



**Report of  
KSV Kofman Inc.  
as Proposed Receiver and Manager of  
Certain Property of Scollard Development  
Corporation**

January 30, 2017

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COURT FILE NO: CV-16-11567-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

APPLICANT

- AND -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION,  
TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION,  
TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947  
ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE  
CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE  
CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION,  
TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION  
AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

RESPONDENTS

APPLICATION UNDER SECTION 37 OF THE  
*MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT*, 2006, S.O. 2006,  
C. 29 AND SECTION 101 OF *THE COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43

REPORT OF  
KSV KOFMAN INC.  
AS PROPOSED RECEIVER AND MANAGER

JANUARY 30, 2017

## 1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as proposed receiver and manager of the real property ("Real Property") registered on title as being owned by the Scollard Development Corporation (the "Company") and of all of the assets, undertakings and properties of the Company acquired for or used in relation to the Real Property (together with the Real Property, the "Property"). KSV has consented to act as receiver and manager ("Receiver").

2. The purpose of this Report is to summarize the terms under which the Receiver proposes to borrow up to \$3.5 million from Downing Street Financial Inc. (“Downing Street” or “Lender”) under a Receiver’s Certificate (the “Loan”).

## 2.0 Background

1. Pursuant to an order of the Ontario Superior Court of Justice (“Court”) dated October 27, 2016, Grant Thornton Limited was appointed the trustee (“Trustee”) of Scollard Trustee Corporation (“STC”) and several related entities under Section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended.
2. STC advanced monies on a secured basis to the Company. STC raised monies from investors through syndicated mortgage investments. Background information regarding the monies raised by STC and the events leading to the appointment of the Trustee is provided in the Fourth Report of the Trustee dated January 20, 2017.
3. The Company is also indebted to Firm Capital Corporation in the amount of approximately \$2.5 million in respect of a mortgage on the Real Property (“Firm Capital Mortgage”). The Firm Capital Mortgage matured on January 1, 2017.
4. The principal purpose of these proceedings is to market and solicit offers for the investment in, development of and/or sale of the Real Property pursuant to a Court-supervised process (the “Marketing Process”).

## 3.0 Receiver’s Borrowings<sup>1</sup>

1. KSV executed a commitment letter with Downing Street on January 26, 2017 (“Commitment Letter”). The borrowings are to be used to repay the Firm Capital Mortgage forthwith following the making of the Receivership Order and to fund the costs of these proceedings, including professional costs. The Commitment Letter is subject to Court approval.
2. Bennett Jones LLP (“Bennett Jones”), legal counsel for KSV should it be appointed Receiver, has conducted a preliminary security review with respect to the Firm Capital Mortgage and intends to provide KSV with a final security opinion in advance of the return of the motion.
3. KSV understands that the Trustee approached three prospective lenders to determine their interest in providing funding for these proceedings. One of the prospective lenders proposed funding subject to conditions that were too onerous and not capable of being satisfied, and that lender later withdrew its offer in any event. The other party offered financing terms similar to the Lender, but which the Trustee determined to be less attractive from a financial perspective. Since the

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<sup>1</sup> Terms not defined in this section have the meaning provided to them in the proposed receivership order.

Trustee had already received the Commitment Letter and found its terms acceptable and more favourable, it decided to work with Downing Street.

4. The terms of the Loan are provided below and a copy of the Commitment Letter is provided in Appendix "A".
  - a) Amount: up to \$3.5 million, including \$150,000 to establish an interest reserve, with the balance to repay the Firm Capital Mortgage and to fund the receivership proceedings;
  - b) Term: one year;
  - c) Repayment: any time, provided that if the Loan is repaid before the six-month anniversary of the initial advance, Downing Street will be entitled to interest for that six-month period;
  - d) Interest rate: 8.5% per annum, compounded monthly. Interest is payable monthly from the interest reserve to the extent funds are available therefrom;
  - e) Lender fee: \$70,000, \$35,000 of which is payable on the date the Receiver is appointed (the "Appointment Date") and the remainder on the earlier of: (i) six months after Appointment Date; and (ii) the date the Lender is repaid;
  - f) Draws and Security: funds are to be advanced by way of one Receiver's Certificate. The Loan is to be secured by the Receiver's Borrowing Charge which shall only be subordinate to the Receiver's Charge and the charges set out in sections 14.06 (7), 81.4(4) and 81.6 (2) of the *Bankruptcy and Insolvency Act*;
  - g) Break Fee: if another party refinances the Firm Capital Mortgage, the Receiver will pay Downing Street a break fee of \$20,000 to cover its costs related to the Loan;
  - h) Escrow: Downing Street has wired the full amount of the Loan to Bennett Jones. The funds are to be released to the Receiver if the receivership order is made by January 31, 2017;
  - i) Material Conditions:
    - i. the Court makes the receivership order; and
    - ii. the Lender is to be consulted with respect to the Marketing Process and all major decisions which require Court approval.

### 3.1 Conclusions and Recommendations

1. KSV considered the following factors regarding the terms of the Loan:
  - a) It will provide the Receiver with liquidity to fund these proceedings and to repay in full the Firm Capital Mortgage, subject to receiving the security opinion from Bennett Jones;
  - b) The Trustee discussed the opportunity with two other potential lenders and considered the Lender's terms reasonable in the circumstances;
  - c) KSV is of the view that the terms of the Loan are consistent with other recent real estate restructurings, including those involving the Urbancorp Group. KSV is the Monitor of a large number of Urbancorp entities in its proceedings under the *Companies' Creditors Arrangement Act*. Based on KSV's recent experience, including its real estate experience, the effective annualized interest rate of the Loan (estimated to be 10.6%<sup>2</sup>) is below market for a loan of this nature, i.e. akin to a debtor-in-possession loan; and
  - d) The break fee is intended to compensate the Lender for its costs in connection with the Commitment Letter if another lender refinances the Firm Mortgage. The break fee is insignificant relative to the total value of the facility (0.57%) and is well below market for fees of this nature (often in the range of 3%).
2. Based on the foregoing, KSV believes that the terms of the Loan are reasonable in the circumstances.

\* \* \*

All of which is respectfully submitted,



**KSV KOFMAN INC.  
IN ITS CAPACITY AS PROPOSED RECEIVER AND MANAGER OF  
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION  
AND NOT IN ITS PERSONAL CAPACITY**

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<sup>2</sup> The effective annualized interest rate includes the lender fee of \$70,000.

## **Appendix “A”**



File # 17-2013

January 25, 2017

KSV Advisory Inc.  
150 King Street West  
Suite 2308, Box 42  
Toronto ON M5H 1J9  
Canada

Attention: Mr. Bobby Kofman

Dear Bobby:

**Re: Loan of up to \$3,500,000 to KSV Kofman Inc., solely in its proposed capacity as the court-appointed receiver and manager (in such capacity, the “Proposed Receiver”) of the real property known municipally as 1606-1614 Charles Street, Whitby, Ontario, and all other property, assets and undertakings of the debtor located on or arising from such real property (collectively, the “Property”), provided that such Proposed Receiver is appointed by way of an Order (the “Appointment Order”) of the Ontario Superior Court of Justice (Commercial List) (the “Court”)**

Unless otherwise defined herein, all capitalized terms are defined as they are in the Model Receivership Order of the Court (the “Model Receivership Order”).

Downing Street Financial Inc. (“DSFI” or the “Lender”) is prepared to advance money to the Proposed Receiver by way of a Receiver Certificate, provided that the funds advanced are secured by the Receiver’s Borrowings Charge, which Receiver’s Borrowings Charge shall rank in priority as set out in the Model Receivership Order (i.e., subordinate in priority only to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4) and 81.6(2) of the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”).

The basic terms of the loan are as follows:

**Amount and Nature  
and Purpose  
of Loan:**

Up to \$3,500,000, at the Proposed Receiver’s option (with the exception of the interest reserve, which shall be mandatory), to be allocated as follows:

- Approximately \$2,500,000 to repay the existing mortgage registered on title against the Property in favour of Firm Capital Mortgage Fund Inc. (the “Firm Capital Mortgage”);
- \$150,000 to establish an interest reserve; and



- the balance as required by the Receiver to administer its mandate (collectively, the "Loan").

<b>Security and Draws:</b>	Funds to be advanced by way of one Receiver's Certificate satisfactory to the Lender and the Proposed Receiver, the form of which Receiver's Certificates shall be approved by the Court in the Appointment Order, to be issued forthwith upon the Proposed Receiver being appointed as the receiver or receiver and manager of the Property. The Loan is to be secured by the Receiver's Borrowings Charge. The Proposed Receiver is to consent to a charge on the Property, if required by the Lender, to reflect the Lender's interest in the Receiver's Borrowings Charge.
<b>Holdback:</b>	\$150,000 to establish the interest reserve (the "Interest Reserve").
<b>Interest and Payment:</b>	8.5% per annum compounded monthly, not in advance, payable monthly from the interest reserve to the extent that funds are available therefrom.
<b>Amortization:</b>	Interest only.
<b>Term:</b>	1.0 years (12 months)
<b>Privileges:</b>	Open to early pre-payment in full at any time, provided, however, that if pre-payment occurs before the six-month anniversary of the initial advance, the Lender shall still be entitled to interest in respect of that six-month period.
<b>Prior Encumbrances:</b>	The Receiver's Charge and the charges required by statute, being those set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.
<b>Lender Fee:</b>	\$70,000 payable (a) as to \$35,000 on the date the Proposed Receiver is appointed as the receiver or receiver and manager of the Property (the "Appointment Date") and (b) as to the balance of \$35,000, on the first to occur of (i) the date that is 6 months after the Appointment Date and (ii) the date that the Lender is repaid hereunder.
<b>Brokerage Fee:</b>	None
<b>Further Condition:</b>	It is understood that the Appointment Order is being sought the week of January 23, 2017 or the week of January 30, 2017. It is also understood that if the Appointment Order is granted, the Proposed Receiver shall subsequently recommend to the Court that a formal Court-supervised marketing process be implemented for the Property, with a view of soliciting an investment in, development of and/or sale of the Property (collectively, the "Marketing Process"). The Lender is to be consulted with respect to the Marketing Process and any other major decisions that are subject to the approval of the Court.
<b>Break Fee:</b>	It is agreed and understood that the Proposed Receiver will recommend to the Court the approval of this agreement by the Court and of the Lender as the sole lender to the receivership to refinance the Firm Capital Mortgage at the initial hearing to appoint the Proposed Receiver. If the Proposed Receiver is appointed as the receiver or receiver and manager

of the Property (the "Receiver") and this proposed break fee is approved by the Court, but a person other than the Lender makes a loan to or advances monies to the Receiver to refinance the Firm Capital Mortgage, the Proposed Receiver or the Receiver, as the case may be, shall forthwith (i) from the other monies loaned or advanced to the Receiver, pay the Lender a break fee of \$20,000 to cover its costs related to this agreement and (ii) return to the Lender all funds sent to the Proposed Receiver, the Receiver or its legal counsel by the Lender.

**Escrow:**

The Lender will wire to the Proposed Receiver's counsel, Bennett Jones LLP, the amount of the Loan in escrow, which funds will not be released by such counsel to the Receiver until (a) the Receiver has been appointed as the receiver or receiver and manager of the Property and (b) the Proposed Receiver has accepted this letter agreement. All such funds shall immediately be returned to the Lender, in full and without deduction, if (i) the Proposed Receiver has not been appointed as the Receiver by no later than January 31, 2017, or (ii) the terms of this letter agreement are not acceptable to the Proposed Receiver, the Lender demands the return of such funds. Within one business day after the date of the appointment of the Receiver and the acceptance by the Receiver of this letter agreement, the Receiver shall pay to the Lender the amount of the interest Reserve, the portion of the Lender Fee payable in accordance herewith, and the amount of any reasonable and documented legal fees, disbursements and HST incurred by the Lender in connection herewith.

**Assignment:**

The Lender shall be entitled to assign this Agreement and the Loan to any other person.

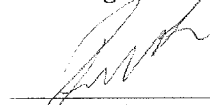
**Legal Fees:**

The reasonable and documented legal fees, disbursements and HST incurred by the Lender in connection herewith, including without limitation in respect of any enforcement of its rights hereunder, shall be secured by the Receiver Certificates and the Receiver's Borrowings Charge.

The foregoing constitutes a formal offer to provide financing, subject to the granting of the Appointment Order and the execution of one or more Receiver's Borrowings Certificates.

Yours truly,

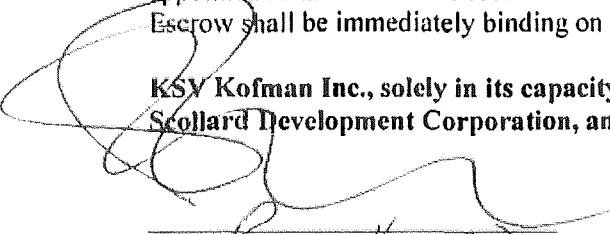
**Downing Street Financial Inc.**



Robert Shiller  
President and Principal Broker

The foregoing is agreed to by the undersigned, to be effective only upon the Proposed Receiver being appointed as the receiver or receiver and manager of the Property, except that the provision herein entitled Escrow shall be immediately binding on the undersigned, this 25<sup>th</sup> day of January, 2017.

**KSY Kofman Inc., solely in its capacity as proposed receiver and manager of certain property of Scollard Development Corporation, and not in its personal or in any other capacity**



Name: Robert Kofman

Title: PRESIDENT

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (ROSS PARK) INC., TEXTBOOK (774 BRONSON AVENUE) INC., 1703858 ONTARIO INC., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (BURLINGTON) LTD., LEGACY LANE INVESTMENTS LTD. AND SCOLLARD DEVELOPMENT CORPORATION (COLLECTIVELY THE "APPLICANTS")

Court File No. CV-16-11625-00CL

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

Proceeding commenced at Toronto

**REPORT OF KSV KOFMAN INC. AS  
PROPOSED RECEIVER AND  
MANAGER OF CERTAIN  
PROPERTY OF SCOLLARD  
DEVELOPMENT CORPORATION**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
Toronto, ON M5X 1A4  
**Sean H. Zweig (573071)**  
Tel: 416-777-6254  
Fax: 416-863-1716

Lawyers for KSV Kofman Inc.,  
the proposed receiver and manager