple Bank has no right, title and interest in and to the Pools, the Mortgages, the Maple Bank NHA MBS or as an Issuer of NHA MBS except for the Mortgages in Collection (as defined in the SI Agreement) and except as owner of the Maple Bank NHA MBS and Defaulted Mortgages (as each such term is defined in the Agreement of Purchase and Sale (Maple Assets) dated September 12 between the Liquidator (as seller) and SI Corp (as buyer) (as amended, supplemented or amended and restated, the “**Maple Assets PSA**”) that are the subject of the Maple Assets PSA, which declaration shall only

be effective upon the delivery by the Liquidator of the Liquidator's Certificate confirming that the SI Transaction has closed.

3. **THIS COURT ORDERS AND DIRECTS** the Liquidator to file with the Court a copy of the Liquidator's Certificate, forthwith after delivery thereof by the Liquidator to SI Corp. and CMHC in respect of the SI Transaction.

4. **THIS COURT ORDERS** that the Liquidator is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable in the opinion of the Liquidator for the completion of the SI Transaction.

**General**

5. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the Republic of Germany, including the assistance of the Amtsgericht Frankfurt am Main [Insolvency Court] to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory or administrative bodies are hereby respectfully requested to make such orders and to provide such orders and to provide such assistance to the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Liquidator in any foreign proceeding, or to assist the Liquidator and their respective agents in carrying out the terms of this Order.

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

Court File No.: CV-16-11290-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF MAPLE BANK GmbH**

**AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,  
R.S.C. 1985, c. W.-11, AS AMENDED**

**AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, c. B. 46, AS AMENDED**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

Applicant

- and -

**MAPLE BANK GmbH**

Respondent

**LIQUIDATOR’S CERTIFICATE  
Successor Issuer Transaction**

**RECITALS**

A. Pursuant to an Order of Regional Senior Justice Morawetz of the Ontario Superior Court of Justice [Commercial List] (the "**Court**") dated February 16, 2016, KPMG Inc. was appointed under the provisions of the *Winding-Up and Restructuring Act (Canada)* as the Liquidator (the "**Liquidator**") of the business in Canada of Maple Bank GmbH ( "**Maple Bank**") and of its assets, as defined in section 618 of *the Bank Act*, S.C. 1991, c.46, as amended.

B. Pursuant to an Order dated April 5, 2016, the Court approved a marketing process (the "**Marketing Process**") providing for, *inter alia*, the solicitation of expressions of interest to assume the responsibilities and acquire the rights of Maple Bank as issuer of the Maple Bank NHA MBS.

C. Pursuant to the Marketing Process, SI Corp. has entered into a Successor Issuer Agreement dated September 12, 2016 between SI Corp. and Canada Mortgage and Housing Corporation (“**CMHC**”) substantially in the form of the agreement attached as Appendix “●” to the Report (the “**SI Agreement**”), pursuant to which SI Corp. has been selected by CMHC as the Successor Issuer to Maple Bank under the NHA Mortgage-Backed Securities Guide 2013, as contemplated by the Successor Issuer Agreement (the “**SI Transaction**”) with respect to the Pools, the Mortgages and the Maple Bank NHA MBS.

D. Pursuant to an Order dated ●, 2016 (the “**Order**”), the Court confirmed by declaration that Maple Bank has no right, title and interest in and to the Pools, the Mortgages, the Maple Bank NHA MBS or as an Issuer of NHA MBS, except for the Mortgages in Collection (as defined in the SI Agreement) and except as owner of the Maple Bank NHA MBS and Defaulted Mortgages (as each such term is defined in the Agreement of Purchase and Sale (Maple Assets) dated September 12, 2016 between the Liquidator (as seller) and SI Corp (as buyer) (as amended, supplemented or amended and restated, the “**Maple Assets PSA**”) that are the subject of the Maple Assets PSA, which declaration shall only be effective upon the delivery by the Liquidator of a Liquidator’s Certificate substantially in the form attached as Schedule “A” to the Order confirming that the SI Transaction has closed.

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

THE LIQUIDATOR CERTIFIES the following:

1. The Liquidator confirms that it has received a certificate from CMHC pursuant to which CMHC has confirmed that the SI Transaction has closed.

2. This Certificate was delivered by the Liquidator at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

KPMG in its capacity as the liquidator (the “**Liquidator**”) in respect of the winding -up of the business in Canada of Maple Bank GmbH and its related assets as defined under section 618 of the *Bank Act*.

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

Name:

Title:

IN THE MATTER OF MAPLE BANK GmbH - AND IN THE MATTER OF THE WINDING-UP AND  
RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED - AND IN THE MATTER OF THE BANK  
ACT, S.C. 1991, C.46, AS AMENDED  
BETWEEN: **ATTORNEY GENERAL OF CANADA**, Applicant – and – **MAPLE BANK GmbH**, Respondent

Court File No. CV-16-11290-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**  
**( •, 2016)**

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

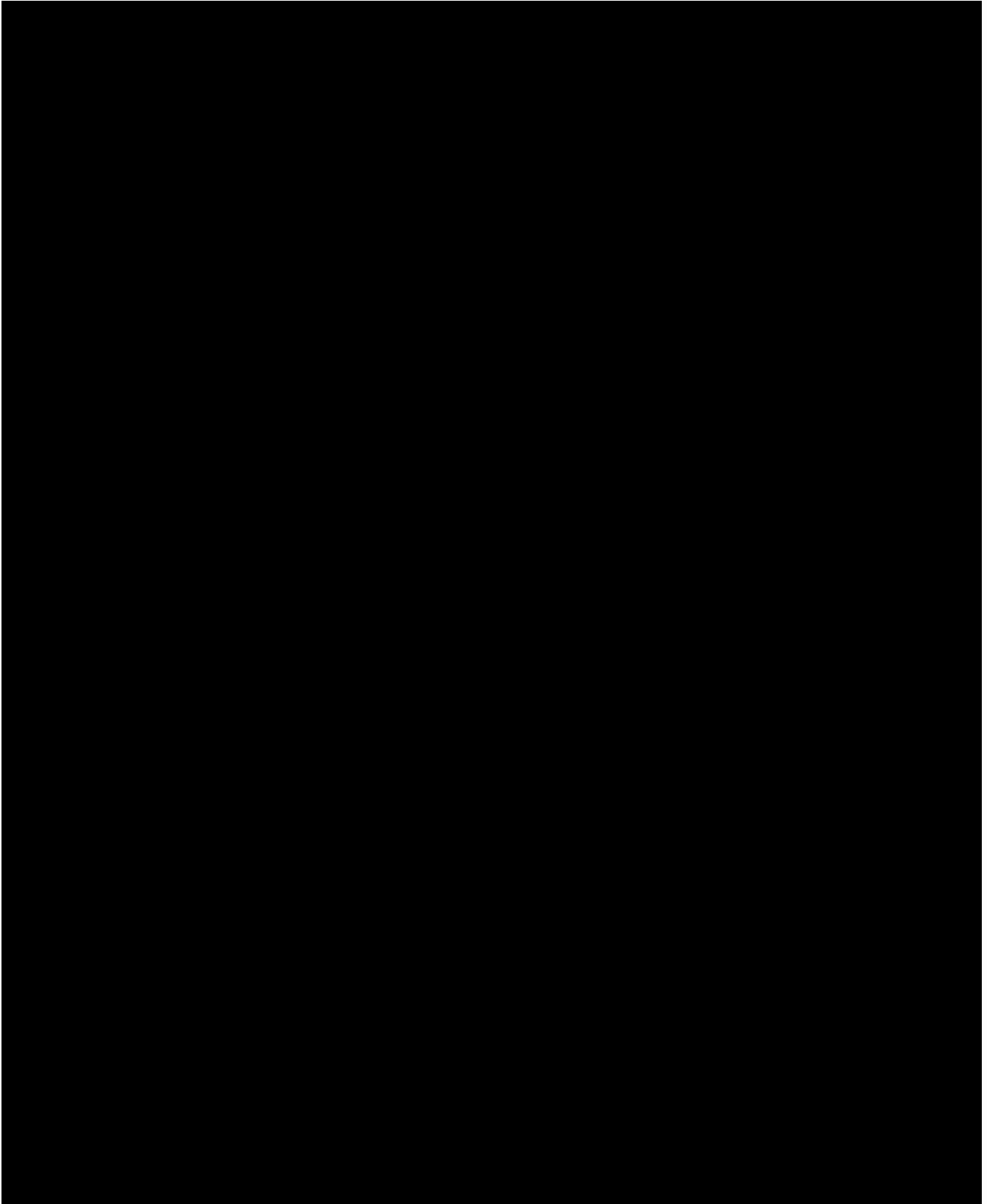
Tel: 416-862-7525  
Fax: 416-862-7661

**Alex MacFarlane:** [alex.macfarlane@gowlingwg.com](mailto:alex.macfarlane@gowlingwg.com)  
**Matthew Karabus:** [matthew.karabus@gowlingwg.com](mailto:matthew.karabus@gowlingwg.com)  
**Thomas Gertner:** [thomas.gertner@gowlingwg.com](mailto:thomas.gertner@gowlingwg.com)

Lawyers for KPMG Inc., in its capacity as Liquidator of the  
business in Canada of Maple Bank GmbH and its assets.

**EXHIBIT B**

**Pools**





## EXHIBIT C

### Form of Release of Maple Bank and Liquidator

#### FULL AND FINAL RELEASE

#### RECITALS:

1. Maple Bank GmbH (“**Maple Bank**”) was an issuer of NHA MBS guaranteed by Canada Mortgage Housing Corporation (“**CMHC**”). Under the terms and provisions of the NHA Mortgage-Backed Securities Guide 2013, with respect to certain mortgage pools (the “**Pools**”).
2. Upon application by the Attorney General of Canada, pursuant to section 10.1 of the *Winding Up and Restructuring Act* (“**WURA**”), on February 16, 2016 the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made a winding-up order: (a) that the business in Canada of Maple Bank (the “**Toronto Branch**”) be wound up and that its assets, as defined under section 618 of the *Bank Act* (Canada) be liquidated; and, (b) appointing KPMG Inc. as the liquidator of the Toronto Branch under section 23 of WURA (the “**Liquidator**”).
3. Pursuant to letters dated February 9 and 12, 2016 CMHC advised Maple Bank that it was in default under the Guide, that it was suspended from acting as an Issuer of NHA MBS and that CMHC had determined that a successor to Maple Bank as Issuer of the Maple Bank NHA MBS must be appointed as soon as possible.
4. Pursuant to an Order dated April 5, 2016, the Court approved a marketing process (the “**Marketing Process**”) providing for, *inter alia*, the solicitation of expressions of interest to assume the responsibilities and acquire the rights of Maple Bank as Issuer of the Maple Bank NHA MBS.
5. Pursuant to the Marketing Process, (a) SI Corp. has proposed to become the successor issuer to Maple Bank, and CMHC is prepared to appoint SI Corp. as Maple Bank’s successor issuer, with respect to the Pools, the Mortgages and the Maple Bank NHA MBS in accordance and subject to compliance with the terms and conditions of a Successor Issuer Agreement dated September 12, 2016 between CMHC and SI Corp. (as amended, supplemented, or amended and restated from time to time, the “**SI Agreement**”) and (b) SI Corp. has entered into an agreement of purchase and sale (Maple Assets), dated September 12, 2016 made between the Liquidator (as seller) and SI Corp. (as buyer) with respect to certain other assets of Maple Bank (as amended, supplemented, or amended and restated from time to time, the “**Maple Assets PSA**”).
6. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the SI Agreement.

**THE UNDERSIGNED HEREBY ACKNOWLEDGES AND AGREES** that for good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged,

SI Corp., on its own behalf and on behalf of and with intent to bind its predecessors, successors and assigns and their respective administrators, affiliates, principals, directors, officers, employees, and agents, (collectively, the “**Releasor**”) irrevocably releases and forever discharges each of Maple Bank, its predecessors, successors and assigns, and the Liquidator, including their respective principals, administrators, affiliates, directors, officers, employees, consultants, legal counsel and agents (collectively, the “**Releasee**”) of and from any and all actions, causes of action and claims of any nature, or kind it had, may now have, or in the future could have, including without limiting the generality of the foregoing all accounts, liabilities, claims, rights, actions, choses in action, causes of action, judgments, orders, debts, damages, obligations, demands for damages or losses and rights of any kind or nature whatsoever resulting from, related to, connected with or otherwise arising from the SI Agreement or the Maple Assets PSA, but excluding from the foregoing, all such actions, causes of action and claims against any of the Releasees resulting from, related to, connected with or otherwise arising from any obligations of such Releasees that survive the closing of the transactions contemplated under the Maple Assets PSA, the Escrow Agreement, the Withholding Escrow Agreement (as defined in the Maple Assets PSA) or any other agreement between the Liquidator and SI Corp., or acknowledgement by the Liquidator to SI Corp., in each case entered into and delivered by the Liquidator to SI Corp. under the Maple Assets Agreement (collectively the “**Claims**”).

**AND FOR THE SAID CONSIDERATION**, the Releasor further agrees not to make any claim or take or continue any proceeding whatsoever against any other person or corporation that might claim contribution or indemnity from the Releasee pursuant to the provisions of any statute or otherwise with respect to any matter that is the subject of this Release, but excluding, actions against any borrower, guarantor, servicer or originator or any of their predecessors, successors and assigns and their respective administrators, affiliates, principals, directors, officers, employees, and agents in respect of any Pools, Mortgages, the Maple Bank NHA MBS or the Purchased Assets (as defined in the Maple Assets PSA) in connection with events, actions or omissions occurring on or after the Closing Date.

**AND FOR SAID CONSIDERATION**, the Releasor hereby agrees to execute, at the cost of the Releasee, such further and other documents or instruments as may be reasonably required by the Releasee to give effect to or in furtherance of the releases provided by this Release.

**THIS RELEASE** shall be construed, interpreted and performed in accordance with the laws of the Province of Ontario and the Federal laws of Canada as applicable thereto.



**IN WITNESS WHEREOF**, on the day and year as set out below, the Releasor has executed this Release:

**DATED** this \_\_\_ day of [        ], 2016

**EQUITABLE BANK**

---

Name: Andrew Moor  
Title: President and CEO  
(I have authority to bind the corporation)

**EXHIBIT D**  
**FORM OF ESCROW AGREEMENT**

TOR\_LAW\9016860\6

**ESCROW AGREEMENT**

**THIS AGREEMENT** dated September ●, 2016,

**BETWEEN :**

**CANADA MORTGAGE AND HOUSING CORPORATION**

(“**CMHC**”)

- and -

**EQUITABLE BANK**, a corporation incorporated under the laws of Canada

(“**SI Corp.**”)

- and -

**KPMG INC.**, solely in its capacity as court-appointed liquidator of the business in Canada of Maple Bank GmbH and its assets as defined in Section 618 of the *Bank Act*

(the “**Escrow Agent**”).

**CONTEXT:**

- A.** By a successor issuer agreement dated September 12, 2016 made between SI Corp. and CMHC (as amended or supplemented by written agreement between the Parties, the “**SI Agreement**”), CMHC agreed to appoint SI Corp. as, and SI Corp. agreed to assume the obligations of, the successor Issuer to Maple Bank GmbH (“**Maple Bank**”) of the Pools, Mortgages and Maple Bank NHA MBS (“**SI Transaction**”).
- B.** It is a condition of the Closing that the Deposit Fund be held in escrow to provide for payment and application of the Deposit as provided under Sections 5.01 and 10.06 of the SI Agreement.
- C.** The Escrow Agent has agreed to facilitate the SI Transaction.

**THEREFORE**, the Parties and the Escrow Agent agree as follows:

**ARTICLE 1  
DEFINITIONS**

**1.1 Capitalized Terms**

Capitalized terms used in this Agreement and not otherwise defined have the meanings given to them in the SI Agreement.

**1.2 Defined Terms**

In this Agreement the following terms have the following meanings:

- 1.2.1 “**Agreement**” means this agreement, as it may be supplemented or amended by written agreement between the Parties and the Escrow Agent.
- 1.2.2 “**Cash Equivalents**” means any of the following:
- 1.2.2.1 marketable direct obligations issued by, or unconditionally guaranteed by, the Canadian Government or the government of a province of Canada or issued by any agency thereof and backed by the full faith and credit of Canada or a province of Canada, as the case may be, in each case maturing within three months from the date of acquisition;
  - 1.2.2.2 certificates of deposit, time deposits or overnight bank deposits having maturities of three months or less from the date of acquisition issued by any bank listed on Schedule I to the *Bank Act (Canada)*; or
  - 1.2.2.3 bankers acceptances accepted by any bank listed on Schedule I to the *Bank Act (Canada)* having a term of not more than three months issued by an issuer rated at least A-1+ by Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. (“S&P”), P-1 by Moody’s Investors Service, Inc. (“Moody’s”), or R-1 (High) by Dominion Bond Rating Service Limited (“DBRS”).
- 1.2.3 “**Central P&I Trust/Custodial Account**” means the account with the Bank of Nova Scotia administered in trust by the Computershare Trust Company of Canada for the NHA MBS Pools.
- 1.2.4 “**Claim**” means any claim, demand, action, cause of action, suit, arbitration, investigation, proceeding, complaint, grievance, charge, prosecution, assessment or reassessment (including any appeal or application for review) and includes the Escrow Agent’s costs and/or expenses of defending itself against any claim of liability or in any action for interpleader and any costs and/or expenses if it is required to attend or provide evidence in a dispute between the Parties in relation to this Agreement.
- 1.2.5 “**Deposit Fund**” is defined in Section 3.1.
- 1.2.6 “**Document**” is defined in Section 7.3.
- 1.2.7 “**Joint Instructions**” means written instructions signed by all the Parties and given to the Escrow Agent from time to time providing for the investment, reinvestment, liquidation or payment of all or any part of the Deposit Fund.
- 1.2.8 “**Maple Bank**” is defined in the recitals.
- 1.2.9 “**Parties**” is defined in the SI Agreement.
- 1.2.10 “**SI Agreement**” is defined in the recitals.
- 1.2.11 “**SI Transaction**” is defined in the recitals.
- 1.2.12 “**Term**” is defined in Section 3.3.

**1.3 Certain Rules of Interpretation**

- 1.3.1 In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word “including” in this Agreement is to be construed as meaning “including, without limitation”.
- 1.3.2 The division of this Agreement into Articles and Sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- 1.3.3 References in this Agreement to an Article or Section are to be construed as references to an Article or Section of this Agreement unless the context requires otherwise.

**1.4 Governing Law**

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province.

**1.5 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and the Escrow Agent pertaining to the administration and disposition of the Deposit Fund by the Escrow Agent, and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and the Escrow Agent, and there are no representations, warranties, conditions or other agreements between the Parties and the Escrow Agent, express or implied, in connection with the administration and disposition of the Deposit Fund except as specifically set out in this Agreement. None of the Parties or the Escrow Agent has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or in contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Agreement.

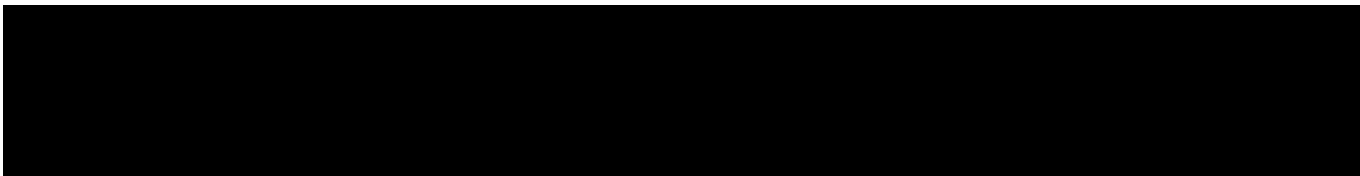
**ARTICLE 2  
DISCLOSURE, APPOINTMENT AND ACCEPTANCE**

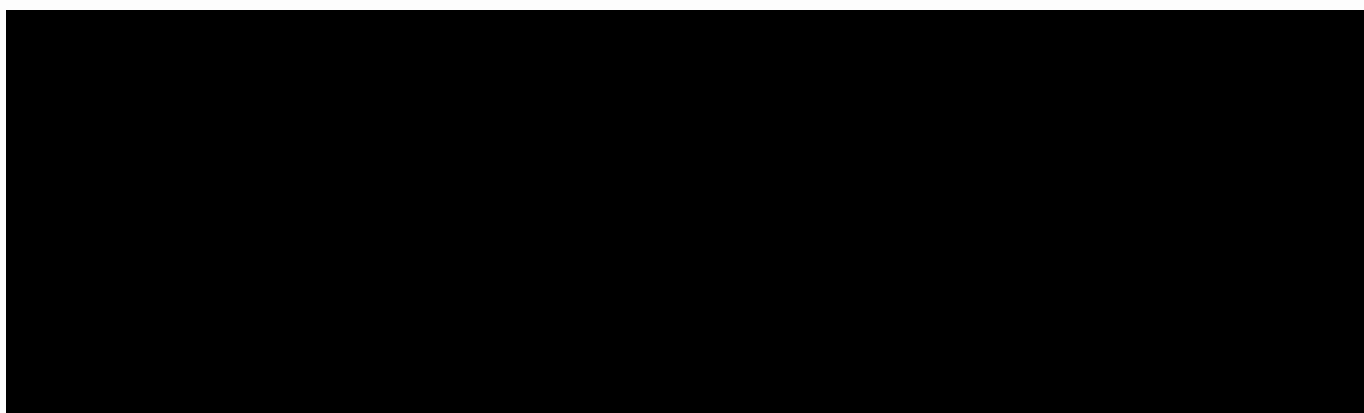
**2.1 Appointment and Acceptance**

The Parties appoint the Escrow Agent to act, and the Escrow Agent accepts the appointment and will act, as escrow agent in accordance with this Agreement.

**ARTICLE 3  
ESTABLISHMENT OF ESCROW**

**3.1 Deposit**





### **3.2 Receipt**

The Escrow Agent:

- 3.2.1 will acknowledge in writing receipt of the Deposit Fund and confirm that the Deposit Fund will be held in accordance with this Agreement; and
- 3.2.2 confirms that it has no ownership interest in the Deposit Fund, but is serving as escrow holder only, and has possession of the Deposit Fund only in accordance with this Agreement.

### **3.3 Term**

The term of this Agreement (the “Term”) will begin upon receipt of the Deposit by the Escrow Agent and will end on the earlier of:

- 3.3.1 the effective date of the Escrow Agent’s resignation, as provided in Section 7.4;
- 3.3.2 the effective date of the Escrow Agent’s removal, as provided in Section 7.5;
- 3.3.3 the payment into court of the Deposit Fund as provided in Section 7.7.2; and
- 3.3.4 the termination of the Escrow, as provided in Section 6.1.

## **ARTICLE 4 INVESTMENT OF ESCROW FUND**

### **4.1 Direction to Invest**

Except as expressly provided in this Agreement, and subject to any Joint Instructions, the Escrow Agent is directed to invest the Deposit Fund, including any interest or other proceeds earned, in (a) an interest bearing deposit account with a Canadian chartered bank listed in Schedule 1 to the *Bank Act* (Canada), or (b) Cash Equivalents, or (c) any combination of the foregoing, as the Escrow Agent may determine in its discretion.

#### **4.2 Authorization to Disclose**

Either Party may, at any time, request full particulars of the investments provided for in Section 4.1, and upon receipt of any such request, the Escrow Agent will disclose those particulars in writing to both Parties.

#### **4.3 Liquidation of Investments**

The Escrow Agent is authorized, at any time during the Term, to liquidate any portion of the Deposit Fund consisting of investments in accordance with its customary procedures, to provide funds for any payments required to be made under this Agreement.

#### **4.4 Restricted Access to Funds**

The Parties acknowledge and understand that all or any portion of the Deposit Fund invested in Cash Equivalents may not, by their terms, be available to the Escrow Agent before maturity or, if available before maturity, may be available only on terms which require payment of break fees, make whole premiums, or similar charges to the issuers of such instruments.

### **ARTICLE 5 RELEASE OF ESCROW FUND**

#### **5.1 Release of Escrow Fund**

At any time during the Term, the Parties may give Joint Instructions to the Escrow Agent with regard to payment of the Deposit under and in accordance with Sections 5.01 and 10.06 of the SI Agreement or otherwise, specifying payment due to SI Corp. and/or into the Central P&I Trust/Custodial Account, as the case may be, and the Escrow Agent will, within two (2) Business Days of receiving those Joint Instructions, pay to SI Corp. and/or into the Central P&I Trust/Custodial Account, as the case may be, the dollar amounts set out in the Joint Instructions.

### **ARTICLE 6 TERMINATION OF ESCROW**

#### **6.1 Termination of Escrow**

6.1.1 If the Term has not already ended by virtue of the Escrow Agent's resignation, removal, or payment of the Deposit Fund into court pursuant to Sections 7.4, 7.5 or 7.7.2, the escrow established by this Agreement will terminate upon the payment in full of the Deposit Fund by the Escrow Agent in accordance with Joint Instructions.

### **ARTICLE 7 DUTIES AND RIGHTS OF THE ESCROW AGENT**

#### **7.1 Duties of the Escrow Agent**

7.1.1 **Specific Duties.** The Escrow Agent will:

- 7.1.1.1 hold, safeguard, invest, reinvest and pay the Deposit Fund in accordance with this Agreement;
- 7.1.1.2 deduct, at the time any payment of income is made from the Deposit Fund, all amounts from the payment which the Escrow Agent is required to deduct pursuant to applicable withholding tax laws; and
- 7.1.1.3 remit all amounts withheld under Section 7.1.1.2 to the appropriate governmental authority.

7.1.2 **No Implied Duties.** Except as expressly provided in this Agreement, the Escrow Agent will have no other duties or responsibilities under this Agreement and no implied duties or obligations will be read into this Agreement against the Escrow Agent.

7.1.3 **No Duty—Instances.** Without limiting the generality of Section 7.1.2, the Escrow Agent will have no duty to:

- 7.1.3.1 give the Deposit Fund any greater degree of care than required under the applicable by-laws and that it would give to its own similar property;
- 7.1.3.2 invest all or any part of the Deposit Fund except as directed in this Agreement;
- 7.1.3.3 enforce any obligation of any Person, except as expressly provided in this Agreement;
- 7.1.3.4 make any representation as to the validity, value, genuineness or collectability of any Document held by or delivered to it; or
- 7.1.3.5 advise any Party as to the wisdom in selling or retaining, or taking or refraining from taking any action, with respect to any securities or other property in the Deposit Fund.

## 7.2 Liability of the Escrow Agent

The Escrow Agent will not be liable for any action taken or not taken by it with respect to any matter relating to this Agreement, except liability arising solely and as a result of its gross negligence or wilful misconduct.

## 7.3 Rights of the Escrow Agent

The Escrow Agent, acting in good faith, will be entitled to:

- 7.3.1 rely upon any Joint Instructions, any judgment, court order or other judicial process, certification, demand, notice, deed, agreement, instrument, security or other writing (each being a “**Document**”) delivered to it under this Agreement without being required to determine the:
  - 7.3.1.1 authenticity of any Document (whether the Document purports to be an original or a copy);
  - 7.3.1.2 due authorization, execution or delivery of any Document;



- 7.3.1.3 correctness of any fact stated in any Document; or
- 7.3.1.4 propriety or validity of the service of any Document;
- 7.3.2 rely upon any signature of a Person believed by the Escrow Agent to be genuine;
- 7.3.3 assume that the Person purporting to give any receipt or advice or make any statement or execute any Document on behalf of any Person in connection with the provisions of this Agreement has been duly authorized to do so;
- 7.3.4 assume that the undersigned representative of any Party which is an entity other than a natural person has full power and authority to instruct the Escrow Agent on behalf of that Party unless written notice to the contrary is delivered to Escrow Agent;
- 7.3.5 in its capacity as a trustee for the benefit of the Parties, seek advice and directions from a court having jurisdiction;
- 7.3.6 commence or defend any action or proceeding for the determination of any Claims, including a suit or action in interpleader;
- 7.3.7 retain at the Parties' sole expense, and act on the opinion, advice or information obtained from, its counsel or other expert, whether retained by the Escrow Agent or any Party, but will not be bound to act upon such opinion, advice or information and, except as expressly provided in this Agreement, will not be held responsible for any losses occasioned by so retaining or not retaining any such counsel or other expert or for so acting or not so acting, as the case may be. The Parties acknowledge that the Escrow Agent would act on advice from its counsel as Liquidator advising it in its capacity as Escrow Agent; and
- 7.3.8 employ any assistance as the Escrow Agent may, in its sole discretion, determine to be necessary or advisable to properly discharge its duties under this Agreement and pay, for the account of the Parties, the fees, disbursements and other costs required for such assistance, including legal or other services provided for in Section 7.3.7.

#### **7.4 Resignation of Escrow Agent**

The Escrow Agent may resign at any time upon ten (10) Business Days' prior written notice, and:

- 7.4.1 if the Escrow Agent has received Joint Instructions within the ten (10) Business Day period to deliver the Deposit Fund to a named successor escrow agent, the Escrow Agent's resignation will take effect on the date of delivery of the Deposit Fund, less the amounts due to the Escrow Agent under Section 7.8, to the successor escrow agent; or
- 7.4.2 if the Escrow Agent has not received the Joint Instructions described above within the ten (10) Business Day period, the Escrow Agent's sole responsibilities after the expiry of that period will be to:
  - 7.4.2.1 hold and safeguard (and not to invest or reinvest) the Deposit Fund; and
  - 7.4.2.2 arrange for the liquidation of the Deposit Fund pursuant to Section 4.3 and the payment of the Deposit Fund into a court of competent jurisdiction as soon as practicable after the expiry of the ten (10) Business Day period;

and the Escrow Agent's resignation will take effect on the day the Escrow Agent pays the Deposit Fund into a court of competent jurisdiction.

## **7.5 Removal of the Escrow Agent**

The Parties may remove the Escrow Agent at any time by Joint Instructions, and:

7.5.1 if those Joint Instructions name a successor escrow agent, the Escrow Agent's removal will take effect on the date of delivery of the Deposit Fund, less the amounts due to the Escrow Agent under Section 7.8, to the successor escrow agent;

7.5.2 if those Joint Instructions do not name a successor escrow agent the Escrow Agent's sole responsibilities will be to:

7.5.2.1 hold and safeguard (and not to invest or reinvest) the Deposit Fund; and

7.5.2.2 arrange for the liquidation of the Deposit pursuant to Section 4.3 and the payment of the Deposit Fund into a court of competent jurisdiction as soon as practicable after receipt of such Joint Instructions;

and the Escrow Agent's removal will take effect on the day the Escrow Agent pays the Deposit Fund into a court of competent jurisdiction.

## **7.6 Discharge from Duties**

At the time the Escrow Agent's resignation or removal, as the case may be, takes effect, the Escrow Agent will be discharged of and from any and all further duties and obligations arising in connection with this Agreement except for any liabilities arising prior to the date of such resignation or removal in accordance with the terms of this Agreement.

## **7.7 Disagreement**

If any disagreement between the Parties results in adverse claims or demands made in relation to the Deposit Fund or if the Escrow Agent is in doubt as to what action it should take under this Agreement, the Escrow Agent, acting in good faith:

7.7.1 will be entitled to retain the Deposit Fund until the Escrow Agent has received Joint Instructions directing payment of the Deposit Fund, and the Escrow Agent will rely and act on the Joint Instructions without further question by paying the Deposit Fund, less the amounts due to the Escrow Agent under Section 7.8, as directed; and

7.7.2 will be entitled, in the alternative, in its sole discretion and without providing prior written notice, to pay any of the Deposit Fund still held by it, less the amounts due to the Escrow Agent under Section 7.8, into court pending resolution of the disagreement, following which the Escrow Agent will be deemed to have resigned effective as of the time of that payment.

## **7.8 Escrow Agent's Compensation**

7.8.1 **Right to Reimbursement.** The Parties will reimburse the Escrow Agent for all reasonable expenses, disbursements or advances incurred or made by the Escrow Agent in performance of its duties under this Agreement (including reasonable fees, expenses and

disbursements of its counsel), with the exception of any such expenses, disbursements or advances incurred by the Escrow Agent in connection with any Claim successfully asserted against the Escrow Agent under Section 7.2.

7.8.2 **Right to Other Compensation.** The Parties agree that the Escrow Agent shall be entitled to charge reasonable fees for its services in the event of, and in connection with, any disputes, disagreements, or adverse claims or demands made in relation to the Deposit Fund or if the Escrow Agent is in doubt as to what action it should take under this Agreement.

7.8.3 **Sharing of Responsibility for Escrow Agent's Compensation.**



7.8.4 **Right to Pay From Amounts Held in Escrow.** All expenses, disbursements and fees of the Escrow Agent or its counsel that are not paid or reimbursed as provided for in this Agreement will be:

7.8.4.1 paid from the Deposit Fund by the Escrow Agent (regardless of the Party that is ultimately entitled to payment of the Deposit Fund); and

7.8.4.2 deemed to be a charge against the full amount of the Deposit Fund (regardless of the Party that is ultimately entitled to payment of the Deposit Fund).

## 7.9 Indemnity

Except to the extent that any Claim which can be brought under Section 7.2 is successfully asserted against the Escrow Agent and a final judgment is obtained, the Parties will jointly and severally indemnify and hold harmless the Escrow Agent (and any successor escrow agent) from and against any and all Claims incurred or sustained by the Escrow Agent in respect of any matter or thing done by it under, pursuant to or in connection with this Agreement, or otherwise arising in connection with its office as Escrow Agent.

## 7.10 Certain Obligations of the Parties

7.10.1 **BINs.** The Parties will provide the Escrow Agent with their respective business identification numbers for Canadian income tax purposes.

7.10.2 **Use of Escrow Agent's Name.** No printed or other matter in any language intended for release or distribution to the Persons other than the Parties and their respective advisers (including prospectuses, notices, reports and promotional material) that mentions the Escrow Agent's name or the rights, powers or duties of the Escrow Agent will be issued by or on behalf of the Parties unless the Escrow Agent will first have given its specific written consent, such consent not to be unreasonably withheld or delayed; provided that if a Party

is bound by Law or the rules of any applicable exchange to make a press release or other public announcement, such Party may do so and may reference the Escrow Agent, provided the Escrow Agent is (a) given a reasonable opportunity to comment upon such press release having regard to the circumstances and (b) the announcement merely relates to the facts and then only to the extent necessary to satisfy such requirements.

## ARTICLE 8 GENERAL

### 8.1 Notices

Any notice provided in connection with this Agreement will be provided in accordance with Section 17 of the SI Agreement (a copy of which the Escrow Agent acknowledges having received), with delivery to the Escrow Agent to be made to the Escrow Agent at:

333 Bay Street, Suite 4600  
Toronto, Ontario, M5H 2S5  
Attention: Nicholas Brearton / Philip Reynolds / Andrew Parkes  
Facsimile No.: (416) 777-3364  
Email: [nbrearton@kpmg.ca](mailto:nbrearton@kpmg.ca) / [pireynolds@kpmg.ca](mailto:pireynolds@kpmg.ca) / [aparkes@kpmg.ca](mailto:aparkes@kpmg.ca)

with a copy to:

Gowling WLG (Canada) LLP  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto, Ontario, M5X 1G5  
Attention: Alex MacFarlane / Lilly Wong / Christine Mason  
Facsimile No.: (416) 862-7661  
Email: [alex.macfarlane@gowlingwlg.com](mailto:alex.macfarlane@gowlingwlg.com) / [lilly.wong@gowlingwlg.com](mailto:lilly.wong@gowlingwlg.com)  
[/christine.mason@gowlingwlg.com](mailto:christine.mason@gowlingwlg.com)

### 8.2 Severability

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

- 8.2.1 the legality, validity or enforceability of the remaining provisions of this Agreement; or
- 8.2.2 the legality, validity or enforceability of that provision in any other jurisdiction.

### 8.3 Submission to Jurisdiction

Without prejudice to the ability of any Party or the Escrow Agent to enforce this Agreement in any other proper jurisdiction, each of the Parties and the Escrow Agent irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario to determine all issues, whether at law or in equity, arising from this Agreement. To the extent permitted by applicable law, each of the Parties and the Escrow Agent:

8.3.1 irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of Ontario , or that the subject matter of this Agreement may not be enforced in those courts; and

8.3.2 irrevocably agrees not to seek, and waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts of Ontario , of the substantive merits of any such suit, action or proceeding.

#### **8.4 Remedies Cumulative**

The rights and remedies of the Parties and the Escrow Agent under this Agreement are cumulative and not alternative.

#### **8.5 Amendment and Waiver**

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

#### **8.6 Assignment and Enurement**

None of the Parties and the Escrow Agent may assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the Parties, or the Escrow Agent and the other Party, as the case may be. This Agreement enures to the benefit of and is binding upon the Parties and the Escrow Agent and their respective successors and permitted assigns.

#### **8.7 Counterparts**

This Agreement may be executed and delivered by the Parties and the Escrow Agent in one or more counterparts, each of which when so executed and delivered will be an original, and each of which may be delivered by facsimile or functionally equivalent electronic means, and such counterparts will together constitute one and the same instrument.

#### **8.8 Survival**

Sections 7.8, 7.9 and any other provisions that would reasonably be expected to remain in force will survive the termination of the escrow created under this Agreement. The termination of the escrow created under this Agreement will not affect the rights of any Party or the Escrow Agent to make a claim for damages arising from a breach of any provision of this Agreement which occurred prior to that termination.

**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.**

Each of the Parties has executed and delivered this Agreement as of the date noted at the beginning of the Agreement .

**CANADA MORTGAGE AND HOUSING CORPORATION**

Per: \_\_\_\_\_  
Name: ●  
Title: ●

**EQUITABLE BANK**

Per: \_\_\_\_\_  
Name: Andrew Moor  
Title: President and CEO

**KPMG INC.**, solely in its capacity as court-appointed liquidator of the business in Canada of Maple Bank GmbH and its assets as defined in section 618 of the *Bank Act*

Per: \_\_\_\_\_  
Name: ●  
Title: ●

## Escrow Agreement

**ESCROW AGREEMENT**

**THIS AGREEMENT** dated September 12, 2016,

**BETWEEN :**

**CANADA MORTGAGE AND HOUSING CORPORATION**

(“**CMHC**”)

- and -

**EQUITABLE BANK**, a corporation incorporated under the laws of Canada

(“**SI Corp.**”)

- and -

**KPMG INC.**, solely in its capacity as court-appointed liquidator of the business in Canada of Maple Bank GmbH and its assets as defined in Section 618 of the *Bank Act*

(the “**Escrow Agent**”).

**CONTEXT:**

- A.** By a successor issuer agreement dated September 12, 2016 made between SI Corp. and CMHC (as amended or supplemented by written agreement between the Parties, the “**SI Agreement**”), CMHC agreed to appoint SI Corp. as, and SI Corp. agreed to assume the obligations of, the successor Issuer to Maple Bank GmbH (“**Maple Bank**”) of the Pools, Mortgages and Maple Bank NHA MBS (“**SI Transaction**”).
- B.** It is a condition of the Closing that the Deposit Fund be held in escrow to provide for payment and application of the Deposit as provided under Sections 5.01 and 10.06 of the SI Agreement.
- C.** The Escrow Agent has agreed to facilitate the SI Transaction.

**THEREFORE**, the Parties and the Escrow Agent agree as follows:

**ARTICLE 1  
DEFINITIONS**

**1.1 Capitalized Terms**

Capitalized terms used in this Agreement and not otherwise defined have the meanings given to them in the SI Agreement.



## 1.2 Defined Terms

In this Agreement the following terms have the following meanings:

- 1.2.1 “**Agreement**” means this agreement, as it may be supplemented or amended by written agreement between the Parties and the Escrow Agent.
- 1.2.2 “**Cash Equivalents**” means any of the following:
- 1.2.2.1 marketable direct obligations issued by, or unconditionally guaranteed by, the Canadian Government or the government of a province of Canada or issued by any agency thereof and backed by the full faith and credit of Canada or a province of Canada, as the case may be, in each case maturing within three months from the date of acquisition;
  - 1.2.2.2 certificates of deposit, time deposits or overnight bank deposits having maturities of three months or less from the date of acquisition issued by any bank listed on Schedule I to the *Bank Act (Canada)*; or
  - 1.2.2.3 bankers acceptances accepted by any bank listed on Schedule I to the *Bank Act (Canada)* having a term of not more than three months issued by an issuer rated at least A-1+ by Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. (“S&P”), P-1 by Moody’s Investors Service, Inc. (“Moody’s”), or R-1 (High) by Dominion Bond Rating Service Limited (“DBRS”).
- 1.2.3 “**Central P&I Trust/Custodial Account**” means the account with the Bank of Nova Scotia administered in trust by the Computershare Trust Company of Canada for the NHA MBS Pools.
- 1.2.4 “**Claim**” means any claim, demand, action, cause of action, suit, arbitration, investigation, proceeding, complaint, grievance, charge, prosecution, assessment or reassessment (including any appeal or application for review) and includes the Escrow Agent’s costs and/or expenses of defending itself against any claim of liability or in any action for interpleader and any costs and/or expenses if it is required to attend or provide evidence in a dispute between the Parties in relation to this Agreement.
- 1.2.5 “**Deposit Fund**” is defined in Section 3.1.
- 1.2.6 “**Document**” is defined in Section 7.3.
- 1.2.7 “**Joint Instructions**” means written instructions signed by all the Parties and given to the Escrow Agent from time to time providing for the investment, reinvestment, liquidation or payment of all or any part of the Deposit Fund.
- 1.2.8 “**Maple Bank**” is defined in the recitals.
- 1.2.9 “**Parties**” is defined in the SI Agreement.
- 1.2.10 “**SI Agreement**” is defined in the recitals.
- 1.2.11 “**SI Transaction**” is defined in the recitals.
- 1.2.12 “**Term**” is defined in Section 3.3.

**1.3 Certain Rules of Interpretation**

- 1.3.1 In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word “including” in this Agreement is to be construed as meaning “including, without limitation”.
- 1.3.2 The division of this Agreement into Articles and Sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- 1.3.3 References in this Agreement to an Article or Section are to be construed as references to an Article or Section of this Agreement unless the context requires otherwise.

**1.4 Governing Law**

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province.

**1.5 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and the Escrow Agent pertaining to the administration and disposition of the Deposit Fund by the Escrow Agent, and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and the Escrow Agent, and there are no representations, warranties, conditions or other agreements between the Parties and the Escrow Agent, express or implied, in connection with the administration and disposition of the Deposit Fund except as specifically set out in this Agreement. None of the Parties or the Escrow Agent has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or in contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Agreement.

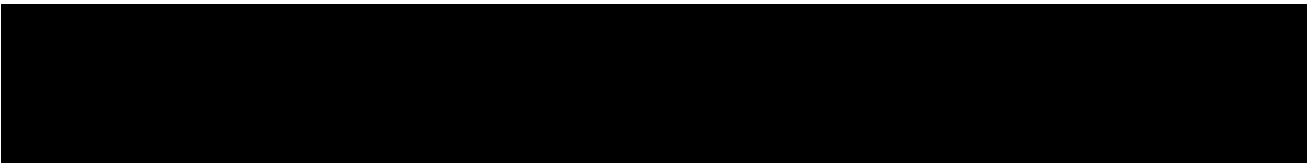
**ARTICLE 2  
DISCLOSURE, APPOINTMENT AND ACCEPTANCE**

**2.1 Appointment and Acceptance**

The Parties appoint the Escrow Agent to act, and the Escrow Agent accepts the appointment and will act, as escrow agent in accordance with this Agreement.

**ARTICLE 3  
ESTABLISHMENT OF ESCROW**

**3.1 Deposit**



### **3.2 Receipt**

The Escrow Agent:

- 3.2.1 will acknowledge in writing receipt of the Deposit Fund and confirm that the Deposit Fund will be held in accordance with this Agreement; and
- 3.2.2 confirms that it has no ownership interest in the Deposit Fund, but is serving as escrow holder only, and has possession of the Deposit Fund only in accordance with this Agreement.

### **3.3 Term**

The term of this Agreement (the “**Term**”) will begin upon receipt of the Deposit by the Escrow Agent and will end on the earlier of:

- 3.3.1 the effective date of the Escrow Agent’s resignation, as provided in Section 7.4;
- 3.3.2 the effective date of the Escrow Agent’s removal, as provided in Section 7.5;
- 3.3.3 the payment into court of the Deposit Fund as provided in Section 7.7.2; and
- 3.3.4 the termination of the Escrow, as provided in Section 6.1.

## **ARTICLE 4 INVESTMENT OF ESCROW FUND**

### **4.1 Direction to Invest**

Except as expressly provided in this Agreement, and subject to any Joint Instructions, the Escrow Agent is directed to invest the Deposit Fund, including any interest or other proceeds earned, in (a) an interest bearing deposit account with a Canadian chartered bank listed in Schedule 1 to the *Bank Act* (Canada), or (b) Cash Equivalents, or (c) any combination of the foregoing, as the Escrow Agent may determine in its discretion.

#### **4.2 Authorization to Disclose**

Either Party may, at any time, request full particulars of the investments provided for in Section 4.1, and upon receipt of any such request, the Escrow Agent will disclose those particulars in writing to both Parties.

#### **4.3 Liquidation of Investments**

The Escrow Agent is authorized, at any time during the Term, to liquidate any portion of the Deposit Fund consisting of investments in accordance with its customary procedures, to provide funds for any payments required to be made under this Agreement.

#### **4.4 Restricted Access to Funds**

The Parties acknowledge and understand that all or any portion of the Deposit Fund invested in Cash Equivalents may not, by their terms, be available to the Escrow Agent before maturity or, if available before maturity, may be available only on terms which require payment of break fees, make whole premiums, or similar charges to the issuers of such instruments.

### **ARTICLE 5 RELEASE OF ESCROW FUND**

#### **5.1 Release of Escrow Fund**

At any time during the Term, the Parties may give Joint Instructions to the Escrow Agent with regard to payment of the Deposit under and in accordance with Sections 5.01 and 10.06 of the SI Agreement or otherwise, specifying payment due to SI Corp. and/or into the Central P&I Trust/Custodial Account, as the case may be, and the Escrow Agent will, within two (2) Business Days of receiving those Joint Instructions, pay to SI Corp. and/or into the Central P&I Trust/Custodial Account, as the case may be, the dollar amounts set out in the Joint Instructions.

### **ARTICLE 6 TERMINATION OF ESCROW**

#### **6.1 Termination of Escrow**

6.1.1 If the Term has not already ended by virtue of the Escrow Agent's resignation, removal, or payment of the Deposit Fund into court pursuant to Sections 7.4, 7.5 or 7.7.2, the escrow established by this Agreement will terminate upon the payment in full of the Deposit Fund by the Escrow Agent in accordance with Joint Instructions.

### **ARTICLE 7 DUTIES AND RIGHTS OF THE ESCROW AGENT**

#### **7.1 Duties of the Escrow Agent**

7.1.1 **Specific Duties.** The Escrow Agent will:

- 7.1.1.1 hold, safeguard, invest, reinvest and pay the Deposit Fund in accordance with this Agreement;
  - 7.1.1.2 deduct, at the time any payment of income is made from the Deposit Fund, all amounts from the payment which the Escrow Agent is required to deduct pursuant to applicable withholding tax laws; and
  - 7.1.1.3 remit all amounts withheld under Section 7.1.1.2 to the appropriate governmental authority.
- 7.1.2 **No Implied Duties.** Except as expressly provided in this Agreement, the Escrow Agent will have no other duties or responsibilities under this Agreement and no implied duties or obligations will be read into this Agreement against the Escrow Agent.
- 7.1.3 **No Duty—Instances.** Without limiting the generality of Section 7.1.2, the Escrow Agent will have no duty to:
- 7.1.3.1 give the Deposit Fund any greater degree of care than required under the applicable by-laws and that it would give to its own similar property;
  - 7.1.3.2 invest all or any part of the Deposit Fund except as directed in this Agreement;
  - 7.1.3.3 enforce any obligation of any Person, except as expressly provided in this Agreement;
  - 7.1.3.4 make any representation as to the validity, value, genuineness or collectability of any Document held by or delivered to it; or
  - 7.1.3.5 advise any Party as to the wisdom in selling or retaining, or taking or refraining from taking any action, with respect to any securities or other property in the Deposit Fund.

## 7.2 Liability of the Escrow Agent

The Escrow Agent will not be liable for any action taken or not taken by it with respect to any matter relating to this Agreement, except liability arising solely and as a result of its gross negligence or wilful misconduct.

## 7.3 Rights of the Escrow Agent

The Escrow Agent, acting in good faith, will be entitled to:

- 7.3.1 rely upon any Joint Instructions, any judgment, court order or other judicial process, certification, demand, notice, deed, agreement, instrument, security or other writing (each being a “**Document**”) delivered to it under this Agreement without being required to determine the:
  - 7.3.1.1 authenticity of any Document (whether the Document purports to be an original or a copy);
  - 7.3.1.2 due authorization, execution or delivery of any Document;

- 7.3.1.3 correctness of any fact stated in any Document; or
- 7.3.1.4 propriety or validity of the service of any Document;
- 7.3.2 rely upon any signature of a Person believed by the Escrow Agent to be genuine;
- 7.3.3 assume that the Person purporting to give any receipt or advice or make any statement or execute any Document on behalf of any Person in connection with the provisions of this Agreement has been duly authorized to do so;
- 7.3.4 assume that the undersigned representative of any Party which is an entity other than a natural person has full power and authority to instruct the Escrow Agent on behalf of that Party unless written notice to the contrary is delivered to Escrow Agent;
- 7.3.5 in its capacity as a trustee for the benefit of the Parties, seek advice and directions from a court having jurisdiction;
- 7.3.6 commence or defend any action or proceeding for the determination of any Claims, including a suit or action in interpleader;
- 7.3.7 retain at the Parties' sole expense, and act on the opinion, advice or information obtained from, its counsel or other expert, whether retained by the Escrow Agent or any Party, but will not be bound to act upon such opinion, advice or information and, except as expressly provided in this Agreement, will not be held responsible for any losses occasioned by so retaining or not retaining any such counsel or other expert or for so acting or not so acting, as the case may be. The Parties acknowledge that the Escrow Agent would act on advice from its counsel as Liquidator advising it in its capacity as Escrow Agent; and
- 7.3.8 employ any assistance as the Escrow Agent may, in its sole discretion, determine to be necessary or advisable to properly discharge its duties under this Agreement and pay, for the account of the Parties, the fees, disbursements and other costs required for such assistance, including legal or other services provided for in Section 7.3.7.

#### **7.4 Resignation of Escrow Agent**

The Escrow Agent may resign at any time upon ten (10) Business Days' prior written notice, and:

- 7.4.1 if the Escrow Agent has received Joint Instructions within the ten (10) Business Day period to deliver the Deposit Fund to a named successor escrow agent, the Escrow Agent's resignation will take effect on the date of delivery of the Deposit Fund, less the amounts due to the Escrow Agent under Section 7.8, to the successor escrow agent; or
- 7.4.2 if the Escrow Agent has not received the Joint Instructions described above within the ten (10) Business Day period, the Escrow Agent's sole responsibilities after the expiry of that period will be to:
  - 7.4.2.1 hold and safeguard (and not to invest or reinvest) the Deposit Fund; and
  - 7.4.2.2 arrange for the liquidation of the Deposit Fund pursuant to Section 4.3 and the payment of the Deposit Fund into a court of competent jurisdiction as soon as practicable after the expiry of the ten (10) Business Day period;

and the Escrow Agent's resignation will take effect on the day the Escrow Agent pays the Deposit Fund into a court of competent jurisdiction.

## **7.5 Removal of the Escrow Agent**

The Parties may remove the Escrow Agent at any time by Joint Instructions, and:

7.5.1 if those Joint Instructions name a successor escrow agent, the Escrow Agent's removal will take effect on the date of delivery of the Deposit Fund, less the amounts due to the Escrow Agent under Section 7.8, to the successor escrow agent;

7.5.2 if those Joint Instructions do not name a successor escrow agent the Escrow Agent's sole responsibilities will be to:

7.5.2.1 hold and safeguard (and not to invest or reinvest) the Deposit Fund; and

7.5.2.2 arrange for the liquidation of the Deposit pursuant to Section 4.3 and the payment of the Deposit Fund into a court of competent jurisdiction as soon as practicable after receipt of such Joint Instructions;

and the Escrow Agent's removal will take effect on the day the Escrow Agent pays the Deposit Fund into a court of competent jurisdiction.

## **7.6 Discharge from Duties**

At the time the Escrow Agent's resignation or removal, as the case may be, takes effect, the Escrow Agent will be discharged of and from any and all further duties and obligations arising in connection with this Agreement except for any liabilities arising prior to the date of such resignation or removal in accordance with the terms of this Agreement.

## **7.7 Disagreement**

If any disagreement between the Parties results in adverse claims or demands made in relation to the Deposit Fund or if the Escrow Agent is in doubt as to what action it should take under this Agreement, the Escrow Agent, acting in good faith:

7.7.1 will be entitled to retain the Deposit Fund until the Escrow Agent has received Joint Instructions directing payment of the Deposit Fund, and the Escrow Agent will rely and act on the Joint Instructions without further question by paying the Deposit Fund, less the amounts due to the Escrow Agent under Section 7.8, as directed; and

7.7.2 will be entitled, in the alternative, in its sole discretion and without providing prior written notice, to pay any of the Deposit Fund still held by it, less the amounts due to the Escrow Agent under Section 7.8, into court pending resolution of the disagreement, following which the Escrow Agent will be deemed to have resigned effective as of the time of that payment.

## **7.8 Escrow Agent's Compensation**

7.8.1 **Right to Reimbursement.** The Parties will reimburse the Escrow Agent for all reasonable expenses, disbursements or advances incurred or made by the Escrow Agent in performance of its duties under this Agreement (including reasonable fees, expenses and

disbursements of its counsel), with the exception of any such expenses, disbursements or advances incurred by the Escrow Agent in connection with any Claim successfully asserted against the Escrow Agent under Section 7.2.

7.8.2 **Right to Other Compensation.** The Parties agree that the Escrow Agent shall be entitled to charge reasonable fees for its services in the event of, and in connection with, any disputes, disagreements, or adverse claims or demands made in relation to the Deposit Fund or if the Escrow Agent is in doubt as to what action it should take under this Agreement.

7.8.3 **Sharing of Responsibility for Escrow Agent's Compensation.**



7.8.4 **Right to Pay From Amounts Held in Escrow.** All expenses, disbursements and fees of the Escrow Agent or its counsel that are not paid or reimbursed as provided for in this Agreement will be:

7.8.4.1 paid from the Deposit Fund by the Escrow Agent (regardless of the Party that is ultimately entitled to payment of the Deposit Fund); and

7.8.4.2 deemed to be a charge against the full amount of the Deposit Fund (regardless of the Party that is ultimately entitled to payment of the Deposit Fund).

## 7.9 Indemnity

Except to the extent that any Claim which can be brought under Section 7.2 is successfully asserted against the Escrow Agent and a final judgment is obtained, the Parties will jointly and severally indemnify and hold harmless the Escrow Agent (and any successor escrow agent) from and against any and all Claims incurred or sustained by the Escrow Agent in respect of any matter or thing done by it under, pursuant to or in connection with this Agreement, or otherwise arising in connection with its office as Escrow Agent.

## 7.10 Certain Obligations of the Parties

7.10.1 **BINs.** The Parties will provide the Escrow Agent with their respective business identification numbers for Canadian income tax purposes.

7.10.2 **Use of Escrow Agent's Name.** No printed or other matter in any language intended for release or distribution to the Persons other than the Parties and their respective advisers (including prospectuses, notices, reports and promotional material) that mentions the Escrow Agent's name or the rights, powers or duties of the Escrow Agent will be issued by or on behalf of the Parties unless the Escrow Agent will first have given its specific written consent, such consent not to be unreasonably withheld or delayed; provided that if a Party



is bound by Law or the rules of any applicable exchange to make a press release or other public announcement, such Party may do so and may reference the Escrow Agent, provided the Escrow Agent is (a) given a reasonable opportunity to comment upon such press release having regard to the circumstances and (b) the announcement merely relates to the facts and then only to the extent necessary to satisfy such requirements.

## **ARTICLE 8 GENERAL**

### **8.1 Notices**

Any notice provided in connection with this Agreement will be provided in accordance with Section 17 of the SI Agreement (a copy of which the Escrow Agent acknowledges having received), with delivery to the Escrow Agent to be made to the Escrow Agent at:

333 Bay Street, Suite 4600  
Toronto, Ontario, M5H 2S5  
Attention: Nicholas Brearton / Philip Reynolds / Andrew Parkes  
Facsimile No.: (416) 777-3364  
Email: [nbrearton@kpmg.ca](mailto:nbrearton@kpmg.ca) / [pireynolds@kpmg.ca](mailto:pireynolds@kpmg.ca) / [aparkes@kpmg.ca](mailto:aparkes@kpmg.ca)

with a copy to:

Gowling WLG (Canada) LLP  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto, Ontario, M5X 1G5  
Attention: Alex MacFarlane / Lilly Wong / Christine Mason  
Facsimile No.: (416) 862-7661  
Email: [alex.macfarlane@gowlingwlg.com](mailto:alex.macfarlane@gowlingwlg.com) / [lilly.wong@gowlingwlg.com](mailto:lilly.wong@gowlingwlg.com)  
[/christine.mason@gowlingwlg.com](mailto:christine.mason@gowlingwlg.com)

### **8.2 Severability**

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

- 8.2.1 the legality, validity or enforceability of the remaining provisions of this Agreement; or
- 8.2.2 the legality, validity or enforceability of that provision in any other jurisdiction.

### **8.3 Submission to Jurisdiction**

Without prejudice to the ability of any Party or the Escrow Agent to enforce this Agreement in any other proper jurisdiction, each of the Parties and the Escrow Agent irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario to determine all issues, whether at law or in equity, arising from this Agreement. To the extent permitted by applicable law, each of the Parties and the Escrow Agent:

8.3.1 irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of Ontario , or that the subject matter of this Agreement may not be enforced in those courts; and

8.3.2 irrevocably agrees not to seek, and waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts of Ontario , of the substantive merits of any such suit, action or proceeding.

#### **8.4 Remedies Cumulative**

The rights and remedies of the Parties and the Escrow Agent under this Agreement are cumulative and not alternative.

#### **8.5 Amendment and Waiver**

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

#### **8.6 Assignment and Enurement**

None of the Parties and the Escrow Agent may assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the Parties, or the Escrow Agent and the other Party, as the case may be. This Agreement enures to the benefit of and is binding upon the Parties and the Escrow Agent and their respective successors and permitted assigns.

#### **8.7 Counterparts**

This Agreement may be executed and delivered by the Parties and the Escrow Agent in one or more counterparts, each of which when so executed and delivered will be an original, and each of which may be delivered by facsimile or functionally equivalent electronic means, and such counterparts will together constitute one and the same instrument.

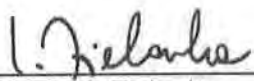
#### **8.8 Survival**

Sections 7.8, 7.9 and any other provisions that would reasonably be expected to remain in force will survive the termination of the escrow created under this Agreement. The termination of the escrow created under this Agreement will not affect the rights of any Party or the Escrow Agent to make a claim for damages arising from a breach of any provision of this Agreement which occurred prior to that termination.

Each of the Parties has executed and delivered this Agreement as of the date noted at the beginning of the Agreement.

**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.**

**CANADA MORTGAGE AND HOUSING CORPORATION**

Per:   
Name: Wojciech Zielonka  
Title: Chief Financial Officer and  
Senior Vice-President, Capital Markets

Per:   
Name: Sebastien Gignac  
Title: Senior Vice-President, General Counsel  
and Corporate Secretary

**EQUITABLE BANK**

Per:


A handwritten signature in black ink, appearing to read 'Andrew Moor', is written over a horizontal line.

Name: Andrew Moor

Title: President and CEO

**KPMG Inc., in its capacity as Court appointed liquidator of the business in Canada of Maple Bank GmbH and its assets as defined under section 618 of the *Bank Act***

Per:



---

Name: Nicholas Brearton

Title: President

## **Acknowledgement and Confirmation**

ACKNOWLEDGEMENT AND CONFIRMATION  
SUCCESSOR ISSUER AGREEMENT

TO: CANADA MORTGAGE AND HOUSING CORPORATION ("**CMHC**")

AND TO: EQUITABLE BANK ("**SI Corp**")

RE: Successor Issuer Agreement dated September 12, 2016 made between CMHC and SI Corp. (as amended, supplemented or amended and restated from time to time, "**SI Agreement**")

**WHEREAS** pursuant to the section 10.03 of the SI Agreement CMHC has confirmed to SI Corp that it has procured the agreement of the Liquidator to, inter alia, diligently pursue the motion for the Court Order;

**AND WHEREAS** SI Corp has requested a confirmation of the agreements of the Liquidator with respect to the Court Order;

NOW THEREFORE WITNESSETH THAT for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Liquidator, the Liquidator hereby acknowledges, confirms and agrees in favour of CMHC and SI Corp as follows:

1. Each capitalized term used in this acknowledgement and confirmation that is not otherwise defined herein shall have the meaning ascribed thereto in the SI Agreement.
2. Subject to Section 4 below, the Liquidator hereby agrees as follows:
  - (a) It will diligently pursue the motion for the Court Order;
  - (b) It will provide SI Corp. and its counsel a reasonable opportunity to review and comment upon drafts of the notice of motion relating to the motion for, the service list for the motion for, and the form of, Court Order and give reasonable consideration to any comments made by SI Corp. and its counsel;
  - (c) It will provide SI Corp.'s counsel on a timely basis with copies of any notice of appearance and evidence served on the Liquidator or Maple Bank, as applicable, or their respective legal counsel in respect of the motion for the Court Order;
  - (d) It will not object to SI Corp.'s counsel making such submissions on the hearing of the motion for the Court Order as such counsel considers appropriate, provided that Liquidator is advised of the nature of any submissions within a reasonable period prior to the hearing and such submissions are consistent with this Agreement, the Maple Assets PSA and the submissions of the Liquidator; and
  - (e) upon receipt of a certificate from CMHC confirming that the Transaction has closed, the Liquidator shall promptly deliver to SI Corp and CMHC the Liquidator's Certificate

substantially in the form attached as Schedule A to the Court Order, with such changes as may be agreed between the Liquidator, CMHC and SI Corp.

3. This acknowledgement and confirmation shall terminate concurrently with the earlier of (a) a termination of the SI Agreement, or (b) the Closing of the Transactions under the SI Agreement.
4. This acknowledgement and confirmation is provided on the condition and basis that, the Liquidator has no liability of any nature or kind to CMHC, SI Corp. or any other Person in the event of a breach of the Liquidator's undertakings hereunder.
5. No third party shall be entitled to claim any benefit or rights under this acknowledgement and confirmation.

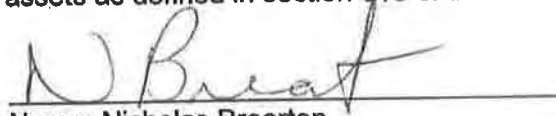
Dated this 12<sup>th</sup> day of September, 2016.

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**KPMG INC.**, solely in its capacity as court-appointed liquidator of the business in Canada of Maple Bank GmbH and its assets as defined in section 618 of the *Bank Act*

Per:

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Name: Nicholas Brearton

Title: President

# Tab 2-F

**This is Appendix “F” to the  
Sixth Report of the Liquidator Dated September 19, 2016**

**AGREEMENT OF PURCHASE AND SALE  
(MAPLE ASSETS)**

**THIS AGREEMENT** is dated September 12, 2016.

**BETWEEN:**

**KPMG INC.**, solely in its capacity as court-appointed liquidator of the business in Canada of **Maple Bank GmbH** and its assets as defined in section 618 of the *Bank Act*

(the "**Seller**")

- and -

**Equitable Bank**, a bank existing under the laws of Canada (the "**Buyer**")

**CONTEXT:**

- A.** Maple Bank GmbH ("**Maple Bank**") is a Canadian-owned German bank and an "authorized foreign bank" in Canada under section 2 and Part XII.1 of the *Bank Act* (Canada). As a German bank, Maple Bank is subject to regulation in Germany by the Federal Financial Supervisory Authority ("**BaFin**"). As an authorized foreign bank under the *Bank Act*, Maple Bank is regulated with respect to its business in Canada by the Office of the Superintendent of Financial Institutions ("**OSFI**").
- B.** On February 10, 2016, BaFin advised OSFI that it filed for insolvency proceedings in Germany in respect of Maple Bank based on the admission of Maple Bank of its impending insolvency and with Maple Bank's consent. On February 11, 2016 the German Court issued an order commencing insolvency proceedings and appointing an Insolvency Administrator over Maple Bank.
- C.** Upon application by the Attorney General of Canada, pursuant to section 10.1 of the *Winding Up and Restructuring Act* ("**WURA**"), on February 16, 2016 the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made a winding-up order (the "**Winding-Up Order**"): (a) that the business in Canada (the "**Business**") of Maple Bank (the "**Toronto Branch**") be wound up and that its assets, as defined under section 618 of the *Bank Act* (Canada) be liquidated; and, (b) appointing KPMG Inc. ("**KPMG**") as the liquidator (the "**Liquidator**") of the Toronto Branch under section 23 of WURA.
- D.** Pursuant to an Order dated April 5, 2016, the Court: (a) approved a marketing process (the "**Marketing Process**") for the sale of certain of the assets of the Toronto Branch (collectively, the "**Toronto Branch Assets**"); and, (b) authorized and directed the Liquidator to implement and carry out the terms of the Marketing Process for sale of the Toronto Branch Assets.
- E.** Concurrently with entering into this Agreement, the Buyer and CMHC entered into the Successor Issuer Agreement.
- F.** Subject to the issuance of the Approval and Vesting Order (as defined below) and other terms and conditions of this Agreement, the Seller has agreed to sell to the Buyer, and the Buyer has

agreed to purchase from the Seller, all of the Maple Bank's right, title and interest in and to the Purchased Assets, on the terms and conditions set out in this Agreement.

**THEREFORE**, the Parties, hereto, agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement the following terms have the following meanings:

**"Additional Defaulted Mortgages"** means such additional mortgages of Maple Bank in default that the Parties agree in writing, after the date of this Agreement, will be purchased by the Buyer from the Seller at Closing as a Defaulted Mortgage.

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

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

**"Approval and Vesting Order"** is defined in Section 5.3.1.

**"Assignment and Assumption Agreement"** means an assignment substantially in the form attached as Exhibit "A".

**"Business"** is defined in the context of this Agreement.

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

**"Cash Equivalents"** means any of the following:

- (a) marketable direct obligations issued by, or unconditionally guaranteed by, the Canadian Government or the government of a province of Canada or issued by any agency thereof and backed by the full faith and credit of Canada or a province of Canada, as the case may be, in each case maturing within three months from the date of acquisition;
- (b) certificates of deposit, time deposits or overnight bank deposits having maturities of three months or less from the date of acquisition issued by any bank listed on Schedule I to the Bank Act (Canada); or
- (c) bankers acceptances accepted by any bank listed on Schedule I to the Bank Act (Canada) having a term of not more than three months issued by an issuer rated at

least A-1+ by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. ("S&P"), P-1 by Moody's Investors Service, Inc. ("Moody's"), or R-1 (High) by Dominion Bond Rating Service Limited ("DBRS").

**"CMHC"** means Canada Mortgage Housing Corporation.

**"Closing"** means the successful completion of the Transaction.

**"Closing Date"** means:

- (a) the seventeenth (17<sup>th</sup>) Business Day of the month in which the Approval and Vesting Order is granted as required pursuant to Section 5.3.1 unless the Approval and Vesting Order is granted after the fifth (5<sup>th</sup>) Business Day of such month, in which case the Closing Date shall be the seventeenth (17<sup>th</sup>) Business Day of the immediately following month; or
- (b) such other date as may be agreed between the Parties;

provided that:

- (i) the Closing Date shall be the same as the "Closing Date" under the Successor Issuer Transaction and if the "Closing Date" for the Successor Issuer Transaction is postponed, then the Closing Date hereunder shall be postponed to the same date (also a "**Delayed Closing Date**"); and
- (ii) if all of the conditions precedent set out in Section 5.3 are not satisfied or waived on the Closing Date determined in accordance with subsection (a) of this definition or the Delayed Closing Date determined in accordance with clause (i) of this definition, then the Closing Date shall be the seventeenth (17<sup>th</sup>) Business Day of the month in which (A) all of such conditions precedent have been or will be satisfied or waived, and (B) each of the Parties have performed their obligations under Sections 2.3.1 and 2.3.2 in such month, or such other date as may be agreed by the Parties (also a "**Delayed Closing Date**").

**"Communication"** means any notice, demand, request, consent, approval or other communication which is required or otherwise contemplated by this Agreement to be given or made by a Party.

**"Computershare"** means Computershare Trust Company of Canada.

**"Confidentiality Agreement"** means the confidentiality agreement dated April 15, 2016 between the Buyer, the Liquidator and CMHC.

**"Consents"** means:

- (a) with respect to the Lakeview Assets, the consents from Trez Capital Limited Partnership and Lakeview Mortgage Funding Inc. contemplated under Section 3.3 of the intercreditor agreement dated January 15, 2016 between Maple Bank GmbH, Toronto Branch, Trez Capital (2011) Corporation, in its capacity as general partner of Trez Capital Limited Partnership, Lakeview Mortgage Funding Inc. and Computershare Trust Company of Canada, in its capacity as trustee of Lakeview Mortgage Funding

Trust I, by its administrative agent, Lakeview Mortgage Funding Inc. substantially in the forms attached as Exhibit "C", with such amendments thereto as may be acceptable to the Buyer, acting reasonably.

- (b) with respect to the Origination Agreements and Servicing Agreements, the consents from each originator and servicer under each Origination Agreement and Servicing Agreement, respectively, to the assignment of such agreement by the Seller to the Buyer, substantially in the form attached as Exhibit "D", with such amendments thereto as may be acceptable to the Buyer, acting reasonably, or such other form as may be agreed between the Seller, the Buyer and the applicable originator or servicer.

"**Court**" is defined in the context of this Agreement.

"**Delayed Closing Date**" is defined in the definition of Closing Date.

"**Defaulted Mortgages**" means the mortgages described in Schedule 3.

"**Defaulted Mortgages Purchase Price**"

"**Deposit**" is defined in Section 2.3.3(a).

"**Designated NHA MBS**" means the NHA MBS described in Schedule 4, being the NHA MBS which may be withdrawn from the purchase and sale of NHA MBS under this Agreement.

"**Directions**" means, collectively, in form and substance reasonably satisfactory to the Seller, Buyer and, as applicable, Computershare:

- (a) Notice to Computershare that the NHA MBS have been transferred by the Seller to the Buyer;
- (b) Notice and Direction by the Seller to Lakeview Mortgage Funding Trust I, Lakeview Mortgage Funding Inc., Trez Capital Limited Partnership and Paradigm Quest Inc. (i) that Maple Bank's right, title and interest in the Lakeview Assets has been assigned to the Buyer and (ii) providing particulars of the new "Senior Distribution Account" designated by the Buyer for the purposes of, and as defined in, the Lakeview Loan Documents as the replacement for the Lakeview Senior Distribution Account as of the Closing Date;
- (c) Notice to each of the parties (other than Maple Bank) to each Origination Agreement and Servicing Agreement that Maple Bank's right, title and interest in the Origination Agreements and/or Servicing Agreements, as applicable, to which such persons are a party has been transferred by the Seller to the Buyer; and
- (d) Notice to Computershare that Maple Bank's right, title and interest in the Origination Agreements has been transferred by the Seller to the Buyer.

"**Encumbrances**" means any liens, claims, charges, demands, security interests, pledges, hypothecations, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), executions, levies, charges and encumbrances of any nature and kind whatsoever.

**"Evaluation Materials"** has the meaning set out in the Confidentiality Agreement.

**"Governmental Authority"** means:

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

**"HST"** means harmonized tax exigible pursuant to Part IX of the *Excise Tax Act* (Canada) as applicable in the Province of Ontario.

**"Lakeview Assets"** means, collectively:

- (a) The Lakeview Loan;
- (b) The Lakeview Loan Documents

and includes, for greater certainty, the Lakeview Reserve Amount and any and all Encumbrances granted as security in respect of the Lakeview Loan.

**"Lakeview Credit Agreement"** means the credit and security agreement dated January 15, 2016 between Lakeview Mortgage Funding Trust I, Lakeview Mortgage Funding Inc. and Maple Bank.

**"Lakeview Loan"** means, at any time, all indebtedness and liabilities owing by Lakeview Mortgage Funding Trust I to Maple Bank under the Lakeview Credit Agreement at such time.

**"Lakeview Loan Documents"** means, collectively, the Lakeview Credit Agreement and the documents listed on Schedule 1.

**"Lakeview Loan Purchase Price"**

**"Lakeview Reserve Amount"** means the amount of \$181,544.29 held by the Seller as the "Reserve Amount" as defined in the Lakeview Credit Agreement.

**"Lakeview Senior Distribution Account"** means the "Senior Distribution Account" as defined in, and established by Maple Bank under, the Lakeview Credit Agreement.

**"Lakeview Statement of Adjustments"** is defined in Section 2.3.1.

**"Liquidator"** is defined in the context of this Agreement.



**"Liquidator's Sale Certificate"** means the certificate, substantially in the form attached as Schedule "A" to the Approval and Vesting Order (which is attached to this Agreement as Exhibit "B"), to be completed by the Liquidator and delivered to the Buyer on the Closing Date and later filed with the Court, pursuant to which the Liquidator confirms that the conditions to Closing have been satisfied or waived.

**"Maple Bank"** is defined in the context of this Agreement.

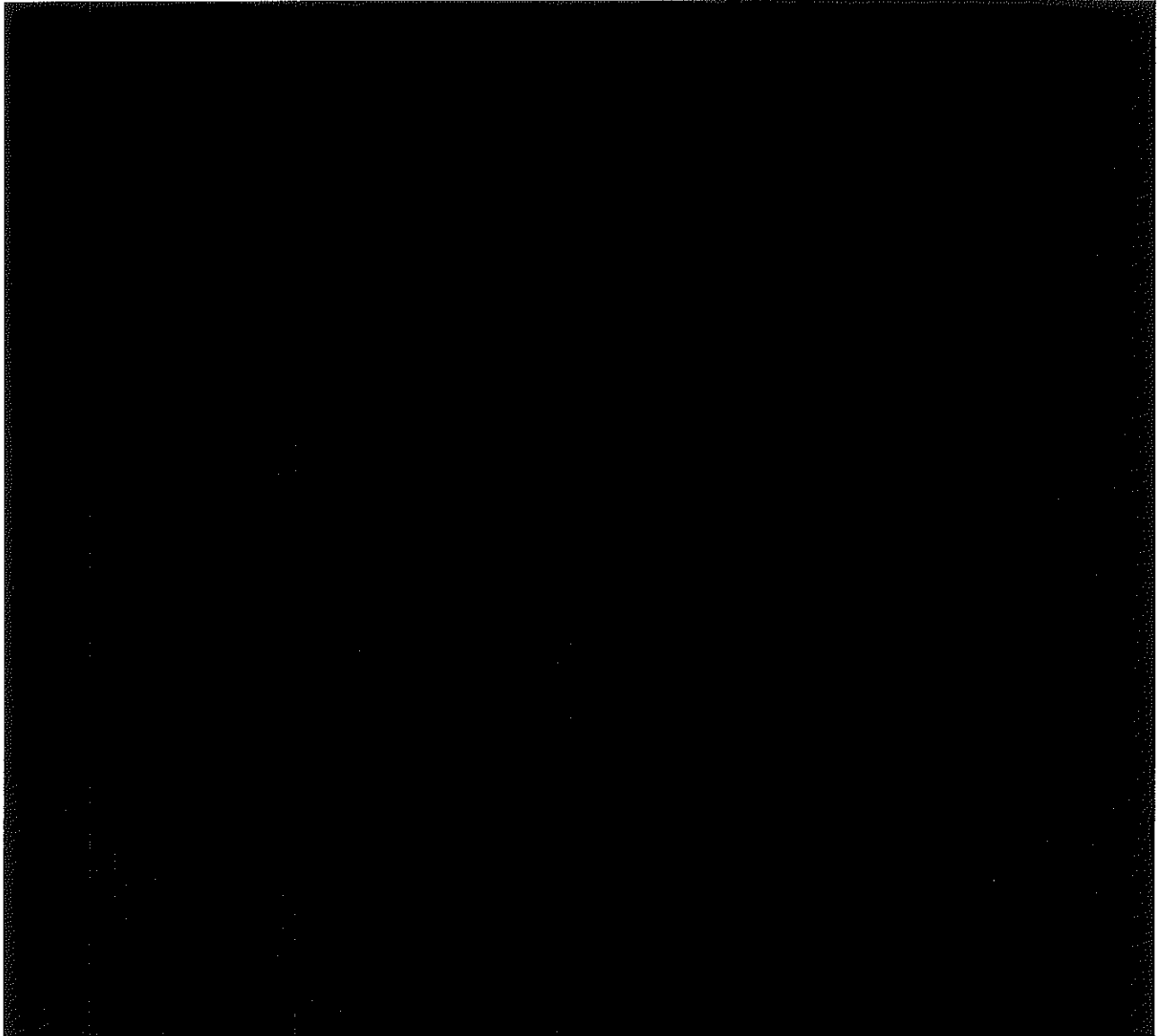
**"Marketing Process"** is defined in the context of this Agreement.

**"MyNext Origination Agreement"** means the Master Mortgage Purchase Agreement dated May 24, 2011 between Maple Bank and myNext Mortgage Premier Trust, as amended by First Amending Agreement dated December 21, 2011, Second Amending Agreement dated November 12, 2012, Third Amending Agreement dated May 23, 2013 and supplemented by Letter dated November 2, 2015 from Maple Bank to myNext Mortgage Premier Trust.

**"NHA MBS"** means (a) the mortgage backed securities issued by Maple Bank under the National Housing Act Mortgage Backed Securities Program described in Schedule 2 which as of August 2, 2016 were in the aggregate outstanding principal amount of \$114,470,919.00, less (b) all Withdrawn NHA MBS.

**"NHA MBS Purchase Price"**





**"Origination Agreements"** means, collectively, the master mortgage purchase agreements, and related agreements described in Schedule 5 hereto.

**"Origination Reserve Amounts"** means, as of the Closing Date, the sum of the "GFC Reserve Amount" as defined in each Origination Agreement held by the Seller as of the Closing Date, plus in the case of the Origination Agreement with myNext Mortgage Premier Trust, the "CGM" Reserve Amount as defined in such agreement held by the Seller as of the Closing Date, which Reserve Amounts as of July 31, 2016 based on the records of Maple Bank are as set out in Schedule 6 hereto.

**"Origination Reserve Excess"** means:

- (a) in the case of the Origination Agreements with each of Paradigm Quest Inc., Bridgewater Bank and CFF Bank, the "GFC Reserve Excess" as defined in each of those Origination Agreements; and

- (b) in the case of the Origination Agreement with myNext Mortgage Premier Trust, the "GFC Reserve Excess" and the "CGM Reserve Excess" as each such term is defined in that Origination Agreement.

**"Origination/Servicing Purchase Price"**

**"Outside Date"** means the "Outside Date" under the Successor Issuer Agreement.

**"Parties"** means the Sellers and the Buyer, and **"Party"** means either one of them.

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

**"Post-Closing Adjustments"** is defined in Section 2.6.3.

**"Post-Closing Adjustment Period"** is defined in Section 2.6.3.

**"Purchased Assets"** means, collectively:

- (a) the Lakeview Assets;
- (b) the NHA MBS;
- (c) the Origination Agreements (and, for certainty, the Origination Reserve Amounts);
- (d) the Servicing Agreements; and
- (e) the Defaulted Mortgages and Additional Defaulted Mortgages (if any).

**"Purchase Price"** means the aggregate of the Lakeview Loan Purchase Price, the NHA MBS Purchase Price, the Origination/Servicing Purchase Price, and the Defaulted Mortgages Purchase Price.

**"Ratewise/Simplicity Mortgage Closing Payment"** means:

- (a) With respect to the MyNext Origination Agreement, the sum of \$790,526.36 relating to obligations of Maple Bank to pay purchase price adjustments for Ratewise Mortgage Loans (as defined under the MyNext Origination Agreement) to MyNext Mortgage Premier Trust in certain circumstances from time to time under the MyNext Origination Agreement following Closing which are being assumed by the Buyer pursuant to the Transaction; and
- (b) With respect to the Xceed Origination Agreement, the sum of \$17,600.87 relating to obligations of Maple Bank to pay purchase price adjustments for Simplicity Mortgage Loans (as defined under the Xceed Origination Agreement) to Xceed Mortgage Corporation in certain circumstances from time to time under the Xceed Origination Agreement following Closing which are being assumed by the Buyer pursuant to the Transaction.

**"Servicing Agreements"** means, collectively, the mortgage administration agreements and related agreements described in Schedule 7 hereto.

**"Successor Issuer Agreement"** means the successor issuer agreement dated September 12, 2016 between CMHC and the Buyer, as the same may be amended, supplemented or restated from time to time.

**"Successor Issuer Transaction"** means the appointment by CMHC of the Buyer as, and the assumption by the Buyer of Maple Bank's rights and obligations as, the "Successor Issuer" of the outstanding mortgaged backed securities issued by Maple Bank under the National Housing Act Mortgage Backed Securities Program, in each case pursuant to the Successor Issuer Agreement.

**"Taxes"** means all taxes (including withholding taxes), duties and other charges levied on or measured by, or referred to as transfer, land transfer, registration charges, gross receipt, sales, retail sales, use, consumption, HST, value-added, and excise or stamp duty.

**"Time of Closing"** means 2 p.m. (EDT) on the Closing Date or such other time on the Closing Date as the Parties may mutually agree.

**"Toronto Branch"** is defined in the context of this Agreement.

**"Toronto Branch Assets"** is defined in the context of this Agreement.

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

**"Winding-Up Order"** is defined in the context of this Agreement.

**"Withdrawn NHA MBS"** means all or such portion of the Designated NHA MBS that the Seller has notified the Buyer as being Designated NHA MBS which are being withdrawn from the sale and purchase of NHA MBS under this Agreement pursuant to Section 2.1.5 of this Agreement.

**"Withholding Escrow Agent"** means the Seller.

**"Withholding Escrow Agreement"** means the escrow agreement to be entered into on Closing between the Parties and the Withholding Escrow Agent substantially in the form attached as Exhibit "F", with such changes as may be agreed by the Parties and the Withholding Escrow Agent.

**"Withholding Escrow Amount"** means 25% of the aggregate amount of the Lakeview Loan Purchase Price and the NHA MBS Purchase Price.

**"WURA"** is defined in the context of this Agreement.

**"Xceed Origination Agreement"** means the Master Mortgage Purchase Agreement dated May 26, 2011 between Maple Bank and Xceed Mortgage Corporation, as amended by First Amending Agreement dated August 27, 2012 and Second Amending Agreement dated May 20, 2014.

## **1.2 Entire Agreement**

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

## **1.3 Time of Day**

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

## **1.4 Business Day**

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

## **1.5 Governing Law**

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province.

## **1.6 Certain Rules of Interpretation**

- 1.6.1 In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".
- 1.6.2 The division of this Agreement into Articles and Sections, the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- 1.6.3 References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.
- 1.6.4 Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends.
- 1.6.5 Unless otherwise specified, any reference in this Agreement to any statute includes all regulations made under or in connection with that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced.

## 1.7 Schedules and Exhibits

The following is a list of Schedules and Exhibits:

<u>Schedule</u>	<u>Subject Matter</u>
Schedule 1	Lakeview Loan Documents
Schedule 2	NHA MBS
Schedule 3	Defaulted Mortgages
Schedule 4	Designated NHA MBS
Schedule 5	Origination Agreements
Schedule 6	Origination Reserve Amounts
Schedule 7	Servicing Agreements

<u>Exhibit</u>	<u>Subject Matter</u>
Exhibit "A"	Assignment and Assumption Agreement
Exhibit "B"	Approval and Vesting Order
Exhibit "C"	Form of Lakeview Consent
Exhibit "D"	Forms of Consent for Origination Agreements and Servicing Agreements
Exhibit "E"	Form of Withholding Escrow Agreement

## ARTICLE 2 SALE AND PURCHASE AND ASSIGNMENT

### 2.1 Sale and Purchase of Purchased Assets

2.1.1 Subject to the terms and conditions of this Agreement, the Seller will sell, transfer and assign all right, title and interest of Maple Bank in and to the Purchased Assets to the Buyer and the Buyer will purchase all right, title and interest of Maple Bank in and to the Purchased Assets on the Closing Date, all without recourse to, and except as expressly provided in this Agreement, without representation or warranty from, the Seller or Maple Bank. The Buyer acknowledges that it is not purchasing any property or assets of Maple Bank pursuant to this Agreement other than the Purchased Assets.

2.1.2 With effect as of the Closing Date (but in each case whether accrued, arising, or relating to a period, before or after the Closing Date), on and after Closing:

- (a) the Buyer will:
  - (i) succeed to all the rights and benefits of Maple Bank under the Purchased Assets and, except as otherwise provided under Section 2.1.3, assume and be obligated to perform, and will perform, all of the covenants and obligations of Maple Bank under the Purchased Assets; and
  - (ii) be the "Lender" under the Lakeview Credit Agreement, in place of Maple Bank.

- (b) except as otherwise provided under Section 2.1.3, the obligations (if any) of each of the Seller and Maple Bank under the Purchased Assets will be assumed in full and the Seller and Maple Bank will relinquish their rights under the Purchased Assets in full, without any novation whatsoever; and
- (c) any steps or decisions taken, and any suit, action or proceeding initiated, by the Buyer arising out of, under, or in connection with any of the Purchased Assets will be in the name of the Buyer only and not in the name of the Seller and/or Maple Bank.

2.1.3 The Buyer shall not assume any monetary obligation or liability under the Purchased Assets arising from a default by the Seller or Maple Bank thereunder prior to the Closing Date and to the extent required in connection with such default, the Seller and Maple Bank shall retain such rights thereunder to contest, settle or otherwise compromise or satisfy such retained obligations or liabilities (including the right to claim set-off against any of the rights or revenues owing to any applicable counterparty prior to the Closing Date).

2.1.4 Except for the covenants and obligations of the Seller and Maple Bank in respect of the Purchased Assets to be expressly assumed by the Buyer at Closing, the Buyer shall not assume and shall have no obligation to discharge, perform or fulfil any liabilities, obligations or covenants, contingent or otherwise, of the Seller or Maple Bank, which liabilities, obligations or covenants, contingent or otherwise shall be and remain the responsibility of the Seller and Maple Bank.

2.1.5 The Buyer agrees that the Seller has the right to withdraw from the purchase and sale of the NHA MBS under this Agreement all or any portion of the Designated NHA MBS by delivering a notice in writing to the Buyer specifying the Designated NHA MBS to be withdrawn at any time on or prior to the third Business Day before the Closing Date.

2.1.6 The Parties acknowledge that, as of the date hereof, the counterparties (other than Xceed Mortgage Corporation) under their respective Origination Agreements are entitled to return of an Origination Reserve Excess and agree that immediately prior to, or concurrently with, the Closing, the Liquidator shall return to each applicable counterparty to an Origination Agreement, the Origination Reserve Excess due to it under its Origination Agreement as of the Closing Date, such that only the remaining balance of the Origination Reserve Amounts are transferred to the Buyer pursuant to the terms hereof. As of July 31, 2016, the Origination Reserve Excess under each applicable Origination Agreements based on the records of Maple Bank is set out in Schedule 6 as "Origination Reserve Excess as of July 31, 2016".

2.1.7 The Seller agrees to pay to the Buyer concurrently with Closing the Ratewise/Simplicity Mortgage Payment in immediately available funds.

## **2.2 "As is, Where is"**

The Buyer acknowledges that the Seller is selling the Purchased Assets on an "as is, where is" basis as they exist on the Closing Date without recourse to the Seller or Maple Bank, and upon Closing, the Seller and Maple Bank will have no further liability to the Buyer other than pursuant to Section 2.6. The Buyer further acknowledges that it has entered into this Agreement and will acquire the Purchased Assets on the basis that the Seller and Maple Bank make no representation or warranty (except as

expressly set out herein) and assume no responsibility (except as expressly set out herein) with respect to any statements, warranties, or representations made in connection with, or any of the books and records relating to, any of the Purchased Assets or the legality, validity, enforceability, priority, sufficiency, value, assignability, condition or any other matter whatsoever of, related to, or respect of (a) any of the Purchased Assets, (b) any deed, agreement, instrument or document furnished under or in connection with any of the Purchased Assets, (c) any of the rights or mortgages, charges, assignments, hypothecs or other security interests granted under or in connection with any of the Purchased Assets, (d) any of the real, immoveable, moveable, intangible or intangible property backing or securing any of the Purchased Assets, or (e) withholding, HST or other Taxes of any nature or kind exigible, deductible or payable in connection with or arising out of the Transaction and owed by the Buyer. For certainty, the Seller and Maple Bank make no representation or warranty in connection with, and assume no responsibility with respect to, any governmental or other guarantees of, or insurance for, any of the Purchased Assets or backing or securing any of the Purchased Assets, the rights or obligations of the servicers, originators or Maple Bank under any of the Purchased Assets, the status of any of the Purchased Assets including as to any defaults thereunder by any party, the sufficiency of the Origination Reserve Amounts or Lakeview Reserve Amount, or the solvency, financial condition or statements of or the existence of defaults by any of the mortgagors, borrowers, guarantors, servicers, originators or other obligors, covenants or counterparties under any of the Purchased Assets or backing or securing any of the Purchased Assets.

No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality, assignability or in respect of any other matter or thing concerning the Purchased Assets or the right of the Seller to sell them, save as expressly represented or warranted in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or under any other applicable law in Canada, the Province of Ontario or any other jurisdiction in which Purchased Assets are located do not apply to the Transaction and have been waived by the Buyer. The description of the Purchased Assets contained in the Schedules is for purposes of identification only. No representation, warranty or condition has or will be given by the Seller concerning the completeness or accuracy of those descriptions.

The Buyer acknowledges and agrees that it has conducted all due diligence with respect to the Purchased Assets that it deemed appropriate, has satisfied itself with regard to all matters relating to the Purchased Assets that it deemed necessary or desirable and has made its own independent credit and legal analysis and decision to enter into this Purchase Agreement and consummate the Transaction.

## **2.3 Payment and Purchase Price**

### **2.3.1 With respect to the Lakeview Assets:**

- (a) At least five (5) Business Days prior to the Closing Date, the Seller will provide to the Buyer a reasonably detailed calculation of the Lakeview Loan Purchase Price on an indicative basis, together with a draft statement of adjustments setting out the adjustments to the Lakeview Loan Purchase Price in accordance with Section 2.6.2 ("**Lakeview Statement of Adjustments**").
- (b) On or before 11:00 am on the Closing Date, the Seller will provide to the Buyer a reasonably detailed calculation of the Lakeview Loan Purchase Price which the Buyer shall be entitled to review and, if the Buyer disagrees with such



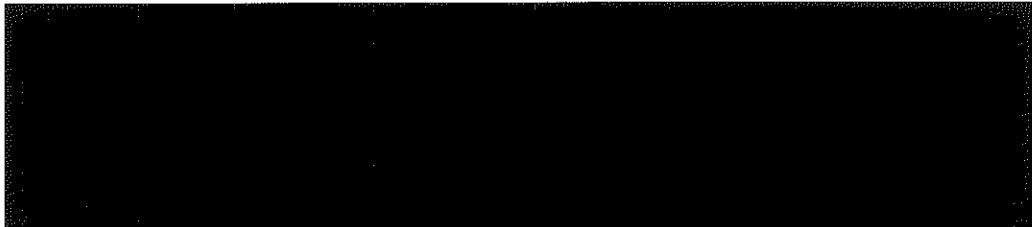
calculation, dispute the same. Each of the Parties agree to use good faith efforts to agree upon the Lakeview Loan Purchase Price on the Closing Date.

**2.3.2 With respect to the NHA MBS:**

- (a) On or before the eighth (8<sup>th</sup>) Business Day of the month within which the Closing Date is expected to occur, the Seller will provide to the Buyer, confirmation of the outstanding balance of the NHA MBS as of the second Business Day of such month;
- (b) On or before the third (3<sup>rd</sup>) Business Day immediately preceding the Closing Date, the Buyer will provide to the Seller a reasonably detailed calculation of the NHA MBS Purchase Price on an indicative basis; and
- (c) On or before 11:00 am on the Closing Date, the Buyer will provide to the Seller a reasonably detailed calculation of the NHA MBS Purchase Price which the Seller shall be entitled to review and, if the Seller disagrees with such calculation, dispute the same. Each of the Parties agree to use good faith efforts to agree upon the NHA MBS Purchase Price on the Closing Date.

**2.3.3 At or prior to the Time of Closing as specified below, the Buyer will pay the Purchase Price to the Seller as follows:**

(a)



(b) the balance of the Purchase Price less the Withholding Escrow Amount will be paid upon Closing in immediately available funds.

**2.3.4 Except as provided under Section 2.7.1, the Purchase Price and all other payments to be made under this Agreement will be made without set-off or counterclaim and without deduction for any Taxes, levies, duties, fees, deductions, withholdings, restrictions, or conditions of any nature whatsoever.**

**2.3.5 The Origination/Servicing Purchase Price will be allocated between the Origination Agreements and Servicing Agreements as follows:**

(a)



(b)

**2.4 Investment of Deposit**

The Seller agrees to invest the Deposit including any interest or other proceeds earned thereon, in (a) an interest bearing deposit account with a Canadian chartered bank listed in Schedule 1 to the Bank Act (Canada), or (b) Cash Equivalents, or (c) any combination of the foregoing, as the Seller may determine in its discretion, in each case segregated from any other funds of the Seller or Maple Bank.

Upon request by the Buyer, Seller agrees to provide the Buyer with full particulars of such investments from time to time.

## **2.5 Application of Deposit**

2.5.1 On Closing, the Seller shall apply the Deposit and any interest or other proceeds earned thereon towards the Purchase Price payable by the Buyer. If this Agreement is terminated by the Seller, or the Closing does not occur by the Outside Date:

- (a) solely as a result of the Buyer's failure to satisfy the conditions under Section 5.2.1 or 5.2.2;
- (b) solely as a result of the condition under Section 5.3.4 not being satisfied solely as a result of the Successor Issuer Agreement having been terminated by CMHC pursuant to Section 10.04(b) or 10.06 of the Successor Issuer Agreement as a result of a breach by the Buyer; or
- (c) the Seller terminating this Agreement pursuant to Section 5.4.2 or 6.6, or this Agreement terminating on the Outside Date pursuant to Section 6.5.1, in each case solely as a result of a breach by the Buyer,

then the Deposit, together with interest or other proceeds earned thereon, shall be forthwith forfeited, and retained by the Seller without any set-off, abatement or deduction whatsoever. The Seller will not be entitled to assert or institute any other claim, action, right or remedy against the Buyer as a result of the non-completion of or otherwise in connection with the Transaction. The Parties agree that the amount of the Deposit is a genuine pre-estimate of the damages that would be suffered by the Seller in the event of a default by the Buyer.

2.5.2 If the Agreement is terminated, or fails to Close by the Outside Date, in any other circumstances, then the Deposit and all interest or other proceeds earned thereon shall forthwith be delivered to the Buyer upon termination of the Agreement or the Outside Date, as the case may be, without any set-off, abatement or deduction whatsoever, and thereafter, neither Party shall have any further claim, action, right or remedy against the other under this Agreement.

## **2.6 Closing Adjustments and Payments**

2.6.1 The Buyer acknowledges and agrees that the Seller shall continue to collect all payments under the Purchased Assets until the Closing Date and shall not be required by the Buyer to hold such payments in trust or in a segregated account.

2.6.2 The following adjustments shall be made to the Lakeview Loan Purchase Price as of the Closing Date:

- (a) The Seller shall receive a credit for all interest accrued under the Lakeview Credit Agreement for any period prior to the Closing Date and remaining unpaid (whether or not then due) on Closing.

2.6.3 The Parties hereby agree to adjust all estimated, projected or assumed amounts and all errors or omissions in the Lakeview Statement of Adjustments (the "**Post-Closing**

**Adjustments**) as soon as practicable following Closing and in any event within forty-five (45) Business Days after the Closing Date (the "**Post-Closing Adjustment Period**"), and the Seller or Buyer (as applicable) shall make all necessary payments in respect of such Post-Closing Adjustments in immediately available funds within five (5) Business Days thereafter. No claim for adjustment shall be made by either the Seller or Buyer after expiry of the Post Closing Adjustment Period. The Parties agree to provide such information to each other with respect to the Purchased Assets as may necessary or desirable to determine and agree on the Post-Closing Adjustments.

- 2.6.4 Each Party agrees to pay to the other Party any amounts received under the Purchased Assets on or after the Closing Date to which such other Party is entitled pursuant to the terms of this Agreement as soon as practicable following receipt including, without limitation, in the case of the Seller, all amounts that may be paid into the Lakeview Senior Distribution Account from time to time following Closing.

## **2.7 Taxes**

- 2.7.1 The parties acknowledge that the Purchaser will at Closing deduct and withhold from the Purchase Price the Withholding Escrow Amount and that the Purchaser may be required to remit all or a portion of such amount to the Canada Revenue Agency pursuant to section 116 of the *Income Tax Act* (Canada). At Closing, the Buyer shall deliver the Withholding Escrow Amount to the Withholding Escrow Agent and the Parties shall enter into the Withholding Escrow Agreement with the Withholding Escrow Agent to provide for the holding, investment and payment of such amount in accordance with the Withholding Escrow Agreement.
- 2.7.2 The Buyer will pay upon Closing, in addition to the Purchase Price, all Taxes applicable to, or payable by, the Buyer under Applicable Law (if any) exigible directly in connection with the purchase and sale of the Purchased Assets. Without limiting the generality of the foregoing, HST (if applicable) shall be in addition to, and not included in, the Purchase Price, and shall be collected and remitted in accordance with the *Excise Tax Act* (Canada).
- 2.7.3 Without limiting or affecting the obligations of the Buyer under Sections 2.7.2 and 2.7.4, the Seller will not collect provincial sales taxes to the extent the Buyer provides the Seller with documentation sufficient to claim exemption under Applicable Law.
- 2.7.4 The Buyer agrees to indemnify and save the Seller harmless from and against all claims and demands for payment of all Taxes payable by the Buyer under Section 2.7.2 in connection with the purchase and sale of the Purchases Assets, including HST, penalties and interest and any liability or costs incurred as a result of any failure to pay those taxes when due. This indemnity shall survive the Closing and any termination or repudiation of this Agreement.
- 2.7.5 For certainty, the Buyer shall not be responsible for any taxes owing by Seller or Maple Bank relating to the Purchased Assets incurred or assessed prior to the Closing Date.

**ARTICLE 3  
REPRESENTATIONS AND WARRANTIES**

**3.1 Buyer's Representations**

The Buyer acknowledges, represents and warrants to the Seller as of the date of this Agreement and as of the Closing Date that:

- 3.1.1 the Buyer is a Schedule I bank, duly organized and subsisting under the laws of its jurisdiction of incorporation;
- 3.1.2 the Buyer has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations and the execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Buyer;
- 3.1.3 the Buyer has obtained all necessary regulatory approvals from the applicable regulatory authorities to enable it to enter into this Agreement and to perform its obligations hereunder;
- 3.1.4 the Buyer is not a party to, bound or affected by or subject to:
  - (a) any charter, certificate of incorporation or by-law of the Buyer; or
  - (b) any Applicable Law; or
  - (c) any mortgage, indenture, indebtedness, agreement, or instrument,  
  
which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance by it of any of the terms contained in this Agreement, except in the case of Section 3.1.4(c), any violation, contravention or breach which would not have a material adverse affect on its capacity to carry out its obligations under this Agreement;
- 3.1.5 as of the date of this Agreement, no actions or proceedings are pending against or which involve the Buyer or to the best of its knowledge have been threatened in writing against or which involve the Buyer to restrain or prohibit the completion of the Transaction;
- 3.1.6 this Agreement and each of the other documents contemplated under this Agreement to which the Buyer is or will be a party have been or will be, as at the Time of Closing, duly and validly executed and delivered by the Buyer and constitutes or will, as at the Time of Closing, constitute legal, valid and binding obligations of the Buyer, as the case may be, enforceable in accordance with its terms; and
- 3.1.7 the Buyer is a sophisticated party capable of making its own assessments in respect of entering into this Agreement and the Transaction and, to that end, it has relied solely upon its own independent review, investigation and inspection of all documents and information relating to the Purchased Assets and except for the representations, warranties and covenants set out herein it has not relied upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether

express or implied (by operation of law or otherwise), regarding the Purchased Assets, or the completeness of any information provided in connection therewith except as expressly set out in this Agreement. For certainty, for the purposes of the Successor Issuer Agreement, the Buyer has relied upon the representations, warranties and covenants set out in the Successor Issuer Agreement with respect to the NHA MBS.

### **3.2 Seller's Representations**

The Seller represents and warrants to the Buyer as of the date of this Agreement and as of the Closing Date that:

- 3.2.1 upon the granting of the Approval and Vesting Order, the Seller has the right to enter into this Agreement and to complete the Transaction and this Agreement and each of the other documents contemplated under this Agreement to which the Seller is or will be a party have been or will be, as at the Time of Closing, duly and validly executed and delivered by the Seller and constitutes or will, as at the Time of Closing, constitute legal, valid and binding obligations of the Seller, as the case may be, enforceable in accordance with its terms;
- 3.2.2 Maple Bank is a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada);
- 3.2.3 as of the date of this Agreement, no actions or proceedings are pending and to the best of the Seller's knowledge, none have been threatened in writing against or which involve the Seller or Maple Bank to restrain or prohibit the completion of the Transaction;
- 3.2.4 to the knowledge of the Seller, copies of the Lakeview Loan Documents, Origination Agreements and Servicing Agreements that are in possession of Maple Bank have been provided to the Buyer; and
- 3.2.5 since February 16, 2016, except to the extent a copy has been provided to the Buyer, the Seller has not granted any written waiver or consent or entered into or agreed to enter into any written amendment in respect of any of the Purchased Assets.

### **3.3 Survival of Representations and Warranties**

The representations and warranties of each of the Buyer and Seller shall not survive closing.

## **ARTICLE 4 COVENANTS**

### **4.1 Access and Interim Covenants**

- 4.1.1 From the date of this Agreement until the earlier of (x) Closing and (y) termination of this Agreement:
  - (a) Seller shall cause to be provided to Buyer, its accountants, legal advisors and other representatives, access to such books and records, agreements, instruments and documents, and information, in respect of the Purchased

Assets that are in the possession or control of the Seller as Buyer may reasonably request;

- (b) Seller shall not cause to be taken, or consent to, any action in respect of the Purchased Assets taken outside of the ordinary course ("ordinary course" being determined by reference to the period since February 16, 2016, being the date of the appointment of the Liquidator pursuant to the Winding-Up Order;
- (c) the Buyer (in consultation with the Liquidator) shall diligently pursue obtaining the Consents from the applicable counterparties to the Lakeview Loan Documents; provided that, for certainty, the receipt of the Consents shall not be a condition precedent to the obligation of either Party to complete the Transaction and the failure to obtain all or any of the Consents shall not constitute a default by the Buyer of any obligation under this Agreement; and
- (d) the Seller (in consultation with the Buyer) shall diligently pursue obtaining the Consents from the applicable counterparties to the Origination Agreements and the Servicing Agreements; provided that, for certainty, the receipt of the Consents shall not be a condition precedent to the obligation of either Party to complete the Transaction and the failure to obtain all or any of the Consents shall not constitute a default by the Seller of any obligation under this Agreement; and
- (e) Seller shall not directly or indirectly solicit, initiate or encourage the submission of any proposal or offer from, or participate in any discussions or negotiations or enter into any agreement or understanding, with any Person (other than the Buyer) relating to the purchase and sale of the Purchased Assets.

#### **4.2 Approval and Vesting Order**

4.2.1 Without limiting anything else in this Article 4, the Liquidator agrees as follows:

- (a) it will diligently pursue the motion for the Approval and Vesting Order;
- (b) it will provide the Buyer and its counsel a reasonable opportunity to review and comment upon drafts of the notice of motion relating to the motion for, the service list for the motion for, and the form of, the Approval and Vesting Order and give reasonable consideration to any comments made by the Buyer and its counsel;
- (c) it will provide the Buyer's counsel on a timely basis with copies of any notice of appearance and evidence served on Liquidator or Maple Bank, as applicable, or their respective legal counsel in respect of the motion for the Approval and Vesting Order; and
- (d) it will not object to the Buyer's counsel making such submissions on the hearing of the motion for the Approval and Vesting Order as such counsel considers appropriate, provided that the Liquidator is advised of the nature of any submissions within a reasonable period prior to the hearing and such submissions are consistent with this Agreement, the Successor Issuer Agreement and the submissions of the Liquidator.

- 4.2.2 The Buyer agrees, at its own expense, to promptly provide the Liquidator with all information and assistance as the Liquidator may reasonably require to obtain the Approval and Vesting Order.
- 4.2.3 The Liquidator agrees to pay to the applicable counterparties under the Purchased Assets as "Cure Amounts" (as defined in the Approval and Vesting Order), the following amounts prior to, or concurrently with, Closing:
- (a) to the applicable counterparties under the Origination Agreements, the Origination Reserve Excess that is due to such counterparties pursuant to the terms of those agreements as of the Closing Date; and
  - (b) such other amounts as the Liquidator agrees are properly due, owing and unpaid to a counterparty under a Purchased Asset as of the Closing Date.

## **ARTICLE 5 CONDITIONS**

### **5.1 Conditions of the Buyer**

The obligation of the Buyer to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Time of Closing:

- 5.1.1 all representations and warranties of the Seller contained in this Agreement will be true as of the Closing Date with the same effect as though made on and as of that date; and
- 5.1.2 the Seller will have performed its obligations under this Agreement to the extent required to be performed on or before the Closing Date.

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

### **5.2 Conditions of the Seller**

The obligation of the Seller to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Time of Closing:

- 5.2.1 all acknowledgements, representations and warranties of the Buyer contained in this Agreement will be true as of the Closing Date with the same effect as though made on and as of that date; and
- 5.2.2 the Buyer will have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date.

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

### **5.3 Conditions – Mutual**

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

- 5.3.1 an order, substantially in the form of the order attached as Exhibit "B", shall have been made by the Court (with such changes as may be acceptable to Seller and Buyer), approving this Agreement and the Transaction and vesting in the Buyer all the right, title and interest of Maple Bank, if any, in the Purchased Assets free and clear of all Encumbrances (the "Approval and Vesting Order");
- 5.3.2 the Approval and Vesting Order will not have been stayed, varied or vacated, no appeal of the Approval and Vesting Order will be pending;
- 5.3.3 no order will have been issued restraining or prohibiting or declaring all or any part of this Agreement to be invalid, and no action or proceeding will be pending or threatened to restrain or prohibit, the completion of the Transaction or challenging the validity of all or any part of this Agreement; and
- 5.3.4 the Buyer becomes the "Successor Issuer" under the Successor Issuer Transaction concurrently with the Closing of this Transaction.

The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Seller and the Buyer. Any condition may be waived by the Seller and the Buyer in whole or in part but any such waiver will only be effective and binding on the Parties if it is made in writing and signed by both the Seller and the Buyer.

#### **5.4 Non-Satisfaction of Conditions**

If any condition set out in this Article is not satisfied or performed prior to the latest time specified therefor, a Party for whose benefit the condition is inserted may in writing:

- 5.4.1 waive compliance with the condition in whole or in part in its sole discretion by written notice to the other Party and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; provided that, for certainty, in the case of the conditions set out in Section 5.3, such conditions can only be waived if both Parties agree to do so; or
- 5.4.2 elect on written notice to the other Party to terminate this Agreement before the Closing Date or Outside Date; provided such Party is not in default of any material obligation under this Agreement. For certainty, in the case of a breach under this Agreement by a Party, this Agreement may be terminated in accordance with Section 6.6 or otherwise.

### **ARTICLE 6 CLOSING**

#### **6.1 Closing**

The completion of the Transaction will take place at the offices of Gowling WLG (Canada) LLP located at Toronto, Ontario, on the Closing Date at the Time of Closing or as otherwise determined by mutual agreement of the Parties in writing.



## **6.2 Buyer's Deliveries on Closing**

At or before the Time of Closing, the Buyer will perform or execute and deliver to the Seller, as applicable, the following (in the case of documents, each of which will be in form and substance satisfactory to the Seller, acting reasonably):

- 6.2.1 payment of the balance of the Purchase Price to the Seller in immediately available funds in accordance with Section 2.3.3 (together with such Taxes as may be payable in connection therewith pursuant to Section 2.7.2);
- 6.2.2 the Assignment and Assumption Agreement;
- 6.2.3 a certificate dated the Closing Date, confirming that all of the representations and warranties of the Buyer contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- 6.2.4 a certificate dated the Closing Date, confirming that each of its obligations under this Agreement has been performed to the extent required to be performed on or before the Closing Date;
- 6.2.5 copies of each Consent actually received by the Buyer;
- 6.2.6 the Withholding Escrow Agreement signed by the Buyer and the Withholding Escrow Agent; and
- 6.2.7 any other documentation as is referred to in this Agreement or as the Seller may reasonably require to give effect to this Agreement.

## **6.3 Seller's Deliveries on Closing**

At or before the Time of Closing, the Seller will perform or execute and deliver to the Buyer the following, each of which will be in form and substance satisfactory to the Buyer, acting reasonably:

- 6.3.1 the Assignment and Assumption Agreement;
- 6.3.2 the Approval and Vesting Order;
- 6.3.3 a certificate dated the Closing Date, confirming that all of the representations and warranties of the Seller contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- 6.3.4 a certificate dated the Closing Date, confirming that each of its obligations under this Agreement has been performed to the extent required to be performed on or waived before the Closing Date;
- 6.3.5 a certificate from the Seller confirming the remaining unpaid balance of the Lakeview Loan as of the Closing Date based solely on the records of Maple Bank;
- 6.3.6 the Directions;
- 6.3.7 the Liquidator's Sale Certificate;

- 6.3.8 copies of each Consent actually received by the Liquidator;
- 6.3.9 the Withholding Escrow Agreement signed by the Seller; and
- 6.3.10 payment by the Seller to the Buyer of all Lakeview Reserve Amounts held by the Seller as of the Closing Date under the Lakeview Credit Agreement;
- 6.3.11 payment of the balance in the Lakeview Senior Distribution Account as of the Closing Date by the Seller to a "Senior Distribution Account" as defined in, and established by the Buyer to replace the Lakeview Senior Distribution Account for the purposes of, the Lakeview Credit Agreement;
- 6.3.12 delivery of such notices or directions as may be required to transfer the NHA MBS from Maple Bank to the Buyer under the Canadian Depository System;
- 6.3.13 subject to Section 2.1.6, payment by the Seller to the Buyer of all of the Origination Reserve Amounts held by the Seller as of the Closing Date under any of the Origination Agreements;
- 6.3.14 payment by the Seller to the Buyer of the Ratewise/Simplicity Mortgage Payment;
- 6.3.15 such originally executed copies of the Lakeview Loan Documents, the Origination Agreements and the Servicing Agreements as are in the possession or control of the Seller;
- 6.3.16 electronic or other copies of the books and records of Maple Bank relating to the Purchased Assets as are in the possession or control of the Seller; and
- 6.3.17 any other documentation as is referred to in this Agreement or as the Buyer may reasonably require to give effect to this Agreement.

#### **6.4 Buyer's Acknowledgement**

The Buyer acknowledges that the Seller is selling the right, title and interest of Maple Bank, if any, in and to the Purchased Assets pursuant to the Approval and Vesting Order. The Buyer agrees to purchase and accept the right, title and interest of Maple Bank in and to the Purchased Assets pursuant to and in accordance with the terms of this Agreement and the Approval and Vesting Order.

#### **6.5 Termination**

- 6.5.1 If the Closing has not occurred on or before the Outside Date, this Agreement will automatically terminate on the Outside Date without requirement for notice or other action by any Party.
- 6.5.2 If either Party validly terminates this Agreement under the provisions of Section 5.4 or 6.6 or this Agreement is automatically terminated under the provisions of Section 6.5.1:
  - (a) all the obligations of the Seller, on the one hand, and the Buyer, on the other hand, under this Agreement will be at an end; and
  - (b) neither Party will have any right to specific performance or other remedy against, or any right to recover damages or expenses from, the other, but this

provision shall not derogate from any right of the Buyer to the return of the deposit and accrued interest or other amounts earned thereon or the right of the Seller to retain the deposit and accrued interest or other amounts earned thereon as liquidated damages, in each case, pursuant to Section 2.5.

## **6.6 Notice of Breach and Termination**

If either Party fails to comply with the terms of this Agreement, the non-breaching Party may, where such failure to comply has not been cured within ten (10) days of notice thereof having been given to the breaching party (or such longer period as the non-breaching Party may agree or such shorter period as may be available due to the occurrence of the Outside Date) by notice to the breaching Party terminate this Agreement (provided such non-breaching Party is not also in default of any material obligation under this Agreement). For certainty, the foregoing provision and right to cure any default shall not operate to extend the Outside Date.

## **ARTICLE 7 GENERAL**

### **7.1 Paramountcy**

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

### **7.2 Commission**

Each Party confirms that there are no agent or broker fees or other commissions payable by such Party or otherwise in connection with the Transaction, and agrees to indemnify the other Party against any claim for compensation or commission by any third party or agent retained by such Party in connection with, or in contemplation of, the Transaction, which indemnity shall survive Closing.

### **7.3 Confidentiality**

All information exchanged between the Seller and the Buyer in connection with the Transaction will be considered Evaluation Materials, and subject to the Confidentiality Agreement. Any publicity relating to the Transaction and the manner of releasing any information regarding the Transaction will be mutually agreed upon by the Seller and the Buyer, both Parties acting reasonably; provided that if a Party is bound by Law or the rules of any applicable exchange to make a press release or other public announcement, such Party may do so, notwithstanding the failure of the other Party to approve same, provided the other Party is (a) given a reasonable opportunity to comment having regard to the circumstances and (b) the announcement merely relates to the facts and then only to the extent necessary to satisfy such requirements.

### **7.4 Costs and Expenses**

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

## 7.5 Time of Essence

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

## 7.6 Notices

Any Communication must be in writing and either:

- 7.6.1 personally delivered;
- 7.6.2 sent by prepaid registered mail; or
- 7.6.3 sent by facsimile, email or functionally equivalent electronic means of communication, charges (if any) prepaid.

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

to the Seller at:

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

Attention: Nicholas Brearton / Philip Reynolds / Andrew Parkes

Facsimile No.: (416) 777-3364

Email: [nbrearton@kpmg.ca](mailto:nbrearton@kpmg.ca) / [pireynolds@kpmg.ca](mailto:pireynolds@kpmg.ca) / [aparkes@kpmg.ca](mailto:aparkes@kpmg.ca)

with a copy to:

Gowling WLG (Canada) LLP

1 First Canadian Place

100 King Street West, Suite 1600

Toronto, Ontario, M5X 1G5

Attention: Alex MacFarlane / Lilly Wong / Christine Mason

Facsimile No.: (416) 862-7661

Email: [alex.macfarlane@gowlingwlg.com](mailto:alex.macfarlane@gowlingwlg.com) / [lilly.wong@gowlingwlg.com](mailto:lilly.wong@gowlingwlg.com)  
[/christine.mason@gowlingwlg.com](mailto:christine.mason@gowlingwlg.com)

to the Buyer at:

30 St. Clair Avenue West, Suite 700

Toronto, Ontario, M4V 3A1

Attention: Mahima Poddar

Facsimile No.: 416-515-7001

Email: [mpoddar@eqbank.ca](mailto:mpoddar@eqbank.ca)

with a copy to:

Attention: Michael Mignardi, Senior Counsel

Facsimile No.: 416-515-7001

Email: [mmignardi@eqbank.ca](mailto:mmignardi@eqbank.ca)

or at any other address that any Party may from time to time advise the other by Communication given in accordance with this Section 7.6. Any Communication delivered to the Party to whom it is addressed will be deemed to have been given and received on the day it is delivered at that Party's address,

provided that if that day is not a Business Day then the Communication will be deemed to have been given and received on the next Business Day. Any Communication transmitted by facsimile or other form of electronic communication will be deemed to have been given and received on the day on which it was transmitted (but if the Communication is transmitted on a day which is not a Business Day or after 4:00 p.m. (local time of the recipient), the Communication will be deemed to have been received on the next Business Day). Any Communication given by registered mail will be deemed to have been received on the fifth (5<sup>th</sup>) Business Day after which it is so mailed. If a strike or lockout of postal employees is then in effect, or generally known to be impending, every Communication must be effected by personal delivery or by facsimile transmission.

#### **7.7 Further Assurances**

Each Party will, at the requesting Party's cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the other Party to give effect to this Agreement and, without limiting the generality of the foregoing, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide all assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies.

#### **7.8 Amendment and Waiver**

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

#### **7.9 Submission to Jurisdiction**

Without prejudice to the ability of any Party to enforce this Agreement in any other proper jurisdiction, each of the Parties irrevocably submits and attorns to the non-exclusive jurisdiction of the Court to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by applicable law, each of the Parties irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that Province or that the subject matter of this Agreement may not be enforced in such courts and irrevocably agrees not to seek, and waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 7.9, of the substantive merits of any such suit, action or proceeding. To the extent a Party has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under this Agreement.

#### **7.10 Assignment and Enurement**

Neither this Agreement nor any right or obligation under this Agreement may be assigned by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

**7.11 Severability**

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

7.11.1 the legality, validity or enforceability of the remaining provisions of this Agreement; or

7.11.2 the legality, validity or enforceability of that provision in any other jurisdiction.

**7.12 Counterparts**

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

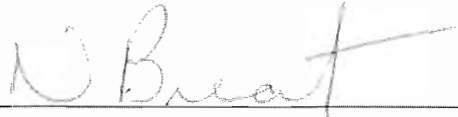
**7.13 Facsimile or PDF Signatures**

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

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

Each of the Parties has executed and delivered this Agreement, as of the date noted at the beginning of the Agreement.

**KPMG Inc., in its capacity as Court appointed liquidator of the business in Canada of Maple Bank GmbH and its assets as defined under section 618 of the *Bank Act***

Per:   
Name: Nicholas Brearton  
Title: President

**Equitable Bank**

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

Name: Andrew Moor

Title: President and CEO



**SCHEDULE 1  
LAKEVIEW LOAN DOCUMENTS**

1. Intercreditor Agreement dated January 15, 2016 between Maple Bank GmbH, Toronto Branch, Trez Capital (2011) Corporation, in its capacity as general partner of Trez Capital Limited Partnership, Lakeview Mortgage Funding Inc. and Computershare Trust Company of Canada, in its capacity as trustee of Lakeview Mortgage Funding Trust I, by its administrative agent, Lakeview Mortgage Funding Inc.
2. Title Custodian Quadpartite Agreement dated January 15, 2016 between Computershare Trust Company of Canada, in its capacity as trustee of Lakeview Mortgage Funding Trust I, by its administrative agent, Lakeview Mortgage Funding Inc., Computershare Trust Company of Canada, Maple Bank GmbH, Toronto Branch and Trez Capital (2011) Corporation, in its capacity as general partner of Trez Capital Limited Partnership
3. Servicer Quadpartite Agreement dated January 15, 2016 between Computershare Trust Company of Canada, in its capacity as trustee of Lakeview Mortgage Funding Trust I, by its administrative agent, Lakeview Mortgage Funding Inc., Paradigm Quest Inc., Maple Bank GmbH, Toronto Branch and Trez Capital (2011) Corporation, in its capacity as general partner of Trez Capital Limited Partnership

**SCHEDULE 2  
NHA MBS**

NHA MBS Pool Number	Original Face Amount to be Purchased by Buyer	Date			
		02-Aug-16	02-Sep-16	02-Oct-16	02-Nov-16
97504676	\$20,800,670	\$19,128,625	\$18,992,798	\$18,854,653	\$18,714,084
97505023	\$35,440,188	\$33,593,164	\$33,364,096	\$33,130,555	\$32,892,642
97505194	\$1,426,541	\$1,334,442	\$1,325,553	\$1,316,496	\$1,307,263
97505195	\$1,362,330	\$1,287,589	\$1,279,023	\$1,270,293	\$1,261,394
97505385	\$13,932,755	\$13,021,702	\$12,937,732	\$12,851,981	\$12,764,598
97505582	\$873,949	\$833,201	\$827,836	\$822,357	\$816,764
97505584	\$5,856,341	\$5,659,592	\$5,622,162	\$5,583,962	\$5,545,011
97505585	\$2,304,667	\$2,187,351	\$2,173,736	\$2,159,818	\$2,145,600
97505587	\$5,099,663	\$4,747,663	\$4,717,649	\$4,686,978	\$4,655,664
97505765	\$1,503,638	\$1,386,774	\$1,378,376	\$1,369,785	\$1,361,005
97505766	\$5,570,503	\$5,265,158	\$5,232,790	\$5,199,730	\$5,165,948
97506093	\$8,030,500	\$7,852,717	\$7,807,668	\$7,761,552	\$7,714,322
97506405	\$3,693,502	\$3,625,976	\$3,606,007	\$3,585,509	\$3,564,492
97506496	\$3,174,583	\$3,133,328	\$3,117,776	\$3,101,781	\$3,085,324
97506498	\$2,405,220	\$2,374,864	\$2,362,962	\$2,350,705	\$2,053,161
97506499	\$9,174,606	\$9,038,773	\$8,991,104	\$8,942,171	\$8,891,915
<b>Total</b>	<b>\$120,649,655</b>	<b>\$114,470,919</b>	<b>\$113,737,269</b>	<b>\$112,988,329</b>	<b>\$111,939,185</b>

**SCHEDULE 3  
DEFAULTED MORTGAGES**

**Schedule 3**  
**As of date:** **Default Mortgages**  
**31-Jul-16**

Mortgage Insurance ID	Mortgage Originator	Principal Balance	Maturity Date	Original LTV
510129	Radius	357,868.03	06-Oct-17	101.56
56239842	Radius	110,345.31	22-Aug-18	80.00
15893542	Radius	228,283.78	23-Aug-18	95.00
42278038	Radius	204,436.26	17-Jul-19	95.00
59983636	Radius	549,664.14	16-Apr-19	94.90
64813293	CFF	215,606.83	15-Jan-20	80.00
71561803	CFF	543,283.60	11-May-20	90.00

**Total Principal Balance 2,209,487.95**

**SCHEDULE 4  
DESIGNATED NHA MBS**

Schedule 4 Designated NHA MBS

Data as of: 30-Apr-16

PoolNumber	Seller	Face	Maturity
97505194	Radius	1,426,540.84	01/05/2020
97505195	Radius	1,362,329.59	01/05/2020
97505582	CFF	873,948.91	01/07/2020
97505585	Radius	2,304,666.97	01/07/2020
97505587	Radius	5,099,662.70	01/07/2020

**SCHEDULE 5  
ORIGINATION AGREEMENTS**

**A. Xceed Mortgage Corporation**

1. Master Mortgage Purchase Agreement dated May 26, 2011 between Maple Bank GmbH, Toronto Branch and Xceed Mortgage Corporation
2. First Amending Agreement dated August 27, 2012 to the Master Mortgage Purchase Agreement between Maple Bank GmbH, Toronto Branch and Xceed Mortgage Corporation
3. Second Amending Agreement dated May 20, 2014 to the Master Mortgage Purchase Agreement between Maple Bank GmbH, Toronto Branch and Xceed Mortgage Corporation
4. Custodial Agreement dated May 26, 2011 between Maple Bank GmbH, Toronto Branch, Xceed Mortgage Corporation and Computershare Trust Company of Canada

**B. myNext Mortgage Premier Trust / myNext Mortgage Company**

1. Master Mortgage Purchase Agreement dated May 24, 2011 between Maple Bank GmbH, Toronto Branch and myNext Mortgage Premier Trust
1. First Amending Agreement dated December 21, 2011 to the Master Mortgage Purchase Agreement between Maple Bank GmbH, Toronto Branch and myNext Mortgage Premier Trust
2. Second Amending Agreement dated November 12, 2012 to the Master Mortgage Purchase Agreement between Maple Bank GmbH, Toronto Branch and myNext Mortgage Premier Trust
3. Third Amending Agreement dated May 23, 2013 to the Master Mortgage Purchase Agreement between Maple Bank GmbH, Toronto Branch and myNext Mortgage Premier Trust
4. Letter re Cash Collateral dated November 2, 2015 from Maple Bank to myNext Mortgage Premier Trust
5. Custodial Agreement dated May 24, 2011 between Maple Bank GmbH, Toronto Branch, MyNext Mortgage Premier Trust and Computershare Trust Company of Canada, as amended and restated by the Custodial Letter Agreement dated January 31, 2013 between Maple Bank GmbH, Toronto Branch, MyNext Mortgage Premier Trust and Computershare Trust Company of Canada

**C. Paradigm Quest Inc.**

1. Master Mortgage Purchase Agreement dated February 4, 2013 between Maple Bank GmbH, Toronto Branch and Paradigm Quest Inc.

2. Letter re Cash Collateral dated December 14, 2015 from Maple Bank to Paradigm Quest Inc.
3. Custodial Agreement dated February 4, 2013 between Maple Bank GmbH, Toronto Branch, Paradigm Quest Inc. and Computershare Trust Company of Canada

**D. Bridgewater Bank**

1. Master Mortgage Purchase Agreement dated February 15, 2012 between Maple Bank GmbH, Toronto Branch and Bridgewater Bank
2. Custodial Agreement dated February 15, 2012 between Maple Bank GmbH, Toronto Branch, Bridgewater Bank and Computershare Trust Company of Canada

**E. CFF Bank**

1. Master Mortgage Purchase Agreement dated December 19, 2014 between Maple Bank GmbH, Toronto Branch and CFF Bank
2. Custodial Agreement dated December 19, 2014 between Maple Bank GmbH, Toronto Branch, CFF Bank and Computershare Trust Company of Canada



**SCHEDULE 6  
ORIGINATION RESERVE AMOUNTS**

**RESERVE AMOUNTS HELD BY SELLER**

**(AS OF JULY 31, 2016)**

**A. Xceed Mortgage Corporation Origination Agreement**

1. Reserve Amount: \$ 0

**B. myNext Mortgage Premier Trust / myNext Mortgage Company Origination Agreement**

1. Reserve Amount: \$ 4,013,225

2. Origination Reserve Excess as of July 31, 2016: \$343,031

**C. Paradigm Quest Inc. Origination Agreement**

1. Reserve Amount: \$ 427,265

2. Origination Reserve Excess as of July 31, 2016: \$17,235

**D. Bridgewater Bank Origination Agreement**

1. Reserve Amount: \$ 1,311,785

2. Origination Reserve Excess as of July 31, 2016: \$137,255

**E. CFF Bank Origination Agreement**

1. Reserve Amount: \$ 1,069,396

2. Origination Reserve Excess as of July 31, 2016: \$65,400

**SCHEDULE 7  
SERVICING AGREEMENTS**

**A. Xceed Mortgage Corporation**

1. Mortgage Administration Agreement dated May 26, 2011 between Maple Bank GmbH, Toronto Branch and Xceed Mortgage Corporation
2. Triparte Agreement dated May 26, 2011 between Maple Bank GmbH, Toronto Branch, Xceed Mortgage Corporation and MCAP Service Corporation

**B. myNext Mortgage Premier Trust / myNext Mortgage Company**

1. Mortgage Administration Agreement dated May 24, 2011 between Maple Bank GmbH, Toronto Branch and myNext Mortgage Company Limited (now known as Radius Financial Inc.)
2. Triparte Agreement dated May 24, 2011 between Maple Bank GmbH, Toronto Branch, myNext Mortgage Company Limited (now known as Radius Financial Inc.) and MCAP Service Corporation

**C. Paradigm Quest Inc.**

1. Mortgage Administration Agreement dated February 4, 2013 between Maple Bank GmbH, Toronto Branch and Paradigm Quest Inc.

**D. Bridgewater Bank**

1. Mortgage Administration Agreement dated February 15, 2012 between Maple Bank GmbH, Toronto Branch and Bridgewater Bank

**E. CFF Bank**

1. Mortgage Administration Agreement dated December 19, 2014 between Maple Bank GmbH, Toronto Branch and CFF Bank

**EXHIBIT "A"**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**BETWEEN:**

**KPMG INC.**, in its capacity as court-appointed liquidator of the business in Canada of **Maple Bank GmbH** and its assets as defined in section 618 of the *Bank Act*

(the "**Assignor**")

- and -

**Equitable Bank**

(the "**Assignee**")

- A.** Upon application by the Attorney General of Canada, pursuant to section 10.1 of the *Winding Up and Restructuring Act* (WURA), on February 16, 2016 the Ontario Superior Court of Justice (Commercial List) ("**the Court**") made a winding-up order: (a) that the business in Canada of Maple Bank GmbH ("**Maple Bank**") be wound up and that its assets, as defined under section 618 of the *Bank Act* be liquidated; and, (b) appointing KPMG Inc. as the liquidator (the "**Liquidator**") of the Toronto Branch under section 23 of WURA.
- B.** Pursuant to an Order dated April 5, 2016, the Court approved: (a) a marketing process for a Buyer of certain of the assets of Maple Bank (collectively, the "**Toronto Branch Assets**"); and, (b) that the Liquidator implement and carry out the terms of the Marketing Process for sale of the Toronto Branch Assets.
- C.** The Buyer and the Seller have entered into an Agreement of Purchase and Sale made as of September 12, 2016 (the "**Agreement**"), pursuant to which, inter alia, the Seller has agreed to sell the Purchased Assets to the Buyer and the Buyer has agreed to purchase and assume the rights and obligations of Maple Bank in and to the Purchased Assets.
- D.** Capitalized terms used in this agreement not otherwise defined in this agreement will have the meanings set out in the Agreement.

**NOW THEREFORE**, in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt of which is acknowledged, the Assignor declares as follows:

Effective as of ●, 2016, the Assignor assigns and transfers to the Assignee, without recourse to the Assignor or Maple Bank and, except as expressly provided in the Agreement, without warranty, all of Maple Bank's right, title and interest in and to the Purchased Assets and the Assignee assumes all of the covenants and obligations of Maple Bank under the Purchased Assets.

To the extent of any conflict between the terms of this Assignment and Assumption Agreement and the terms of the Agreement, the Agreement shall govern.

The Assignor undertakes and agrees to execute, at the request and expense of the Assignee, such further documentation as may be reasonably required in order to permit the Assignee to complete this assignment of the Purchased Assets.

Each of the parties has executed and delivered this Agreement on the ● day of ●, 2016.

**KPMG Inc., in its capacity as Court appointed liquidator of the business in Canada of Maple Bank GmbH and its assets as defined under section 618 of the *Bank Act***

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

**Equitable Bank**

Per: \_\_\_\_\_  
Name: Andrew Moor  
Title: President and CEO

**EXHIBIT "B"**  
**FORM OF APPROVAL AND VESTING ORDER**

Court File No. CV-16-11290-00CL

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

THE HONOURABLE REGIONAL ) \*DAY THE \*  
SENIOR JUSTICE MORAWETZ ) DAY OF \*, 2016  
)

IN THE MATTER OF MAPLE BANK GmbH

AND IN THE MATTER OF THE *WINDING-UP AND RESTRUCTURING ACT*,  
R.S.C. 1985, C.W-11, AS AMENDED

AND IN THE MATTER OF THE *BANK ACT*, S.C. 1991, C.46, AS AMENDED

BETWEEN:

**ATTORNEY GENERAL OF CANADA**

Applicant

and

**MAPLE BANK GmbH**

Respondent

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by KPMG Inc. ("**KPMG**"), in its capacity as the Court-appointed Liquidator (the "**Liquidator**") in respect of the winding up of the business in Canada (the "**Business**") of Maple Bank GmbH ("**Maple Bank**") and its assets as defined in section 618 of the *Bank Act*, S.C. 1991, as amended (the "**Bank Act**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale dated September 12, 2016 (the "**Sale Agreement**") between the Liquidator and Equitable Bank (the "**Buyer**"), as appended to the ● Report of the Liquidator dated ●, 2016 (the "**Report**"), and vesting in the Buyer Maple Bank's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Liquidator, counsel for the German Insolvency Administrator, counsel for Canada Mortgage and Housing Corporation and counsel for the Buyer, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [Frances Dunne] sworn •, 2016, filed:

1. THIS COURT ORDERS that the Report and the activities of the Liquidator as set out in the Report be and are hereby approved.
2. THIS COURT ORDERS AND DECLARES that (i) the Transaction is hereby approved; (ii) the execution of the Sale Agreement by the Liquidator is hereby authorized, ratified and approved, and (iii) the Liquidator is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Buyer, including the making of such minor amendments to the Sale Agreement as the Liquidator and the Buyer may agree.
3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Liquidator's certificate to the Buyer substantially in the form attached as Schedule "A" hereto (the "**Liquidator's Certificate**"), all of Maple Bank's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Buyer, free and clear of and from any and all liens, claims, charges, demands, security interests, pledges, hypothecations, mortgages, trusts or deemed trusts (in each case, whether contractual, statutory or otherwise), executions, levies, charges, or other financial or monetary claims, and encumbrances of any

nature and kind whatsoever whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of Regional Senior Justice Morawetz dated February 16, 2016; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, **[and, without limiting the generality of the foregoing, the registrations listed as Schedule "B" hereto];** and (iii) **[those Claims listed on Schedule "C" hereto]** (all of which are collectively referred to as the "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Liquidator's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Liquidator is authorized and permitted to disclose and transfer to the Buyer personal information of identifiable individuals, if any, relating to the Purchased Assets, and who may be identified in, or subject to, the Sale Agreement or the Purchased Assets. The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Maple Bank.

7. THIS COURT ORDERS that, notwithstanding the pendency of these proceedings, the vesting of the Purchased Assets in the Buyer pursuant to this Order and the payments by the Liquidator to the Buyer as contemplated under the Sale Agreement shall not be void or voidable by creditors of Maple Bank, nor shall the constitute nor be deemed to be a fraudulent

preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Winding-Up and Restructuring Act* or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the *Bulk Sales Act* (Ontario) and any equivalent legislation in any other jurisdiction in which all or any part of the Purchased Assets are located.

9. THIS COURT ORDERS that upon delivery of the *Liquidator's Certificate*, all of the rights and obligations of Maple Bank under the agreements set out in Schedule "D" hereto that are Purchased Assets (collectively, the "**Assigned Contracts**") shall be assigned to the Buyer pursuant to the Sale Agreement, this Order and Section 35 of the *Winding Up and Restructuring Act* (Canada).

10. THIS COURT ORDERS that the assignment to the Buyer of the rights and obligations of Maple Bank under the Assigned Contracts pursuant to the Sale Agreement, the *Winding-Up and Restructuring Act* (Canada), and this Order is valid and binding upon all of the counterparties to the Assigned Contracts notwithstanding any restriction or prohibition contained in any such Assigned Contracts relating to the assignment thereof, including any provision requiring the consent of any party to the assignment.

11. THIS COURT ORDERS that Maple Bank's right, title and interest in the Assigned Contracts shall vest absolutely in the Buyer free and clear of all Encumbrances.

12. THIS COURT ORDERS that each counterparty to the Assigned Contracts is prohibited from exercising any right or remedy under the Assigned Contracts by reason of any defaults thereunder arising from the assignment of the Assigned Contracts, the insolvency of Maple Bank, the commencement of these proceedings, any failure of Maple Bank to perform any non-monetary obligation under the Assigned Contracts or, subject to payment of the Cure Amounts, any failure of Maple Bank to perform a monetary obligation under the Assigned Contracts.

13. THIS COURT ORDERS that the Cure Amounts for the Assigned Contracts shall be in amounts set out in Schedule "D" hereto and that upon closing Maple Bank shall pay the Cure Amounts as set out therein with respect to each applicable Assigned Contract, in full and final



satisfaction of any Cure Amounts owing to the counterparty to the applicable Assigned Contract, by no later than the Closing (as defined in the Sale Agreement).

14. THIS COURT ORDERS that the Purchaser shall not be liable for any amounts of any kind due by Maple Bank to the applicable counterparty under the Assigned Contracts prior to the Closing other than in respect of:

- (a) the Lakeview Reserve Amount and the Origination Reserve Amounts (as each such term is defined in the Purchase Agreement);
- (b) the obligations which gave rise to the Ratewise/Simplicity Mortgage Closing Payment (as such term is defined in the Purchase Agreement);
- (c) the moneys collected in the Lakeview Senior Distribution Account (as defined in the Purchase Agreement) as of the Closing Date (as defined in the Purchase Agreement) by the Seller and paid on the Closing Date to a "Senior Distribution Account" as defined in, and established by the Buyer to replace the Lakeview Senior Distribution Account for the purposes of, the Lakeview Credit Agreement (as defined in the Purchase Agreement); and
- (d) the fees accrued under the Servicing Agreements (as defined in the Purchase Agreement) since the Effective Date (as defined in the Successor Issuer Agreement dated September 12, 2016 between Canada Mortgage and Housing Corporation and the Buyer, as the same may be amended, supplemented or amended and restated from time to time) which remain unpaid as of the Closing Date.

15. THIS COURT DIRECTS that the Liquidator send a copy of this Order to all of the counterparties to the Assigned Contracts.

16. THIS COURT ORDERS that the Withholding Escrow Amount (as defined in the Sale Agreement) shall be paid to and held by the Liquidator, in trust in accordance with the terms of the Withholding Escrow Agreement (as defined in the Sale Agreement) and such Withholding Escrow Amount shall not be part of the assets or estate of Maple Bank or the Liquidator unless released from such trust to and for the benefit of Maple Bank or the Liquidator in accordance with the Withholding Escrow Agreement.

17. THIS COURT ORDERS that the Liquidator is authorized and directed to enter into and perform its obligations, as escrow agent, under the Withholding Escrow Agreement and to release the Withholding Escrow Amount to the parties and at the times set out in the Withholding Escrow Agreement. For avoidance of doubt, the Withholding Escrow Amount shall not be released from escrow other than in accordance with the terms of the Withholding Escrow Agreement.

18. THIS COURT ORDERS that [Confidential Appendices "1", "2" and "3"] to the \*Report are hereby sealed and shall not form part of the public record until such time as the Liquidator's Certificate has been filed with the Court, or upon further order of the Court. [NTD: REMOVE IF NOT APPLICABLE].

19. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or the Republic of Germany, including the Amtsgericht Frankfurt am Main [Insolvency Court], to give effect to this Order and to assist the Liquidator 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 Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.

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**Schedule "A" – Form of Liquidator's Certificate**

Court File No. CV-16-11290-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF MAPLE BANK GmbH

AND IN THE MATTER OF THE WINDING-UP AND RESTRUCTURING ACT,  
R.S.C. 1985, C.W-11, AS AMENDED

AND IN THE MATTER OF THE BANK ACT, S.C. 1991, C.46, AS AMENDED

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

Applicant

and

**MAPLE BANK GmbH**

Respondent

**LIQUIDATOR'S CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of Regional Senior Justice Morawetz of the Ontario Superior Court of Justice [Commercial List] (the "**Court**") dated February 16, 2016, KPMG Inc. was appointed under the provisions of the *Winding-Up and Restructuring Act* (Canada) as the Liquidator (the "**Liquidator**") of the business in Canada of Maple Bank GmbH ("**Maple Bank**") and of its assets, as defined in section 618 of the *Bank Act*, S.C. 1991, c.46, as amended.
- B. Pursuant to an Order of the Court dated •, 2016, the Court approved the agreement of purchase and sale made as of September 12, 2016 (the "**Sale Agreement**") between the Liquidator and Equitable Bank (the "**Buyer**"), and provided for the vesting in the

Buyer of Maple Bank's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Liquidator to the Buyer of a certificate confirming (i) the payment by the Buyer of the Purchase Price for the Purchased Assets payable at Closing; (ii) that the conditions to Closing as set out in Sections 5.1, 5.2 and 5.3 of the Sale Agreement have been satisfied or waived by the Liquidator and the Buyer; and (iii) the Transaction has been completed to the satisfaction of the Liquidator, subject to Post-Closing Adjustments (as defined in the Sale Agreement).

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

THE LIQUIDATOR CERTIFIES the following:

1. The Buyer has paid and the Liquidator has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Liquidator and the Buyer; and
3. The Transaction has been completed to the satisfaction of the Liquidator, subject to Post-Closing Adjustments.
4. This Certificate was delivered by the Liquidator at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**KPMG Inc.**, in its capacity as the Court-appointed Liquidator in respect of the winding up of the business in Canada of Maple Bank GmbH, and of its assets, as defined in section 618 of the *Bank Act*, S.C. 1991, c.46, as amended.

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

Name:

Title:

**Schedule "B" – PPSA Registrations to be deleted and expunged**

**Name of Debtor: Maple Bank GmbH**

**As of: \*, 2016**

	<u>SECURED PARTY</u>	<u>FILE NO./ REGISTRATION NO.</u>	<u>COLLATERAL CLASSIFICATION/DESCRIPTION</u>
1.		*  * years	
2.			
3.			
4.			

**Schedule "C" - Encumbrances**

**Schedule "D" – Assigned Contracts**

IN THE MATTER OF MAPLE BANK GmbH - AND IN THE MATTER OF THE WINDING-UP AND  
RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED - AND IN THE MATTER OF THE BANK  
ACT, S.C. 1991, C.46, AS AMENDED  
BETWEEN: **ATTORNEY GENERAL OF CANADA**, Applicant – and – **MAPLE BANK GmbH**,  
Respondent

Court File No. CV-16-11290-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**APPROVAL AND VESTING ORDER**

**GOWLING WLG (CANADA) LLP**

Barristers & Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto, ON M5X 1G5

Tel: 416-862-7525

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**Alex MacFarlane: alex.macfarlane@gowlingwg.com**  
**Matthew Karabus: matthew.karabus@gowlingwg.com**  
**Thomas Gertner: thomas.gertner@gowlingwg.com**

Lawyers for KPMG Inc., in its capacity as Liquidator of the  
business in Canada of Maple Bank GmbH and its assets.



**EXHIBIT "C"**  
**FORM OF LAKEVIEW CONSENT**

**CONSENT**

Reference is made to:

1. Credit and Security Agreement dated as of January 15, 2016 between Computershare Trust Company of Canada, in its capacity as trustee of Lakeview Mortgage Funding Trust I, Lakeview Mortgage Funding Inc., and Maple Bank GmbH, Toronto Branch (the "**Credit Agreement**"); and
2. Intercreditor Agreement dated as of January 15, 2016 between Maple Bank GmbH, Toronto Branch, Trez Capital (2011) Corporation, in its capacity as general partner of Trez Capital Limited Partnership, Lakeview Mortgage Funding Inc. and Computershare Trust Company of Canada, in its capacity as trustee of Lakeview Mortgage Funding Trust I, by its administrative agent, Lakeview Mortgage Funding Inc. (the "**Intercreditor Agreement**").

We acknowledge that pursuant to an agreement of purchase and sale dated [●], 2016, KPMG Inc., in its capacity as court-appointed liquidator (the "**Liquidator**") of the business in Canada of Maple Bank GmbH ("**Maple Bank**") and its assets as defined in section 618 of the *Bank Act*, has agreed to assign all of Maple Bank's right, title and interest in, *inter alia*, the Credit Agreement and the Intercreditor Agreement to Equitable Bank (the "**Transaction**").

We hereby confirm and acknowledge that:

- (a) attached at Schedule A is a true and complete copy of the Intercreditor Agreement;
- (b) pursuant to Section 3.3 of the Intercreditor Agreement, we consent and agree to the assignment of Maple Bank's right, title and interest in the Credit Agreement and Intercreditor Agreement to Equitable Bank, such assignment to be effective as at the closing of the Transaction; and
- (c) we have no claims against the Liquidator or Maple Bank in connection with the Intercreditor Agreement or the transactions contemplated thereunder.

**EXHIBIT "C"**

**FORMS OF CONSENT FOR ORIGINATION AGREEMENTS AND SERVICING  
AGREEMENTS**

See attached.

**A: XCEED MORTGAGE CORPORATION**

**CONSENT AND ACKNOWLEDGEMENT**

Reference is made to:

1. Master Mortgage Purchase Agreement dated May 26, 2011 between Maple Bank GmbH, Toronto Branch and Xceed Mortgage Corporation, as amended by a first amending agreement dated August 27, 2012 and a second amending agreement dated May 20, 2014, (collectively, the "**MMPA**"); and
2. Mortgage Administration Agreement dated May 26, 2011 between Maple Bank GmbH, Toronto Branch and Xceed Mortgage Corporation ("**MAA**").

Capitalized terms used but not defined in this Consent and Acknowledgment have the meanings given to them in the MMPA.

We acknowledge that pursuant to an agreement of purchase and sale, KPMG Inc., in its capacity as court-appointed liquidator of the business in Canada of Maple Bank GmbH ("**Maple Bank**") and its assets as defined in section 618 of the *Bank Act*, has agreed to assign all of Maple Bank's right, title and interest in the MMPA and MAA to the Person appointed by Canada Mortgage and Housing Corporation as successor Issuer (as defined in the Guide) to Maple Bank under the NHA MBS Program (the "**Purchaser**"), subject to the assumption by the Purchaser of all of Maple Bank's obligations arising under the MMPA and MMA from and after the closing date as set out therein (the "**Transaction**").

We hereby confirm and acknowledge that:

- (a) attached at Schedule A is a true and complete copy of the MMPA;
- (b) attached at Schedule B is a true and complete copy of the MAA;
- (c) each of the MMPA and MAA is in full force and effect, has not been terminated nor amended, and represents the entire agreement between the parties in connection with the subject matter set out therein;
- (d) to the best of our knowledge and belief, there is no existing default under the terms of the MMPA and/or MAA other than the default(s) set out in Schedule C attached; and
- (e) we consent and agree to the Transaction.

[signature page follows]

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2016

**XCEED MORTGAGE CORPORATION**

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

**B: CFF BANK**

## **CONSENT AND ACKNOWLEDGEMENT**

Reference is made to:

1. Master Mortgage Purchase Agreement dated December 19, 2014 between Maple Bank GmbH, Toronto Branch and CFF Bank (now known as Home Bank) ("**MMPA**"); and
2. Mortgage Administration Agreement dated December 19, 2014 between Maple Bank GmbH, Toronto Branch and CFF Bank (now known as Home Bank) ("**MAA**").

Capitalized terms used but not defined in this Consent and Acknowledgment have the meanings given to them in the MMPA.

We acknowledge that pursuant to an agreement of purchase and sale, KPMG Inc., in its capacity as court-appointed liquidator of the business in Canada of Maple Bank GmbH ("**Maple Bank**") and its assets as defined in section 618 of the *Bank Act*, has agreed to assign all of Maple Bank's right, title and interest in the MMPA and MAA to the Person appointed by Canada Mortgage and Housing Corporation as successor Issuer (as defined in the Guide) to Maple Bank under the NHA MBS Program (the "**Purchaser**"), subject to the assumption by the Purchaser of all of Maple Bank's obligations arising under the MMPA and MMA from and after the closing date as set out therein (the "**Transaction**").

We hereby confirm and acknowledge that:

- (a) attached at Schedule A is a true and complete copy of the MMPA;
- (b) attached at Schedule B is a true and complete copy of the MAA;
- (c) each of the MMPA and MAA is in full force and effect, has not been terminated nor amended, and represents the entire agreement between the parties in connection with the subject matter set out therein;
- (d) as at July 31, 2016, the GFC Reserve Amount held by Maple Bank pursuant to Section 6.7(1) of the MMPA is \$[●], and the GFC Reserve Excess owing to Home Bank in accordance with Section 6.7(4) of the MMPA is \$[●];
- (e) to the best of our knowledge and belief, there is no existing default under the terms of the MMPA and/or MAA other than (i) failure to pay the GFC Reserve Excess to Home Bank pursuant to Section 6.7(4) of the MMPA; and (ii) such other default(s) set out in Schedule C attached; and
- (f) subject to receipt by Home Bank of the GFC Reserve Excess on closing of the Transaction, we consent and agree to the Transaction.

[signature page follows]

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2016

**HOME BANK**

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

Name:

Title:

**C: PARADIGM QUEST INC.**

**CONSENT AND ACKNOWLEDGEMENT**

Reference is made to:

1. Master Mortgage Purchase Agreement dated February 4, 2013 between Maple Bank GmbH, Toronto Branch and Paradigm Quest Inc. ("**MMPA**"); and
2. Mortgage Administration Agreement dated February 4, 2013 between Maple Bank GmbH, Toronto Branch and Paradigm Quest Inc. ("**MAA**").

Capitalized terms used but not defined in this Consent and Acknowledgment have the meanings given to them in the MMPA.

We acknowledge that pursuant to an agreement of purchase and sale, KPMG Inc., in its capacity as court-appointed liquidator of the business in Canada of Maple Bank GmbH ("**Maple Bank**") and its assets as defined in section 618 of the *Bank Act*, has agreed to assign all of Maple Bank's right, title and interest in the MMPA and MAA to the Person appointed by Canada Mortgage and Housing Corporation as successor Issuer (as defined in the Guide) to Maple Bank under the NHA MBS Program (the "**Purchaser**"), subject to the assumption by the Purchaser of all of Maple Bank's obligations arising under the MMPA and MMA from and after the closing date as set out therein (the "**Transaction**").

We hereby confirm and acknowledge that:

- (a) attached at Schedule A is a true and complete copy of the MMPA;
- (b) attached at Schedule B is a true and complete copy of the MAA;
- (c) each of the MMPA and MAA is in full force and effect, has not been terminated nor amended, and represents the entire agreement between the parties in connection with the subject matter set out therein;
- (d) as at July 31, 2016, the GFC Reserve Amount held by Maple Bank pursuant to Section 6.7(1) of the MMPA is \$[●], and the GFC Reserve Excess owing to Paradigm Quest Inc. in accordance with Section 6.7(4) of the MMPA is \$[●];
- (e) to the best of our knowledge and belief, there is no existing default under the terms of the MMPA and/or MAA other than (i) failure to pay the GFC Reserve Excess to Paradigm Quest Inc. pursuant to Section 6.7(4) of the MMPA; and (ii) such other default(s) set out in Schedule C attached; and
- (f) subject to receipt by Paradigm Quest Inc. of the GFC Reserve Excess on closing of the Transaction, we consent and agree to the Transaction.

[signature page follows]

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2016

**PARADIGM QUEST INC.**

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

Name:

Title:



**D: MYNEXT MORTGAGE PREMIER TRUST**

**CONSENT AND ACKNOWLEDGEMENT**

Reference is made to:

1. Master Mortgage Purchase Agreement dated May 24, 2011 between Maple Bank GmbH, Toronto Branch and myNext Mortgage Premier Trust, as amended by a first amending agreement dated December 21, 2011, a second amending agreement dated November 12, 2012 and a third amending agreement dated May 23, 2013 (collectively, the "**MMPA**"); and
2. Mortgage Administration Agreement dated May 24, 2011 between Maple Bank GmbH, Toronto Branch and myNext Mortgage Company Limited (now known as Radius Financial Inc.) ("**MAA**").

Capitalized terms used but not defined in this Consent and Acknowledgment have the meanings given to them in the MMPA.

We acknowledge that pursuant to an agreement of purchase and sale, KPMG Inc., in its capacity as court-appointed liquidator of the business in Canada of Maple Bank GmbH ("**Maple Bank**") and its assets as defined in section 618 of the *Bank Act*, has agreed to assign all of Maple Bank's right, title and interest in the MMPA and MAA to the Person appointed by Canada Mortgage and Housing Corporation as successor Issuer (as defined in the Guide) to Maple Bank under the NHA MBS Program (the "**Purchaser**"), subject to the assumption by the Purchaser of all of Maple Bank's obligations arising under the MMPA and MMA from and after the closing date as set out therein (the "**Transaction**").

We hereby confirm and acknowledge that:

- (a) attached at Schedule A is a true and complete copy of the MMPA;
- (b) attached at Schedule B is a true and complete copy of the MAA;
- (c) each of the MMPA and MAA is in full force and effect, has not been terminated nor amended, and represents the entire agreement between the parties in connection with the subject matter set out therein;
- (d) as at July 31, 2016
  - i) the GFC Reserve Amount held by Maple Bank pursuant to Section 6.7(1) of the MMPA is \$[●], and the GFC Reserve Excess owing to myNext Mortgage Premier Trust in accordance with Section 6.7(4) of the MMPA is \$[●]; and
  - ii) the CGM Reserve Amount held by Maple Bank pursuant to Section 6.8(1) of the MMPA is \$[●], and the CGM Reserve Excess owing to myNext Mortgage Premier Trust in accordance with Section 6.8(4) of the MMPA is \$[●]; and

- (e) to the best of our knowledge and belief, there is no existing default under the terms of the MMPA and/or MAA other than (i) failure to pay the GFC Reserve Excess and the CGM Reserve Excess to myNext Mortgage Premier Trust pursuant to Sections 6.7(4) and 6.8(4) respectively of the MMPA; and (ii) such other default(s) set out in Schedule C attached; and
- (f) subject to receipt by myNext Mortgage Premier Trust of the GFC Reserve Excess and CGM Reserve Excess on closing of the Transaction, we consent and agree to the Transaction.

[signature page follows]

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2016

**MONTREAL TRUST COMPANY OF  
CANADA, in its capacity as trustee of  
myNEXT MORTGAGE PREMIER TRUST,  
by its agent RADIUS FINANCIAL INC.**

**RADIUS FINANCIAL INC.**

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

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

**E: BRIDGEWATER BANK**

**CONSENT AND ACKNOWLEDGEMENT**

Reference is made to:

1. Master Mortgage Purchase Agreement dated February 15, 2012 between Maple Bank GmbH, Toronto Branch and Bridgewater Bank ("**MMPA**"); and
2. Mortgage Administration Agreement dated February 15, 2012 between Maple Bank GmbH, Toronto Branch and Bridgewater Bank ("**MAA**").

Capitalized terms used but not defined in this Consent and Acknowledgment have the meanings given to them in the MMPA.

We acknowledge that pursuant to an agreement of purchase and sale, KPMG Inc., in its capacity as court-appointed liquidator of the business in Canada of Maple Bank GmbH ("**Maple Bank**") and its assets as defined in section 618 of the *Bank Act*, has agreed to assign all of Maple Bank's right, title and interest in the MMPA and MAA to the Person appointed by Canada Mortgage and Housing Corporation as successor Issuer (as defined in the Guide) to Maple Bank under the NHA MBS Program (the "**Purchaser**"), subject to the assumption by the Purchaser of all of Maple Bank's obligations arising under the MMPA and MMA from and after the closing date as set out therein (the "**Transaction**").

We hereby confirm and acknowledge that:

- (a) attached at Schedule A is a true and complete copy of the MMPA;
- (b) attached at Schedule B is a true and complete copy of the MAA;
- (c) each of the MMPA and MAA is in full force and effect, has not been terminated nor amended, and represents the entire agreement between the parties in connection with the subject matter set out therein;
- (d) as at July 31, 2016, the GFC Reserve Amount held by Maple Bank pursuant to Section 6.7(1) of the MMPA is \$[●], and the GFC Reserve Excess owing to Bridgewater Bank in accordance with Section 6.7(4) of the MMPA is \$[●];
- (e) to the best of our knowledge and belief, there is no existing default under the terms of the MMPA and/or MAA other than (i) failure to pay the GFC Reserve Excess to Bridgewater Bank pursuant to Section 6.7(4) of the MMPA; and (ii) such other default(s) set out in Schedule C attached; and
- (f) subject to receipt by Bridgewater Bank of the GFC Reserve Excess on closing of the Transaction, we consent and agree to the Transaction.

[signature page follows]

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2016

**BRIDGEWATER BANK**

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

**EXHIBIT "E"**  
**FORM OF WITHHOLDING ESCROW AGREEMENT**

**WITHHOLDING TAX ESCROW AGREEMENT**

**THIS AGREEMENT** made as of the ● day of ●, 2016.

**BETWEEN:**

**KPMG INC.**, solely in its capacity as court-appointed liquidator of the business in Canada of **Maple Bank GmbH** and its assets as defined in section 618 of the *Bank Act*, in its capacity as vendor

(the "**Vendor**")

- and -

**EQUITABLE BANK**, a bank existing under the laws of Canada

(the "**Purchaser**")

- and -

**KPMG INC.**, solely in its capacity as court-appointed liquidator of the business in Canada of Maple Bank GmbH and its assets as defined in section 618 of the *Bank Act*, in its capacity as escrow agent

(the "**Escrow Agent**")

**WHEREAS** by a purchase and sale agreement dated September 12, 2016 (as amended, supplemented or amended and restated from time to time, the "**Purchase Agreement**") between the Vendor and the Purchaser, the Vendor agreed to sell, assign and transfer all of Maple Bank's right, title and interest in, *inter alia*, the Subject Assets to the Purchaser;

**AND WHEREAS** Maple Bank is a non-resident of Canada for purposes of the ITA (as hereinafter defined);

**AND WHEREAS** pursuant to Section 2.7.1 of the Purchase Agreement, the parties have agreed that the Withholding Tax Escrow Amount is to be deposited with the Escrow Agent to be held in accordance with the terms hereof.

**NOW THEREFORE** the parties hereby agree and declare as follows:

**ARTICLE 1**  
**INTERPRETATION**

1.1 Definitions.

In this agreement unless there is something in the subject matter or context to indicate otherwise, the following terms shall have the meanings set out below and capitalized terms not defined herein shall have the meaning given thereto in the Purchase Agreement.

- (a) "**116 Certificate**" means, with respect to any Subject Asset, the certificate or certificates, if any, issued by CRA prior to the Remittance Date for such Subject Asset pursuant to section 116 of the ITA in respect of the sale of such Subject Asset by the Vendor to Purchaser, which certificate(s) are acceptable to Purchaser acting reasonably;

- (b) **"116 Certificate Limit"** means, with respect to any Subject Asset, the amount set out in the 116 Certificate for such Subject Asset and referred to as the "certificate limit" in subsection 116(5) of the ITA, provided that until a 116 Certificate for such Subject Asset is delivered to the Purchaser and accepted by Purchaser acting reasonably, the 116 Certificate Limit shall be deemed to be zero;
- (c) **"CRA"** means the Canada Revenue Agency;
- (d) **"CRA Comfort Letter"** means, with respect to any Subject Asset, a comfort letter or letters, in form satisfactory to the Purchaser, acting reasonably, issued by the CRA and provided to the Purchaser prior to the Remittance Date for such Subject Asset, providing, in effect, (i) that such Subject Asset (A) is not "taxable Canadian property", as defined in the ITA, or (B) is "excluded property" for the purposes of section 116 of the ITA, or (ii) that, in any event, no remittance will be required under subsection 116(5) of the ITA;
- (e) **"Escrow Funds"** means the Withholding Tax Escrow Amount and the Escrow Interest;
- (f) **"Escrow Interest"** has the meaning assigned by Section 4.3;
- (g) **"ITA"** means the *Income Tax Act* (Canada);
- (h) **"Judgment"** has the meaning assigned by Section 5.1(c);
- (i) **"Purchase Agreement"** has the meaning assigned by the recitals;
- (j) **"Subject Assets"** means, collectively, the Lakeview Assets and the NHA MBS, and **"Subject Asset"** means either of them;
- (k) **"Remittance Date"** means, with respect to a Subject Asset, the Business Day prior to the thirtieth (30th) day following the end of the calendar month in which the Closing Date occurs, except that if a letter, in form satisfactory to the Purchaser acting reasonably, is issued by the CRA and is provided to Purchaser before such Business Day in respect of the Vendor's application for the 116 Certificate confirming that the Purchaser shall not be required to make a remittance under subsection 116(5) of the ITA with respect to such Subject Asset, until further notice is provided by the CRA, the Remittance Date for such Subject Asset, shall be such later date as the Purchaser is required to make such remittance in accordance with such letter and any such further notice;
- (l) **"Withholding Tax Escrow Amount"** means an amount equal to 25% of the sum of the Lakeview Loan Purchase Price and the NHA MBS Purchase Price, allocated as follows:
  - (i) Lakeview Assets: \$●; and
  - (ii) NHA MBS: \$●.

[NTD: The allocated amount is 25% of the Lakeview Loan Purchase Price and 25% of the NHA MBS Purchase Price.]

## 1.2 General.

Headings contained herein are inserted for convenience of reference only and are not to be considered for the purposes of interpretation. All monetary references are to Canadian dollars and all



references to time are to Toronto time. References to sections, subsections and parts are to those of this Agreement. If anything herein is to be done or held on a day which is not a Business Day, the same shall be done or held on the next succeeding Business Day. Words importing the singular shall include the plural and vice versa. References to statutes refer to such statute and any relevant regulations thereunder, as same may be amended from time to time.

### 1.3 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

## **ARTICLE 2** **WITHHOLDING TAX ESCROW AMOUNT**

### 2.1 Acknowledgement of Deliveries.

The parties hereto acknowledge the delivery by the Purchaser to the Escrow Agent on the date hereof of the Withholding Tax Escrow Amount, which amount or any part or parts thereof, together with the interest and any other proceeds earned thereon, shall be held, invested and released by the Escrow Agent in the manner hereinafter prescribed.

### 2.2 Certificates, Authorizations and Directions.

- (a) The Purchaser and the Vendor hereby acknowledge that the releases from the Withholding Tax Escrow Amount, together with any interest and any other proceeds earned thereon, to be made from time to time by the Escrow Agent pursuant to the terms of this Agreement will, as further described herein, require the delivery of various authorizations, directions and/or other documents and accordingly each of the parties hereto hereby agrees to act in good faith and to cooperate with each other in executing and delivering any such necessary certificates, authorizations, directions and/or other documents.
- (b) The parties agree that all authorizations, directions and other documents to be delivered pursuant to the terms of this Agreement shall be in form and in substance satisfactory to the Purchaser and the Escrow Agent, acting reasonably.
- (c) Provided that the Escrow Agent has not acted in a grossly negligent manner or with wilful misconduct, nothing in this Agreement shall make the Escrow Agent responsible or liable on any matter for the sufficiency, correctness, genuineness or validity of any notice, direction, officers' certificate, authorization and/or any other document to be delivered by the Purchaser pursuant to this Agreement and accordingly, the Escrow Agent shall be at liberty to accept any officer's certificates, authorizations or directions of the Purchaser or any other documents provided by the Purchaser to the Escrow Agent as to any statements of facts as conclusive evidence of the truth of such statements and the Escrow Agent shall be in no way bound to call for further evidence or be responsible for any loss that may be occasioned by its failing to do so. For greater certainty, but subject to the Escrow Agent not acting in a grossly negligent manner or with wilful misconduct, the Escrow Agent shall be entitled to assume or rely upon the authority of the person making or signing such notice, direction, officers' certificate, authorization and/or document provided by the Purchaser, the genuineness of the signatures thereto and the accuracy of the matters set out therein, with the right, but without the duty or obligation on the part of the Escrow Agent, to inquire beyond the face of any such notice, direction, officers' certificate, authorization and/or document

received by it and the Escrow Agent is hereby irrevocably authorized and directed to follow the directions contained therein and will not incur any liability in its capacity as escrow agent hereunder as a result of complying with such directions.

**ARTICLE 3**  
**INVESTMENT OF WITHHOLDING TAX ESCROW AMOUNT**

3.1 Direction re Investment.

Each of the Vendor and Purchaser hereby authorizes and directs the Escrow Agent to invest and from time to time re-invest, in both cases in Canadian dollars, the Withholding Tax Escrow Amount together with all Escrow Interest (a) in a deposit account with a Canadian chartered bank listed in Schedule 1 to the *Bank Act* (Canada) (whether interest bearing or otherwise), (b) subject to the agreement of the Purchaser, acting reasonably, Cash Equivalents, or (c) subject to the agreement of the Purchaser, acting reasonably, any combination of the foregoing, in each case segregated from any other funds of the Vendor and the Escrow Agent.]

3.2 Disclosure.

The Escrow Agent shall provide the Vendor and the Purchaser, at any time either party may request, full particulars of the investments provided for in Section 3.1.

**ARTICLE 4**  
**RELEASES OF WITHHOLDING TAX ESCROW AMOUNT**

4.1 CRA Communications.

Each of the Vendor and the Purchaser agree to give each other prompt written notice of any written communication from the CRA pertaining to the matters addressed herein, including any demand, document or correspondence that may affect the determination of the Remittance Date for any Subject Asset. Either the Vendor or the Purchaser shall give each other and the Escrow Agent prompt written notice of the occurrence of a Remittance Date for any Subject Asset or of the receipt of a 116 Certificate or CRA Comfort Letter.

4.2 Release of Withholding Tax Escrow Amount.

The Escrow Agent shall disburse the Withholding Tax Escrow Amount as follows:

- (a) If, on or before the Remittance Date for a Subject Asset, the Purchaser has notified the Escrow Agent that, in relation to the acquisition of such Subject Asset from the Vendor:
  - (i) the Purchaser has received the Purchaser's original copy of a 116 Certificate that the Purchaser determines, acting reasonably, would preclude liability of the Purchaser under subsection 116(5) of the ITA, with respect to such Subject Asset, provided that the Escrow Agent fully complies with the provisions of this Section;
  - (ii) the 116 Certificate correctly identifies the Vendor as the non-resident disposing of such Subject Asset, and the Purchaser as the purchaser of such Subject Asset; and
  - (iii) the 116 Certificate correctly describes such Subject Asset, as the property in respect of which the 116 Certificate was issued;

then, following receipt of notice from the Purchaser of its determination in paragraph (a)(i) above, the Escrow Agent shall forthwith pay or deliver to the Receiver General for Canada 25% of the amount, if any, by which the portion of the Purchase Price payable to the Vendor for such Subject Asset, exceeds the 116 Certificate Limit of the 116 Certificate for such Subject Asset and shall provide evidence of such payment to the Purchaser and to the Vendor.

- (b) If on or before the Remittance Date for a Subject Asset the Purchaser has notified the Escrow Agent that it has been provided with or has received a CRA Comfort Letter in respect of such Subject Asset that the Purchaser determines, acting reasonably, would preclude liability of the Purchaser under subsection 116(5) of the ITA with respect to such Subject Asset, then the Escrow Agent shall forthwith remit to the Vendor such portion of the Withholding Tax Escrow Amount that is allocated to such Subject Asset.
- (c) If the Purchaser has received either a 116 Certificate in accordance with Section 4.2(a) or a CRA Comfort Letter in accordance with Section 4.2(b) in respect of a Subject Asset, then the Escrow Agent shall forthwith remit to the Vendor any remaining Withholding Tax Escrow Amount that was allocated to such Withholding Tax Purchased Asset.
- (d) On the Remittance Date for a Subject Asset, if the Purchaser has not received a 116 Certificate in accordance with Section 4.2(a) and has not received a CRA Comfort Letter in accordance with Section 4.2(b) for such Subject Asset, then the Escrow Agent shall pay from the Withholding Tax Escrow Amount to the Receiver General for Canada in satisfaction of the Purchaser's obligations under section 116 of the ITA an amount equal to the Withholding Tax Escrow Amount allocated to such Subject Asset.
- (e) The Escrow Agent shall remit to the Vendor any remaining Withholding Tax Escrow Amount forthwith after the provisions of one or more of the foregoing subsections has been satisfied with respect to each of the Subject Assets.

#### 4.3 Interest on the Withholding Tax Escrow Amount.

The parties agree that any interest and other proceeds earned on the Withholding Tax Escrow Amount (including interest on interest) (collectively the "**Escrow Interest**") shall be held in escrow for the benefit of the Vendor and, subject to any withholding taxes on interest, shall be released to the Vendor upon the release of the balance of the Withholding Tax Escrow Amount in accordance with Section 4.2 (to the extent such Escrow Interest is not required to satisfy a remittance to CRA as described in Section 4.2).

### **ARTICLE 5** **INDEMNITY AND LIABILITY**

#### 5.1 Indemnity

- (a) In addition to, and without limiting any other protection of the Escrow Agent hereunder or otherwise by law, the Purchaser shall, defend, indemnify and hold the Escrow Agent, harmless from and against any and all liabilities, losses, claims, damages, penalties, actions, suits, demands, levies, costs, expenses and disbursements including any and all legal and adviser fees and disbursements of whatever kind or nature which may at any time be suffered by, imposed on, incurred by or asserted against the Escrow Agent whether groundless or otherwise, howsoever arising from or out of any act or omission of the Escrow Agent unless arising from (i) the gross negligence or wilful misconduct on

the part of the Escrow Agent or (ii) arising from the inaction, omission or conduct of the Vendor in all capacities except as the escrow agent under this Agreement (collectively, "Indemnified Claims"); provided that this indemnity by the Purchaser shall be limited to 50% of the Indemnified Claims. For certainty, the foregoing indemnity is provided to the Escrow Agent solely in its capacity and solely in respect of its role as escrow agent under this Agreement. Notwithstanding any other provision hereof, this indemnity shall survive the removal or resignation of the Escrow Agent and/or termination of this Agreement.

- (b) The duties of the Escrow Agent hereunder are entirely administrative in nature. The Escrow Agent will have no duties or obligations except those which are expressly set forth in this Agreement and, in respect of such duties, the Escrow Agent:
  - (i) will have no discretion as to the performance of such duties and satisfaction of such obligations; and
  - (ii) will have no duties except those which are expressly set forth herein, and it will not be bound by any notice of claim or demand with respect to such duties and obligations, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received by the Escrow Agent in writing and signed by each other party hereto and unless the Escrow Agent has given its written consent thereto if its duties or obligations hereunder are affected.
- (c) Notwithstanding any other provision of this Agreement, the Escrow Agent is hereby authorized and directed to comply with and obey any order, judgement, decree or award of an Ontario court (a "Judgment"), and the Escrow Agent will be entitled to rely on any such Judgment without further investigation and not be liable by reason thereof to any person even if thereafter such order, judgement, decree or award is appealed, reversed, modified, annulled, set aside or vacated.
- (d) Notwithstanding any other provision of this Agreement, if for any reason the Escrow Agent determines in good faith that it is unable to identify clearly the person or persons entitled to receive all or any portion of the Withholding Tax Escrow Amount, the Escrow Agent may refuse to make any payment of the Withholding Tax Escrow Amount and may retain the Withholding Tax Escrow Amount in its possession or control subject to receipt of further directions in accordance with this Agreement.
- (e) The Escrow Agent will not by reason hereof be required to initiate, defend or otherwise prosecute any legal proceeding in respect of any matter arising out of or in connection with this Agreement unless and until it is indemnified by the Vendor and the Purchaser, on a several (and not joint and several) basis each as to 50%, including indemnity by way of advance deposit with the Escrow Agent of amounts estimated by the Escrow Agent of the costs (including legal costs on a solicitor and his own client basis), expenses, awards, judgements, amounts paid in settlement of claims or otherwise that the Escrow Agent determines might be incurred or suffered in or as a result of such legal proceedings to the complete and unfettered satisfaction of the Escrow Agent;
- (f) The Escrow Agent may act relative hereto upon the advice of legal counsel, chartered accountants or other professional advisors in reference to any matter pertaining hereto and will incur no liability in respect of any action taken, omitted or suffered by it in good faith in accordance with the advice of any such counsel or other advisor;

- (g) The Escrow Agent will not be liable for any act or failure to act by any representative, legal counsel, accountant, banker, agent or other person appointed to act in any matter pertaining to the Withholding Tax Escrow Amount or be bound to supervise the conduct of any such person;
- (h) All payments made by the Escrow Agent hereunder will be subject to any withholding taxes required by law, which taxes will be withheld and remitted by the Escrow Agent on a timely basis;
- (i) The Escrow Agent shall not be required to expend or risk its own funds or otherwise incur financial liabilities in the performance of any of its duties, or in the exercise of any of its rights and powers, hereunder; provided that, for certainty, the Escrow Agent acknowledges that this does not extend to its fees and costs (including the fees and costs of its legal counsel) in performing its duties as escrow agent under this Agreement in the ordinary course (for further certainty, "ordinary course" will not include the commencement of any legal proceedings).
- (j) If a dispute arises among any of the parties to this Agreement with respect to the custody, release or delivery of any of the Escrow Funds, or if a successor escrow agent fails to be appointed within twenty (20) days of a notice of resignation being given by the Escrow Agent in accordance with this Agreement, then either the Vendor or the Purchaser may bring a motion before the Ontario Superior Court of Justice [Commercial List] to seek a determination of such dispute or for the appointment of a successor escrow agent, as the case may be, upon at least five (5) Business Days prior written notice to the other parties to this Agreement. In such case, the Escrow Agent shall continue to hold the Escrow Funds until directed pursuant to a final order of the Court or written direction from the Vendor and the Purchaser.

**ARTICLE 6**  
**MISCELLANEOUS**

6.1 Notices.

Any notice or request to be given in connection with this Agreement shall be in writing, and shall be given by delivery, facsimile or electronic mail addressed to the Vendor and Purchaser at the address therefor set forth in the Purchase Agreement and shall be given to the Escrow Agent, as follows:

Escrow Agent:

●

Attention: ●

Fax No. ●

Email: ●

Any notice delivered shall be deemed to have been given on the day it is delivered unless such day is not a Business Day, in which event it shall be deemed to have been given on the next Business Day. Any notice transmitted by facsimile or electronic mail shall be deemed to have been given on the day of transmission if received at or prior to 5:00 p.m. (Toronto time) on a Business Day or, if received thereafter or on a day which is not a Business Day, shall be deemed to have been given on the next Business Day.

## 6.2 Appointment of New Escrow Agent.

The Escrow Agent may resign its trust and be discharged from all further duties and liabilities hereunder after giving at least thirty (30) days' notice in writing to each of the Vendor and Purchaser provided, however, that such shorter notice may be given as such parties shall accept as sufficient.

In case of the resignation of the Escrow Agent or its removal from office or incapacity to act, it's successor shall be at once appointed by the Vendor and Purchaser provided that such successor so appointed shall be either a law firm comprised of lawyers authorized to practise law in the Province of Ontario or a trust company qualified to carry on trust business in the Province of Ontario and there shall not exist a material conflict of interest in its role as a fiduciary under this Agreement; but should the Vendor and Purchaser fail to make such appointment then such successor shall be appointed by a Judge of the Superior Court of Justice [Commercial List] upon the application of any party hereto at the expense of the parties and given in such manner as the said Judge may direct. On any new appointment the new Escrow Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as the Escrow Agent without any further assurance, conveyance, act or deed, but there shall be immediately executed, at the expense of the parties, all such instruments (if any) as the new Escrow Agent may be advised by counsel to the new Escrow Agent, acting reasonably, are necessary or advisable.

Any such new successor Escrow Agent shall, forthwith upon appointment, become vested with all the estates, properties, rights, powers and trusts of its predecessors in the trusts hereunder, with like effect as if originally named as Escrow Agent herein and upon receipt of a written authorization and direction from each of the Vendor and Purchaser to such effect, the Escrow Agent shall promptly deliver the balance of the Withholding Tax Escrow Amount and all Escrow Interest to the successor Escrow Agent.

## 6.3 Release.

Upon payment by the Escrow Agent out of escrow of all of the Escrow Funds in accordance with this Agreement, the obligations of the Escrow Agent hereunder will terminate and the Escrow Agent will be forever released and discharged from all further obligations hereunder.

## 6.4 No Liability.

The Escrow Agent (solely in its capacity as escrow agent under this Agreement) shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted, excepting only its own gross negligence or wilful misconduct.

## 6.5 Time.

Time shall be of the essence of this Agreement, provided that the time for doing or completing any matter may be extended or abridged by an agreement in writing between the parties or their respective solicitors.

## 6.6 Enurement.

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6.7 Appointment.

Each of the Vendor and Purchaser hereby appoints the Escrow Agent as escrow agent hereunder and the Escrow Agent acknowledges and confirms such appointment.

6.8 Counterparts.

This Escrow Agreement may be executed in several counterparts, each of such counterparts when executed shall constitute an original document, and such counterparts taken together shall constitute one and the same instrument. Counterparts may be executed either in original or faxed form or in other electronically transmitted form (including by electronic mail or PDF) and the parties adopt any such signature as the original signature of the parties provided that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was faxed or sent by other electronic form.

***[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date set out above.

**KPMG INC., in its capacity as Court appointed liquidator of the business in Canada of Maple Bank GmbH and its assets as defined under section 618 of the *Bank Act*, as Vendor**

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

**EQUITABLE BANK, as Purchaser**

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

**KPMG INC., in its capacity Court appointed liquidator of the business in Canada of Maple Bank GmbH and its assets as defined under section 618 of the *Bank Act*, as Escrow Agent**

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