



**Sixth Report of
KSV Kofman Inc.
as Receiver and Manager of Certain Property
of Scollard Development Corporation, Memory
Care Investments (Kitchener) Ltd., Memory
Care Investments (Oakville) Ltd., 1703858
Ontario Inc., Legacy Lane Investments Ltd.,
Textbook (525 Princess Street) Inc. and
Textbook (555 Princess Street) Inc.**

July 12, 2017

Contents		Page
1.0	Introduction.....	1
1.1	Purposes of this Report.....	3
1.2	Restrictions.....	4
1.3	Currency.....	4
2.0	Background.....	4
2.1	The Fourth Report.....	5
3.0	Asset Summaries.....	6
4.0	Examination.....	6
4.1	The Davies Family Trust.....	7
4.2	The Davies Arizona Trust.....	7
4.3	The Davies Arizona Trust’s Arizona Property and Bank Account with JP Morgan Chase.....	8
4.4	Judith Davies.....	9
4.5	The Davies Children.....	10
4.6	The Mortgage on Davies’ and Judith Davies’ Personal Residence.....	11
4.7	The Recent Listing for Sale of Davies’ and Judith Davies’ Personal Residence.....	11
5.0	Review of Aeolian’s Receipts and Disbursements.....	12
5.1	Receipts.....	13
5.1.1	Amounts Received by Aeolian from Davies Developers.....	13
5.1.2	TSI, TSSI and MCIL.....	14
5.2	Disbursements.....	14
5.2.1	Judith Davies.....	14
5.2.2	Arizona Property.....	14
5.2.3	Amex and Other Personal Payments.....	14
6.0	Conclusion.....	15

Appendices

Appendix	Tab
Fourth Report	A
Management Fee Document	B
Reconciliation	C
Davies Asset Summary	D
Aeolian Asset Summary	E
Revised Davies Asset Summary	F
Revised Aeolian Asset Summary	G
Transcript of Examination	H
Davies Family Trust Decalaration of Trust	I
Davies Arizona Trust Irrevocable Trust Agreement	J
Arizona Property Appraisal	K
Letter from Bennett Jones to Dentons	L
Letter from Dentons to Bennett Jones	M
Letter from Bennett Jones to Moskowitz	N
Aeolian Receipts and Disbursements	O



COURT FILE NO: CV-17-11689-00CL

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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.

AND IN THE MATTER OF A MOTION PURSUANT TO SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED

**SIXTH REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER**

JULY 12, 2017

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager of the real property registered on title as being owned by Scollard Development Corporation ("Scollard"), Memory Care Investments (Kitchener) Ltd. ("Kitchener"), Memory Care Investments (Oakville) Ltd. ("Oakville"), 1703858 Ontario Inc. ("Burlington"), Legacy Lane Investments Ltd. ("Legacy Lane"), Textbook (555 Princess Street) Inc. ("555 Princess") and Textbook (525 Princess Street) Inc. ("525 Princess") (collectively the "Companies", and each a "Company"), and of all of their assets, undertakings and properties acquired for or used in relation to their real property (the "Property").
2. Pursuant to an order of the Ontario Superior Court of Justice ("Court") dated October 27, 2016, Grant Thornton Limited was appointed Trustee ("Trustee") of eleven entities¹ which raised monies from investors ("Investors") through syndicated mortgage investments (collectively, the "Trustee Corporations")². Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements ("Loan Agreements") between the Trustee Corporation and the Companies and four related entities, Textbook Ross Park Inc. ("Ross Park"), Textbook (445 Princess Street) Inc. ("445 Princess"), Textbook (774 Bronson Avenue) Inc. ("Bronson") and McMurray Street Investments Inc. ("McMurray") (collectively, including the Companies, the "Davies Developers").

¹ 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

² Individuals who hold their mortgage investment in a Registered Retirement Savings Plan have a mortgage with Olympia Trust instead of the applicable Trustee Corporation.

3. On January 21, 2017, the Trustee brought a motion for an order (the “Receivership Order”) appointing KSV as receiver and manager (“Receiver”) of the Property owned by Scollard. On February 2, 2017, the Court made the Receivership Order.
4. On April 18, 2017, the Trustee brought a motion, *inter alia*, seeking orders:
 - a) amending and restating the Receivership Order to add the Property owned by the Companies (except for Scollard, which was already in receivership) (the “Amended and Restated Receivership Order”); and
 - b) compelling John Davies (“Davies”), a director and officer of each of the Davies Developers, to immediately deliver to the Trustee all of the bank statements for the Davies Developers (the “Production Order”).
5. On April 28, 2017, the Court made the Amended and Restated Receivership Order and the Production Order.
6. The Amended and Restated Receivership Order was further amended and restated pursuant to a Court order made on May 2, 2017 to rectify certain clerical errors.
7. Following the issuance of the Amended and Restated Receivership Order, the Receiver commenced a review of the receipts and disbursements of the Companies (except for Scollard, which review was already underway). Additionally, at the request of the Trustee, the Receiver reviewed the receipts and disbursements of Ross Park, 445 Princess, Bronson and McMurray.
8. On June 6, 2017, the Receiver filed its Fourth Report to Court (the “Fourth Report”). The Fourth Report recommended, *inter alia*, that the Court issue an order restraining Davies and Aeolian Investments Ltd. (“Aeolian” and together with Davies, the “Defendants”) from disposing of their assets (the “Mareva Order”). Aeolian is owned by Davies’ wife, Judith, and his children. Its sole director and officer is Davies. Aeolian is an indirect or direct shareholder of each of the Davies Developers.³ A copy of the Fourth Report is attached as Appendix “A”, without appendices.
9. On June 7, 2017, the Court made the Mareva Order on an interim basis. In addition to restraining the Defendants from disposing of their assets, the Mareva Order required:
 - a) Davies and Aeolian to provide sworn statements describing the nature, value and location of their worldwide assets (the “Asset Summaries”);
 - b) Davies and Aeolian’s authorized representative (being Davies) to submit to examinations regarding the Asset Summaries (the “Examination”); and
 - c) the Receiver to apply for an extension of the Mareva Order within ten days, failing which the Mareva Order would terminate.

³ Other than McMurray which is partially owned by the Davies Family Trust.

10. On June 12, 2017, the Receiver brought a motion to compel Textbook Suites Inc. (“TSI”), Textbook Student Suites Inc. (“TSSI”), Memory Care Investments Ltd (“MCIL”) and Aeolian, each being shareholders of Davies Developers, to forthwith provide the Receiver with a copy of their books and records (the “Second Production Order”).
11. On June 16, 2017, on the consent of the Defendants, the Court extended the Mareva Order until July 17, 2017.
12. Also on June 16, 2017, the Court made the Second Production Order. Davies has provided the Receiver with bank statements and financial information for TSI, TSSI, MCIL and Aeolian. The Defendants’ legal counsel has also provided select emails which had been reviewed by their legal counsel; however, the Receiver is seeking production of all non-privileged emails, which has still not occurred as at the date hereof.
13. On June 23 and 27, 2017, the Defendants’ legal counsel also produced several binders containing, among other things, email correspondence between Greg Harris (“Harris”), Raj Singh (“Singh”), Walter Thompson (“Thompson”), Bruce Stewart (“Stewart”) and Davies relating to intercompany loans, development management fees, Davies’ family members’ work for the Davies Developers and various other issues; the pro formas for the Davies Developers that were provided to Tier 1 Transaction Advisory Inc. (“Tier 1”) and the Trustee Corporations; and limited email correspondence to and from Tier 1/the Trustee Corporations.
14. On June 30, 2017, the Defendants’ legal counsel produced answers to all of the undertakings given at the Examination (the “Undertakings”).

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide a summary of:
 - i. the Examination;
 - ii. Davies’ and Judith Davies’ re-listing of their jointly owned personal residence for sale (on the day that the Mareva Order was granted) and their subsequent conduct;
 - iii. the Receiver’s review of Aeolian’s receipts and disbursements for the period October 1, 2012 to May 29, 2017; and
 - b) recommend that the Court issue an order:
 - o extending the Mareva Order to apply to Davies and Aeolian on an interlocutory basis (until a final disposition of the proceeding); and
 - o expanding the Mareva Order to include the trustees (in such capacity) of the Davies Family Trust and the Davies Arizona Trust (jointly, the “Trusts”), and Judith Davies.

1.2 Restrictions

1. In preparing this Report, the Receiver has reviewed the information noted in Section 1.2 of the Fourth Report, as well as the following information:
 - a) Aeolian's accounting records and bank statements;
 - b) Aeolian's unaudited financial information;
 - c) the transcript of the Examination; and
 - d) the Undertakings.
2. A representative of the Receiver attended at the Examination.
3. The Receiver has not performed an audit of the financial information addressed in this Report. The findings discussed herein remain subject to further review. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report.
4. The Receiver has not discussed this Report with Davies, Judith Davies or any other person, nor has Davies or Judith Davies had an opportunity to review the Report in advance of it being served.
5. To date, no party has refuted any of the findings in any of the reports filed by the Receiver, with the exception of Raj Singh and Tier 1, which claim that no unauthorized payments were made to Mr. Singh or entities related to Mr. Singh. Additionally, Mr. Davies, through his counsel, Dentons Canada LLP ("Dentons"), has advised that management fees paid to him and others were disclosed to Mr. Singh and were referenced in project forecasts provided by Davies and others to Mr. Singh. A copy of a document in this regard was included in documents provided on June 27, 2017 by Dentons to Bennett Jones LLP, the Receiver's legal counsel, and is attached as Appendix "B".

1.3 Currency

1. All references to currency in this Report are in Canadian dollars, unless otherwise noted.

2.0 Background

1. The Davies Developers are developers of student residences, accommodations for people suffering from various forms of cognitive impairment and low-rise condominiums. All but one of the Davies Developers' projects are in pre-construction⁴ (collectively the "Projects").

⁴ Footings and foundations have been laid down at the Project owned by Burlington.

2. The amounts borrowed by the Davies Developers total approximately \$119.940 million⁵, including approximately \$93.675 million in secured debt owing to the Trustee Corporations (being monies raised by the Trustee Corporations from Investors) and \$23.675 million owing to other mortgage lenders (the “Other Lenders”). The Receiver understands that all of the obligations owing to Other Lenders rank in priority to the Trustee Corporations.
3. The funds advanced from the Trustee Corporations to the Davies Developers were to be used to purchase real property and to pay the soft costs associated with the development of the Projects.

2.1 The Fourth Report

1. The Receiver’s findings detailed in the Fourth Report include the following:
 - a) only a small percentage of the monies raised from Investors appear to have been used for their intended purpose;
 - b) each of the Projects is in the early stages of development and none of the Davies Developers has any capital to further develop their respective Projects;
 - c) millions of dollars were paid by the Davies Developers to their shareholders, including corporations relating to Davies, Thompson, Singh, Harris and Stewart, in respect of management fees, consulting fees, dividends, loans and other amounts. A substantial portion of these payments contravene the Loan Agreements;
 - d) Aeolian received approximately \$5.4 million from the Davies Developers, including at least \$4.1 million in prohibited management fees and \$875,000 in dividends;⁶
 - e) Davies and his family members received more than \$1.322 million from the Davies Developers, including \$900,000 in payments made from McMurray towards mortgages on Davies’ personal residence and cottage and more than \$422,000 paid to family members;
 - f) entities related to the Davies Developers’ shareholders (other than Aeolian) received \$3.125 million in dividends. The Receiver advised in the Fourth Report that it is its view that no value was created to justify the payment of the dividends. Each entity had no or negligible equity after related party transactions and the payment of the dividends; and

⁵ Represents the principal amounts owed, excluding interest and fees.

⁶ These amounts are based on the Davies Developers’ financial records. Aeolian’s financial records reflect that Aeolian received approximately \$5.6 million from the Davies Developers, including \$3.9 million in prohibited management fees and \$625,000 in dividends. A reconciliation of the differences is provided in Appendix “C”.

- g) there appear to be numerous other breaches of the Loan Agreements, including: i) the granting of security interests on certain of the Davies Developers' real estate in priority to the security interests granted to the applicable Trustee Corporations;⁷ and ii) the routine transfer of monies among the Davies Developers.

3.0 Asset Summaries

1. Davies provided the Receiver with the Asset Summaries on June 14, 2017. Copies of Davies' Asset Summary and Aeolian's Asset Summary provided on that date are found in Appendix "D" and "E", respectively.
2. The Asset Summaries reflect that:
 - a) Davies has assets of approximately \$1.7 million (excluding the Davies Arizona Trust, which he has not quantified) and liabilities of \$2.0 million; and
 - b) Aeolian has shareholdings in six companies of no value or of an "unknown" value, and liabilities of approximately \$200,000.
3. Following the Examination, on June 30, 2017, in an answer to an undertaking, Davies provided the Receiver with revised Asset Summaries for him and Aeolian. Copies of Davies' revised Asset Summary and Aeolian's revised Asset Summary are attached at Appendix "F" and "G", respectively.
4. The revised Asset Summaries reflect that:
 - a) Davies has assets of approximately \$1.7 million (excluding the Davies Arizona Trust, which he has not quantified) and liabilities of approximately \$2.1 million; and
 - b) Aeolian has shareholdings in eight companies of no value or of an "unknown" value, and liabilities of approximately \$170,000.

4.0 Examination

1. The Receiver and its counsel, Bennett Jones LLP, conducted the Examination on June 16, 2017. A copy of the transcript from the Examination is attached as Appendix "H". Key items identified in the Examination are detailed in the sections below.

⁷ All of the Trustee Corporations were to have a first ranking security interest against the applicable Davies Developers' property, with the exception of Ross Park, Bronson and 445 Princess, in which case the Trustee Corporations were to have a second ranking security interest behind existing mortgages. In certain circumstances, the relevant Loan Agreements provide that the Trustee Corporation may be subordinated in limited situations, such as to grant a security interest to Tarion Warranty Corporation.

4.1 The Davies Family Trust

1. During the Examination, Davies testified that, in or around 2002 or 2003, he established the Davies Family Trust.⁸ He further testified that the beneficiaries of the Davies Family Trust are Judith Davies and his four children: Jessica Deborah Davies, Sarah Ramona Davies, Andrew John Davies and Walter Robert Jackson Davies (collectively, the “Davies Children”).⁹
2. Following the Examination, in an answer to an undertaking, Davies produced the Declaration of Trust for the Davies Family Trust, which indicates that the Davies Family Trust was established in December 2000 and the beneficiaries of the Davies Family Trust include not only Judith Davies and the Davies Children, but also Davies himself and any future children and issue of Davies. A copy of the Declaration of Trust for the Davies Family Trust is attached as Appendix “I”.
3. Davies testified that the Davies Family Trust owns no property, has no assets and no bank account, though he subsequently admitted that the trust has an ownership interest in McMurray.¹⁰
4. Davies also testified that the Davies Family Trust received over \$300,000 from Aeolian, all of which was used to help fund part of a renovation on the Arizona Property (as defined in, and discussed in, Section 5.2.2 below).¹¹
5. The trustees of the Davies Family Trust are Davies, Judith Davies and Harris.¹² Harris is related to corporations that have ownership interests in several of the Davies Developers and has also acted as legal counsel to some or all of the Davies Developers.

4.2 The Davies Arizona Trust

1. During the Examination, Davies testified that, in or around 2013, the Davies Arizona Trust was established.¹³ He further testified that the beneficiaries of the Davies Arizona Trust are himself, Judith Davies, the Davies Children, Judith Davies’ parents and siblings, as well as certain other family members.¹⁴

⁸ Qs. 137-138, p 31, lines 12-15.

⁹ Q. 141, p 31, lines 20-21.

¹⁰ Qs. 142-148, p 31, lines 22-25, p 32, lines 1-13.

¹¹ Qs. 401-402, p 101, lines 7-23.

¹² Qs. 139-140, p 31, lines 16-19; Declaration of Trust for the Davies Family Trust attached as Appendix “I”.

¹³ Q. 150, p 32, lines 23-25.

¹⁴ Qs. 157-159, p 34, lines 4-14.

2. Following the Examination, in an answer to an undertaking, Davies produced the Irrevocable Trust Agreement for the Davies Arizona Trust, which indicates that the Davies Arizona Trust was established in December 2013 and the beneficiaries include only the Davies Children, though as the sole trustee, Davies may, among other things, distribute trust property to other persons and entities for the use and benefit of a beneficiary. As sole trustee, Davies also has broad powers under the Irrevocable Trust Agreement, including the power to, among other things, sell or convey real property in the manner and on the terms and conditions he, as sole trustee, deems appropriate. A copy of the Irrevocable Trust Agreement, along with the Certification of Trust, for the Davies Arizona Trust is attached as Appendix “J”.

4.3 The Davies Arizona Trust’s Arizona Property and Bank Account with JP Morgan Chase¹⁵

1. During the Examination, Davies testified that when the Davies Arizona Trust was first established in December 2013, it immediately purchased a house located at 35410 North 66th Place, Carefree, Arizona, 85377 (the “Arizona Property”).¹⁶ Davies further testified that:
 - a) the Arizona Property was purchased for US\$1.2 million;¹⁷
 - b) the funds used to purchase the Arizona Property came from Aeolian,¹⁸ with the Bank of Internet having a US\$600,000 mortgage on the Arizona Property;^{19,20}
 - c) there are no other liens on the Arizona Property;²¹
 - d) almost US\$2 million was spent to renovate the Arizona Property following its acquisition;²² and
 - e) Aeolian funded all the costs to purchase and renovate the home, in part through the Trusts.
2. Davies testified that, notwithstanding the US\$1.2 million purchase price and the US\$2 million spent on renovations for the Arizona Property, it is currently worth US\$1.795 million given the depressed market for real estate in Arizona.²³

¹⁵ The amounts reflected in this section do not necessarily reconcile to the results of the Receiver’s investigation.

¹⁶ Qs. 153-154 and 161, p. 33, lines 17-21, and p. 35, lines 15-20.

¹⁷ Q. 170, p 36, lines 18-19.

¹⁸ Q. 155, p 33, lines 22-24.

¹⁹ Qs. 171-172, p 36, lines 20-23.

²⁰ The Receiver has since obtained a Deed of Trust for the Arizona Property, which reflects that the lender is BOFI Federal Bank.

²¹ Q. 173, p 36, lines 24-25 and p 37, line 1.

²² Qs. 356-357, p 91, lines 5-9.

²³ Qs. 464-466, p 115, lines 17-24.

3. Following the Examination, in an answer to an undertaking, Davies produced an “as is” appraisal for the Arizona Property, a copy of which is attached as Appendix “K” (the “Appraisal”). The Appraisal states that the market value of the Arizona Property, as of December 9, 2015, is \$1,740,000; however, the Appraisal appears to have been performed before additional funds were spent on the Arizona Property. Davies has recently advised the Receiver that further renovations are required in order to complete the house and the house may be worth less than \$1,740,000.
4. Davies also testified that the Davies Arizona Trust has a bank account with the Chase Bank in Arizona (“Chase”) over which he has control.²⁴ The Receiver's legal counsel notified the Chase Bank about the Mareva Order, but received a response that Chase would not freeze the account in the US or provide information about the account until the Order is domesticated and recognized in the US. Davies' counsel recently advised that the current account balance of the Chase account is \$62.67 (chequing) and \$2.30 (savings).
5. On June 21, 2017, legal counsel for the Receiver sent a letter to legal counsel for Davies advising of the Receiver's position that the Arizona Property (and any other property of the Davies Arizona Trust) is caught by the terms of the Mareva Order and that Davies is accordingly precluded from, among other things, selling and encumbering the Arizona Property. A copy of the letter from the Receiver's counsel is attached as Appendix “L”.
6. On June 26, 2017, legal counsel for Davies responded by letter that it disagreed with the Receiver's position that the Arizona Property is subject to the terms of the Mareva Order, but confirmed that Davies will take no steps to sell or encumber the Arizona Property. A copy of the letter from Davies' counsel is attached as Appendix “M”.

4.4 Judith Davies

1. During the Examination, Davies acknowledged that funds flowed from Aeolian to his spouse Judith Davies.²⁵ Davies further testified that Judith Davies only recently began working part-time (and not for Aeolian or any Davies Developer) as a result of the activities involving the Davies Developers over the last eight or nine months. Prior to that, she did not work. During the Examination, Davies admitted that Judith Davies never worked for any of the Davies Developers²⁶; however, management fees were paid to her, through Aeolian, in any event.

²⁴ Qs. 164-165, p 36, lines 2-5.

²⁵ Qs. 391-393, p 98, lines 9-25 and p 99, lines 1-12.

²⁶ Q. 301, p 77, lines 10-13.

2. During the Examination, Davies testified that, over the last five years, he funded his living expenses by receiving development fees from the various Projects through Aeolian, and this has been his only employment over the last five years.²⁷ Davies testified that he does not have a personal bank account and has not had one for seven or eight years.²⁸ He testified that, in order to pay for living expenses, he either uses an Aeolian debit card or Judith Davies pays the expenses.²⁹, ³⁰ During the Examination, Davies further testified that funds flowed from Aeolian to Judith Davies for “income splitting” purposes.^{31, 32}
3. Davies also testified that Judith Davies has a bank account with Toronto-Dominion Bank.³³ The Receiver has no information concerning this account.

4.5 The Davies Children

1. During the Examination, Davies testified that certain Davies Children had limited involvement in some of the Davies Developers’ projects. He testified that his daughter, Sarah Davies, was employed by the Davies Developers as a marketing director at a starting salary of \$3,300/month (in 2013), which was subsequently raised to \$3,600/month with a \$400 car allowance.³⁴ He testified that another daughter, Jessica Davies, was the receptionist for the McMurray sales centre for one summer.³⁵ He further testified that his son, Andrew Davies, and his company, Y2 Media, made recommendations on advertising rates and suggestions about the advertising for various companies, specifically McMurray and Scollard.³⁶
2. During the Examination, Davies testified that Aeolian has been making payments to Auto One to cover lease payments for certain of his children’s vehicles, including a Range Rover Evoque and Ford Escape for two of his daughters.³⁷
3. Davies also testified that in the last eight months he has been selling assets belonging to his children, including artwork (which Aeolian purchased) to fund his living expenses.³⁸

²⁷ Qs. 36-37, p 10, lines 22-25 and p 11, lines 1-6.

²⁸ Qs. 17-22, p 8, lines 7-25.

²⁹ Q. 23, p 9, lines 1-4.

³⁰ The Receiver’s investigation has revealed that Davies also used his Amex to pay for personal expenses.

³¹ Qs. 391-394, p 98, lines 9-25 and p 99, lines 1-14.

³² During the examination, Davies was asked to undertake to produce copies of his income tax returns for the last five years. This request was taken under advisement by Davies’ legal counsel and, to date, the tax returns have not been provided. On June 30, 2017, Davies’ legal counsel did, however, advise that “[t]his question was taken under advisement in order to agree upon terms for production. Mr. Davies and Aeolian are prepared to produce income statements and capital gains statements from their tax returns over the last five years.”

³³ Qs. 63-64, p 15, lines 2-5.

³⁴ Qs. 293-297, p 75, lines 3-25 and p 76, lines 1-2.

³⁵ Q. 298, p 76, lines 3-8.

³⁶ Q. 299, p 76, lines 9-25 and p 77, lines 1-3.

³⁷ Qs. 416-418, p 107, lines 6-17.

³⁸ Qs. 53-57, p 13, lines 16-25, p 14, lines 1-6.

4.6 The Mortgage on Davies' and Judith Davies' Personal Residence

1. During the Examination, Davies testified that the mortgage on his and Judith Davies' personal residence located at 24 Country Club Drive, King City, Ontario in favour of Moskowitz Capital Mortgage Fund II (the "Moskowitz") has not been, and is not being, serviced and is in arrears.³⁹
2. On June 12, 2016, legal counsel to Moskowitz wrote to the Receiver's counsel to advise that the mortgage is in default and that Moskowitz had commenced power of sale proceedings. The Notice of Sale under Mortgage was enclosed with the letter, which advised that the redemption date under the power of sale proceedings is July 22, 2017.
3. On July 4, 2017, the Receiver's legal counsel wrote to Moskowitz's legal counsel to request a detailed breakdown of the amounts claimed under the Notice of Sale, including evidence of advances made under the mortgage and that the funds were used in connection with Davies' house. A copy of the letter is attached as Appendix "N". As of the date of this Report, Moskowitz has not provided the information.

4.7 The Recent Listing for Sale of Davies' and Judith Davies' Personal Residence

1. During the Examination, when asked whether his and Judith Davies' personal residence is currently listed for sale, Davies testified that the house "has not been re-listed".⁴⁰ However, the Receiver has recently learned that this is not true. Davies' and Judith Davies' personal residence is currently listed for sale on the MLS. The listing agreement with the real estate agent was entered into on June 7, 2017 (the date that the Mareva Order was first granted). An open house was held on July 8, 2017.
2. On July 10, 2017, immediately after learning about the listing and the open house, the Receiver's counsel contacted Davies' counsel and made inquiries regarding these developments. Davies' counsel confirmed that the residence is currently listed for sale and that Davies and Judith Davies are making active attempts to sell the residence due to concerns that if the residence is sold in a power of sale proceeding, it will sell at a lower price.
3. In light of this conduct, and the other conduct described in this Report, the Receiver is concerned that Davies is attempting to alienate and dissipate assets to put them beyond the reach of creditors, in direct contravention of the Mareva Order, and Judith Davies is assisting him in doing so, which is also in direct contravention of the Mareva Order.

³⁹ Q. 113, p 25, lines 23-25 and p 26, line 1.

⁴⁰ Q. 135, p 30, lines 11-13.

5.0 Review of Aeolian's Receipts and Disbursements

1. The Receiver prepared the financial information in this section based on information provided by Davies under the Second Production Order and bank statements provided by Royal Bank of Canada under the Mareva Order.
2. Aeolian's receipts and disbursements for the period October 1, 2012 to May 29, 2017 (the "Period") are provided in the table below.

(unaudited; \$000)	Amount	% Receipts / Disbursements
Receipts		
Advances from Related Parties		
Davies Developers	5,592	65.2%
TSSI, TSI and MCIL	1,160	13.5%
Other related parties	249	2.9%
	7,001	81.6%
Raj Singh and entities related to Mr. Singh	646	7.5%
Other	230	2.7%
Unidentified	695	8.1%
Total receipts	8,572	100%
Disbursements		
Personal		
Judith Davies	2,509	29.3%
Arizona Property	1,841	21.5%
AMEX	1,346	15.7%
Other	1,387	16.2%
	7,084	82.6%
Other and unidentified	1,488	17.4%
Total disbursements	8,572	100.0%
Ending balance	-	

3. The table reflects that Aeolian had:
 - a) receipts of \$8.572 million, including advances from related parties of \$7.001 million; and
 - b) disbursements of approximately \$8.572 million, including Davies' and/or his family's personal expenses of \$7.084 million.
4. A discussion of certain of the line items in the table is provided below. Appendix "O" provides Aeolian's detailed Statement of Receipts and Disbursements (the "R&D").

5.1 Receipts

5.1.1 Amounts Received by Aeolian from Davies Developers

1. According to Aeolian's books and records, a summary of the amounts received by Aeolian from the Davies Developers is provided in the table below.

(unaudited; \$000)	Amount
Management fees	
Scollard	1,248
Oakville	1,137
Kitchener	481
Burlington	433
Legacy Lane	316
McMurray	272
	<hr/>
	3,887
Other entities	<hr/>
	500
	<hr/>
	4,387
Dividends paid to Aeolian	
555 Princess	250
Ross Park	250
Bronson	125
	<hr/>
	625
Other	
Reimbursement of costs – McMurray	236
Profit from the sale of Kitchener	344
	<hr/>
	580
Total	<hr/>
	5,592
	<hr/>

2. The table reflects that:
 - a) Aeolian received management fees of \$4.387 million, of which \$3.887 million is prohibited under the Scollard, Oakville, Kitchener, McMurray and Burlington Loan Agreements. As discussed in the Fourth Report, Davies has advised the Receiver that there are no management agreements between Aeolian and any of the Davies Developers;
 - b) Aeolian received dividends of \$625,000 from 555 Princess, Bronson and Ross Park. According to the books and records of 525 Princess, Aeolian also received a \$250,000 dividend from 525 Princess. These funds do not appear to have been deposited into Aeolian's bank account; they were used to repay a loan owing to RS Consulting Group Inc., an entity controlled by Singh. The payment was made directly from Harris & Harris LLP to RS Consulting Group Inc.; and
 - c) Aeolian received \$344,000 in profit from the sale of the Kitchener property. Further details regarding this transaction are provided in Section 3.1.2 of the Fourth Report.

5.1.2 TSI, TSSI and MCIL

1. Approximately \$1.160 million was paid to Aeolian by TSI, TSSI and MCIL, consisting of management fees in the amount of approximately \$887,000, with the balance recorded as a reimbursement of costs. The Receiver tied the source of the majority of these payments to the general ledgers of TSI, TSSI and MCIL. For the most part, the source of these monies was the Davies Developers.

5.2 Disbursements

5.2.1 Judith Davies

1. Judith Davies received approximately \$2.509 million from Aeolian.
2. The payments to Judith Davies are recorded in Aeolian's financial statements as management fees. During the Examination, Davies testified that Judith Davies provided no services to the Davies Developers or Aeolian, but management fees were paid to her in any event.
3. Davies has advised that Judith Davies did not have any other source of income during the Period.

5.2.2 Arizona Property

1. The Davies Arizona Trust owns the Arizona Property.
2. Notwithstanding that the Receiver identified \$1.841 million being paid by Aeolian in respect of the Arizona Property, Davies testified during the Examination that:
 - a) approximately US\$3.2 million was spent to purchase and renovate the Arizona Property;
 - b) there is a US\$600,000 mortgage on the Arizona Property; and
 - c) Aeolian provided all of the funds used to purchase and renovate the Arizona Property.

5.2.3 Amex and Other Personal Payments

1. Other personal payments include:
 - a) approximately \$1.3 million to American Express - on July 4, 2017, the Receiver's legal counsel requested that Davies provide copies of the relevant American Express statements. Davies has provided statements for the period December 28, 2016 to June 27, 2017. Davies' legal counsel advised that the remaining statements have been requested from American Express;
 - b) \$160,000 paid to the Oshawa Generals Hockey Team – Davies or entities related to Davies had an ownership interest in the team;

- c) approximately \$105,000 for art purchases; and
 - d) approximately \$50,000 for jewellery.
2. Further details on these payments are provided in the R&D.

6.0 Conclusion

1. For the reasons detailed in this Report, the Receiver recommends that the Court issue an order (1) extending the Mareva Order to apply to Davies and Aeolian on an interlocutory basis (until a final disposition of the proceeding); and (2) expanding the Mareva Order to include the trustees (in such capacity) of the Trusts and Judith Davies.
2. Based on the currently available evidence, it would appear that Davies has transferred misappropriated assets to the Trusts and to Judith Davies in a transparent attempt to put such assets beyond the reach of the Companies to which he owed fiduciary duties. Further, it appears that Davies and Judith Davies are actively attempting to sell their personal residence and to dissipate assets in contravention of the Mareva Order. Given this pattern of conduct, there are concerns that the already depleted misappropriated assets may well continue to be further transferred to frustrate recovery efforts. The expansion of the Mareva Order is directly targeted at combatting that risk.

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,
1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS
STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”



**Fourth Report of
KSV Kofman Inc.
as Receiver and Manager of Certain Property
of Scollard Development Corporation, Memory
Care Investments (Kitchener) Ltd., Memory
Care Investments (Oakville) Ltd., 1703858
Ontario Inc., Legacy Lane Investments Ltd.,
Textbook (525 Princess Street) Inc. and
Textbook (555 Princess Street) Inc.**

June 6, 2017

Contents		Page
1.0	Introduction.....	1
1.1	Purposes of this Report.....	3
1.2	Restrictions.....	3
1.3	Currency.....	4
2.0	Background.....	5
2.1	Textbook Entities.....	6
2.2	Memory Care Entities.....	7
2.3	Scollard.....	8
2.4	Legacy Lane.....	8
2.5	McMurray.....	9
3.0	Review of Receipts and Disbursements.....	10
3.1	Property Related Costs.....	11
3.2	Payments to Shareholders and Affiliates.....	13
3.3	Interest and fees.....	21
3.4	Brokers.....	21
3.5	Professional fees.....	22
3.6	Traditions Development Company.....	22
4.0	Davies Developer Transactions.....	23
5.0	Disposition by Davies of His Cottage and a Home.....	24
6.0	Conclusion and Recommendation.....	24

Appendices

Appendix

Tab

Loan Agreements and Corporate Profile Reports.....	A
Burlington Balance Sheet as at May 2, 2017	B
First Report.....	C
Kitchener Brochure.....	D
Corporate Chart Textbook Entities	E
Corporate Chart Memory Care Entities	F
Statement of Receipts and Disbursements - 525 Princess.....	G
Statement of Receipts and Disbursements - 555 Princess	H
Statement of Receipts and Disbursements - 445 Princess	I
Statement of Receipts and Disbursements – Ross Park	J
Statement of Receipts and Disbursements - Scollard	K
Statement of Receipts and Disbursements - Bronson.....	L
Statement of Receipts and Disbursements - Oakville	M
Statement of Receipts and Disbursements – Legacy Lane.....	N
Statement of Receipts and Disbursements - Kitchener	O
Statement of Receipts and Disbursements - McMurray	P
Statement of Receipts and Disbursements - Burlington	Q
Acknowledgement	R
Ancillary Documents.....	S
Title Search – Davies’ home.....	T
Third Report and May 17 Order.....	U
Directors, Officers and Shareholders – Memory Care Entities and Legacy Lane.....	V
Title Search – Davies’ cottage.....	W



COURT FILE NO: CV-17-11689-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.

AND IN THE MATTER OF A MOTION PURSUANT TO SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED

FOURTH REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER

JUNE 6, 2017

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager of the real property ("Real Property") registered on title as being owned by, and of all of the assets, undertakings and properties acquired for or used in relation to the Real Property (together with the Real Property, the "Property"), of the following entities:
 - a) Scollard Development Corporation ("Scollard");
 - b) Memory Care Investments (Kitchener) Ltd. ("Kitchener");
 - c) Memory Care Investments (Oakville) Ltd. ("Oakville");
 - d) 1703858 Ontario Inc. ("Burlington")¹;
 - e) Legacy Lane Investments Ltd. ("Legacy Lane");
 - f) Textbook (555 Princess Street) Inc. ("555 Princess"); and
 - g) Textbook (525 Princess Street) Inc. ("525 Princess").

Collectively the above entities are referred to as the "Companies".

¹ This entity owns the real property on which the development known as "Memory Care (Burlington)" was to be developed. Burlington's shares are owned by Memory Care Investments (Burlington) Ltd., which is defined below as MC Burlington.

2. Pursuant to an order of the Ontario Superior Court of Justice (“Court”) dated October 27, 2016, Grant Thornton Limited was appointed Trustee (“Trustee”) of eleven entities² which raised monies from investors (“Investors”) through syndicated mortgage investments (collectively, the “Trustee Corporations”)³. Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements (“Loan Agreements”) between the Trustee Corporation and one or more “Davies Developer”. The Davies Developers is a defined term used throughout this Report and includes the Companies and the following entities, none of which is in receivership:
 - a) Textbook Ross Park Inc. (“Ross Park”);
 - b) Textbook (445 Princess Street) Inc. (“445 Princess”);
 - c) Textbook (774 Bronson Avenue) Inc. (“Bronson”); and
 - d) McMurray Street Investments Inc. (“McMurray”).
3. A copy of each Loan Agreement and each Davies Developer’s corporate profile report is attached as Appendix “A”.
4. On January 21, 2017, the Trustee brought a motion for an order (“Receivership Order”) appointing KSV as receiver and manager (“Receiver”) of the Property owned by Scollard. On February 2, 2017, the Court made the Receivership Order.
5. Following its appointment as the Receiver of Scollard, the Receiver reviewed Scollard’s books and records and identified transactions between Scollard and certain of the other Davies Developers and other related parties, including shareholders of the Davies Developers, John Davies (“Davies”), Walter Thompson (“Thompson”), Raj Singh (“Singh”) and Greg Harris (“Harris”), and/or corporations and individuals related to each of them.
6. On April 18, 2017, the Trustee brought a motion, *inter alia*, seeking orders:
 - a) amending and restating the Receivership Order to add the Property owned by the Companies (except for Scollard, which was already in receivership) (the “Amended and Restated Receivership Order”); and
 - b) compelling Davies to immediately deliver to the Trustee all of the bank statements for the Davies Developers (the “Production Order”).
7. On April 28, 2017, the Court made the Amended and Restated Receivership Order and the Production Order.

² 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

³ Individuals who hold their mortgage investment in a Registered Retirement Savings Plan have a mortgage with Olympia Trust instead of the applicable Trustee Corporation.

8. The Amended and Restated Receivership Order was further amended and restated by a Court order made on May 2, 2017 to rectify certain clerical errors.
9. Following the issuance of the Amended and Restated Receivership Order, the Receiver commenced a review of the receipts and disbursements of the Companies (except for Scollard, which review was already underway). Additionally, at the request of the Trustee, the Receiver reviewed the receipts and disbursements of Ross Park, 445 Princess, Bronson and McMurray. The review of the books and records, Loan Agreements and other materials discussed in this Report is defined as the “Review”.
10. The Receiver has learned that Davies recently sold his cottage and his house. The sale of the cottage closed on April 25, 2017. As of June 5, 2017, the sale of the house does not appear to have closed.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide the Court with the Receiver’s findings concerning the Review; and
 - b) recommend that the Court issue orders:
 - granting an interim Mareva injunction against Davies and Aeolian Investments Ltd., (“Aeolian”), an entity owned by Davies’ wife and daughters, such that both are restrained from disposing of their property; and
 - compelling Textbook Suites Inc. (“TSI”) and Textbook Student Suites Inc. (“TSSI”), the shareholders of the Textbook Entities (as defined in Section 2.1), Memory Care Investments Ltd (“MCIL”), the shareholder of the Memory Care Entities (as defined in Section 2.2) and Aeolian to forthwith provide the Receiver with a copy of their books and records.

1.2 Restrictions

1. In preparing this Report, the Receiver has reviewed the following information:
 - a) all of the materials filed in this proceeding, the proceeding appointing the Trustee, and the failed application of the Davies Developers under the *Companies’ Creditors Arrangement Act* (“CCAA”);
 - b) unaudited financial information of the Companies;
 - c) accounting records and bank statements for the Companies, which were provided to the Receiver by Davies;
 - d) accounting records and bank statements for Memory Care Investments Burlington Ltd. (“MC Burlington”), a non-receivership entity which owns the shares of Burlington, which were provided to the Receiver by Davies; and
 - e) bank statements for Ross Park, 445 Princess, Bronson and McMurray, which were provided to the Trustee pursuant to the Production Order, and which were subsequently provided by the Trustee to the Receiver.

2. The Receiver has not performed an audit of the financial information addressed in this Report. The findings discussed herein remain subject to further review. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report.
3. The Receiver has had a small number of discussions with, and corresponded on a limited basis with, Davies and Harris regarding certain of the matters addressed in this Report. The Receiver has not spoken to or communicated with Singh or Thompson regarding the matters addressed in this Report. None of Davies, Thompson, Singh, Harris or any other person or entity referenced herein has had the opportunity to respond to this Report.
4. The Receiver has neither had access to the books, records and bank statements of Aeolian, TSI, TSSI or MCIL, nor the books and records of Ross Park, 445 Princess, Bronson and McMurray.
5. The Receiver has no knowledge of the business interests and activities of Aeolian other than those discussed in this Report.
6. The Davies Developers poorly documented their transactions and their books and records do not appear to be well maintained. Examples include, but are not limited to:
 - a) Burlington's accounting records appear to be inaccurate and/or incomplete. Burlington's balance sheet does not reflect any debt owing to a Trustee Corporation or the real property owned by Burlington. A copy of Burlington's balance sheet as at May 2, 2017 is attached as Appendix "B"; and
 - b) the Davies Developers paid millions of dollars in management fees and transferred millions of dollars – purportedly by way of loans - to related parties but appear to have never entered into any management services agreements or to have documented the terms of the loans.
7. **No party has contested or disputed any of the findings in the Receiver's First Report dated April 5, 2017, which addressed issues similar to those discussed in this Report.** A copy of the First Report (without appendices) is attached as Appendix "C".

1.3 Currency

1. All currency references in this Report are to Canadian dollars.

2.0 Background⁴

1. The Davies Developers are developers of student residences, accommodations for people suffering from various forms of cognitive impairment and low-rise condominiums. All but one of the Davies Developers' projects (collectively the "Projects") are in pre-construction⁵.
2. The amounts borrowed by the Davies Developers total approximately \$119.940 million⁶, including approximately \$93.675 million in secured debt owing to the Trustee Corporations (being monies raised by the Trustee Corporations from Investors) and \$23.675 million owing to other mortgage lenders (the "Other Lenders"). The Receiver understands that all of the obligations owing to Other Lenders rank in priority to the Trustee Corporations.
3. The funds advanced from the Trustee Corporations to the Davies Developers were to be used to purchase real property and to pay the soft costs associated with the development of the Projects.
4. In raising monies from Investors:
 - a) the Davies Developers covenanted that they would not, without the consent of the applicable Trustee Corporation, "use the proceeds of any Loan Instalment for any purposes other than the development and construction of the project on the Property" (Section 7.02 (g) of the various Loan Agreements);⁷
 - b) all of the Trustee Corporations were to have a first ranking security interest against the applicable Davies Developer's property (Section 5.01 of the various Loan Agreements), with the exception of Ross Park, Bronson and 445 Princess, in which case the Trustee Corporations were to have a second ranking security interest behind existing mortgages; and
 - c) the security interests granted to the Trustee Corporations would only be subordinated in certain defined circumstances, such as to construction financing of certain specified maximum amounts and to Tarion warranty bond mortgage security (Section 5.01 of the various Loan Agreements). This was also noted on certain of the advertising materials, as evidenced by the Kitchener brochure attached as Appendix "D".

⁴ Unless otherwise noted, the background information in this section is sourced from the Affidavit of John Davies sworn December 6, 2016 filed in support of the Davies Developers' application for CCAA protection.

⁵ Footings and foundations have been laid down at the Project owned by Burlington.

⁶ Represents the principal amounts owed, excluding interest and fees.

⁷ The Loan Agreements for 445 Princess, 525 Princess, 555 Princess, Ross Park, Scollard and Bronson contain a carve-out allowing the Davies Developer to earn interest income on funds not immediately required to be expended.

2.1 Textbook Entities

- The entities in the table below are defined in this Report as the “Textbook Entities”. The Textbook Entities were intended to develop student residences. The table below provides the purchase price for each property and a summary of the Textbook Entities’ secured obligations (principal only).

(unaudited; \$000) Textbook Entity	Purchase Price	Trustee Corporation	Other Lenders	Mortgagee	Total Secured Obligations
555 Princess	2,000	7,927	-	-	7,927
525 Princess	2,400	6,387	-	-	6,387
445 Princess	9,300	8,397	7,000	Kingsett Mortgage Corporation	15,397
Bronson	10,250	10,806	5,700	Vector Financial Services Ltd.	16,506
Ross Park	7,000	11,617	3,500	2377358 Ontario Ltd. and Creek Crest Holdings Inc.	15,117

- Davies and Thompson are the sole officers and directors of the Textbook Entities⁸.
- The shareholders of the Textbook Entities are:
 - TSI;
 - TSSI; and
 - RS Consulting Group Inc. (“RSCG”).
- TSI and TSSI are owned (in different proportions) by Aeolian, RSCG, 1321805 Ontario Inc. (“132”) and Dachstein Holdings Inc. (“Dachstein”). The Receiver understands that:
 - Aeolian is owned by Davies’ wife and children;
 - RSCG is owned by Singh;
 - Singh is also:
 - the sole director, officer and shareholder of the Trustee Corporations⁹;
 - the sole director, officer and shareholder of Tier 1 Transaction Advisory Services Inc. (“Tier 1 Advisory”); and

⁸ As at the date of this Report. Certain of the Davies Developers may have had different or additional officers and directors at different points in time. This footnote applies throughout this Report.

⁹ Except for Textbook Student Suites (445 Princess Street) Trustee Corporation.

- a director and sole officer of Tier 1 Mortgage Corporation (“Tier 1 Mortgage”) and a licensed mortgage agent with First Commonwealth Mortgage Corporation (“FCMC”, and together with Tier 1 Mortgage, the “Brokers”). The Brokers and Tier 1 Advisory promoted and sold the syndicated mortgage investments to Investors;¹⁰
- d) 132 holds its equity interest on behalf of a trust, of which Thompson, among others, is a beneficiary; and
 - e) The equity interest in Dachstein is held on behalf of family members of Harris, a partner at Harris + Harris LLP, legal counsel to the Davies Developers.
5. A corporate chart for the Textbook Entities is attached as Appendix “E”.

2.2 Memory Care Entities

1. The entities in the table below are defined as the “Memory Care Entities”. The Memory Care Entities were intended to develop residences for people suffering from various forms of cognitive impairment. The table below provides the purchase price for each property and a summary of the Memory Care Entities’ present secured obligations (principal only).

(unaudited; \$000) Memory Care Entity	Purchase Price	Trustee Corporation	Other Lenders	Mortgagee	Total Secured Obligations
Kitchener	3,950	10,577	950	2174217 Ontario Inc.	11,527
Burlington	2,500	8,303	1,250	2174217 Ontario Inc.	9,553
Oakville	1,945	9,063	1,250	2174217 Ontario Inc.	10,313

2. Pursuant to the Amended and Restated Receivership Order, MarshallZehr Group Inc. (“MZG”) made loans to the Receiver of \$1.475 million, \$1.775 million and \$1.662 million, and was granted a Court-ordered super-priority charge for these amounts on the properties owned by Kitchener, Burlington and Oakville, respectively. The MZG loans were used to repay the mortgages referenced in the table as owing to 2174217 Ontario Inc. (including principal, interest and fees) and to fund the fees and costs of the Kitchener, Burlington and Oakville receivership proceedings.
3. Davies is the sole director and officer of the Memory Care Entities.
4. MCIL is the shareholder of Kitchener and Oakville¹¹.
5. Burlington is a wholly owned subsidiary of MC Burlington. MCIL is the sole shareholder of MC Burlington.

¹⁰ The information concerning the Brokers and Tier 1 Advisory is sourced from the Affidavit of Mohammed Ali Marfatia sworn October, 20 2016 filed in support of the application by the Superintendent of Financial Services (“FSCO”) for an order appointing a receiver and manager over the property of the Trustee Corporations.

¹¹ The Class “B” shares of Oakville are owned by MCIL. The Class “A” preferred shares are owned by investors in the syndicated mortgage investment for Oakville.

6. MCIL is owned by Aeolian (50%) and Erika Harris (50%). Ms. Harris is the mother of Harris.
7. The Kitchener, Burlington and Oakville Loan Agreements prohibited each of them from granting a first ranking security interest in its real property to any lender other than the applicable Trustee Corporations, except in connection with construction financing.
8. A corporate chart for the Memory Care Entities is provided in Appendix "F".

2.3 Scollard

1. The real property owned by Scollard was purchased for \$9 million. Scollard was intended to develop a condominium project known as "Boathaus".
2. Scollard borrowed \$13.596 million from Investors.
3. Pursuant to the Receivership Order, Downing Street Financial Inc. ("Downing") made a \$3.5 million loan to the Receiver and was granted a super-priority Court ordered charge on the Property owned by Scollard. The Downing facility repaid a mortgage owing to Firm Capital Mortgage Corporation in the approximate amount of \$2.5 million and the balance is being used to fund the fees and costs of Scollard's receivership proceedings.
4. Three liens totalling approximately \$800,000 have been registered on title against the Scollard Real Property. The Receiver's counsel is reviewing the lien claims to determine their validity and priority.
5. Davies is the sole director and officer of Scollard.
6. The shareholders of Scollard are Aeolian (50%) and Erika Harris (50%).
7. The Scollard Loan Agreement prohibits it from granting a first ranking security interest in its real property to any lender other than the applicable Trustee Corporation, except in connection with construction financing.

2.4 Legacy Lane

1. Legacy Lane's real property was purchased for \$650,000. Legacy Lane was intended to develop a low-rise condominium building consisting of 33 townhomes.
2. Legacy Lane borrowed \$3.478 million from Investors. Legacy Lane has no other secured obligations.
3. Davies is the sole director and officer of Legacy Lane.
4. The shareholders of Legacy Lane are Aeolian (50%) and Alan Harris (50%). Alan Harris is the father of Harris.

2.5 McMurray

1. The real property owned by McMurray was purchased for \$650,000. McMurray was intended to develop 88 residential condominiums and lofts.
2. McMurray borrowed \$3.5 million from Investors.
3. McMurray has a mortgage owing in the amount of \$2 million to Pillar Financial Services Inc. ("Pillar"). The Receiver has not been able to trace the mortgage proceeds received from Pillar into McMurray's bank statements.
4. The sole directors and officers of McMurray are Davies and Harris. The officers of McMurray are Davies, Harris and David Arsenault.
5. The shareholders of McMurray are the Davies Family Trust (30%), Alan Harris (16%), Tori Manchulenko (46%) and D. Arsenault Holdings Inc. (8%). The latter two shareholders appear to be unrelated to any of the other Davies Developers' shareholders.
6. The McMurray Loan Agreement prohibits it from granting a first ranking security interest in its real property to any lender other than the applicable Trustee Corporation, except in connection with construction financing.

3.0 Review of Receipts and Disbursements

1. The table below provides a summary of the Review.¹²

(unaudited; \$000)	Amount	% Receipts / Disbursements
Receipts		
Loan proceeds		
Trustee Corporations	93,675	74.4%
Other loans	26,265	20.8%
	119,940	95.2%
Preference shares (Oakville)	1,000	0.8%
Sales tax refunds	1,717	1.4%
Other related parties	345	0.3%
Sundry and unknown	2,913	2.3%
Total receipts	125,915	100%
Disbursements		
Property related costs		
Purchase of Real Property	48,935	38.9%
Development costs	12,354	9.8%
Subtotal	61,289	48.7%
Payments to Shareholders ¹³ and entities related to Shareholders ¹⁴		
TSSI/TSI	4,384	3.5%
MCIL	1,124	0.9%
Davies and entities related to Davies	6,763	5.4%
Singh and entities related to Singh, including broker commissions	9,407	7.5%
Thompson and entities related to Thompson	1,947	1.5%
Harris and entities related to Harris, excluding professional fees	1,000	0.8%
Textbook (256 Rideau Street) Inc.	3,700	2.9%
Advances to Affiliates	339	0.3%
Subtotal	28,664	22.8%
Interest and fees	14,529	11.5%
FCCM broker commissions ¹⁵	9,988	7.9%
Professional fees	3,357	2.7%
Traditions Development Company	1,487	1.2%
Other related parties	156	0.1%
Other and unknown	6,440	5.1%
Subtotal	35,957	28.5%
Total disbursements	125,910	100.0%
Ending balance	5	

¹² Includes MC Burlington transactions, i.e. the shareholder of Burlington.

¹³ Defined in Section 3.2 below.

¹⁴ Reflects net payments to shareholders.

¹⁵ Of this amount, \$219,000 was paid to third party brokers.

2. The discussion in Section 3.1 to 3.6 below addresses each line item in the table, in the order presented in the table.
3. The table reflects that the Davies Developers had:
 - a) receipts of approximately \$125.915 million, including loans from Trustee Corporations of \$93.675 million and loans of \$26.265 million from Other Lenders; and
 - b) disbursements of approximately \$125.910 million, including:
 - \$48.935 million to purchase Real Property;
 - \$28.664 million to Shareholders and entities related to Shareholders¹⁶;
 - \$14.529 million in interest paid and fees;
 - \$12.354 million in development costs; and
 - \$9.988 million in broker fees paid to FCMC.
4. Schedules of the receipts and disbursements for each Davies Developer are attached as Appendices “G” to “Q”.
5. The table above excludes monies transferred among the Davies Developers, which transfers exceed \$17.2 million. A summary of those transactions is provided in Section 4.0 below.

3.1 Property Related Costs

3.1.1 Real Property Transactions

1. The Davies Developers own eleven properties which were purchased for a total of approximately \$48.935 million.¹⁷ All of the property transactions appear to be at arm’s length, except for the property owned by Kitchener, as discussed in the immediately following section.

3.1.2 Kitchener Property Purchase

1. On June 4, 2013, 2375219 Ontario Ltd. (“237”), an entity in which Singh and Harris have an ownership interest, purchased, in the context of a receivership, a retirement home located at 169 Borden Avenue, Kitchener (the “Kitchener Property”) for \$1.585 million.

¹⁶ Defined in Section 3.2 below.

¹⁷ Excludes the purchase price of the real property owned by McMurray which was purchased for \$650,000 in January 2010.

2. MCIL incorporated Lafontaine Terrace Management Corporation (“Lafontaine”) to discontinue the business of the retirement facility which was operating on the Kitchener property¹⁸. Davies is the sole officer and director of Lafontaine. Further information regarding Lafontaine and 237 is provided in Section 3.2 below.
3. On February 25, 2014, approximately nine months after the retirement home was purchased, the Kitchener Property was sold by 237 to Kitchener for \$3.950 million, apparently netting a gain for 237 in the amount of approximately \$2.365 million. The Kitchener Property was purchased from 237 with funds advanced by Investors to Kitchener.
4. Harris has provided the Receiver with a copy of an Acknowledgement and Direction (the “Acknowledgement”), which Harris has advised was provided to all Kitchener syndicated mortgage investors. The Acknowledgement is attached as Appendix “R”. The Acknowledgement discloses that:
 - a) the Kitchener Property would be acquired from 237;
 - b) the shareholders of 237 would earn a gain on the transaction;¹⁹ and
 - c) Harris and Singh are the shareholders of 237.
5. The Receiver has asked Harris for further details regarding the sale to Kitchener, including confirmation of the amount of the gain earned by 237 and the ownership structure of 237. As of the date of this Report, the Receiver has not received this information.

3.1.3 Development Costs

1. A summary of the development costs paid by the Davies Developers is provided below.

(unaudited; \$000) Davies Developer	Development Costs	Total Disbursements	% of Total Disbursements
McMurray	3,353	8,797	38.1%
Scollard	2,737	20,493	13.4%
Burlington	2,402	9,495	25.3%
Oakville	1,478	11,236	13.2%
Kitchener	762	10,069	7.6%
Ross Park	705	16,963	4.2%
Legacy Lane	502	4,318	11.6%
Bronson	239	15,844	1.5%
555 Princess	74	8,047	0.9%
525 Princess	73	6,548	1.1%
445 Princess	29	14,100	0.2%
Total	12,354	125,910	9.8%

¹⁸ Sourced from the Affidavit of John Davies sworn December 6, 2016 filed in support of the Davies Developers’ application for protection under the *Companies’ Creditors Arrangement Act*.

¹⁹ The Acknowledgement states that 237 funded operating shortfalls. Information is not available to the Receiver so that it can confirm this statement.

2. The table reflects:
 - a) Of the nearly \$126 million that was raised, \$12.354 million (or 9.8% of the total raised) was spent on development costs. Of this amount, \$8.4 million (or 68.7%) of the development costs were spent on the McMurray, Scollard and Burlington Projects.
 - b) Less than \$250,000 was spent on development costs for each of Bronson, 445 Princess, 555 Princess and 525 Princess.

3.2 Payments to Shareholders and Affiliates

1. A summary of the net amounts paid to Davies Developers' shareholders and entities related to and affiliated with the shareholders referenced in the table (collectively, the "Shareholders") is provided in the table below.

(unaudited; \$'000)			Davies	Singh	Thompson	Harris		
Davies Developer	TSI/TSSI	MCIL	Entities	Entities	Entities	Entities	Other	Total
Oakville	(35)	305	1,231	2,142	-	-	2	3,645
Ross Park	1,554	2	499	434	749	250	1,267	4,755
Kitchener	(48)	128	510	2,579	-	-	111	3,280
525 Princess	880	4	340	483	340	250	16	2,313
555 Princess	786	3	408	401	408	250	1,478	3,734
Burlington	(145)	199	602	1,444	-	-	110	2,210
Scollard	(27)	181	1,310	286	-	-	75	1,825
Bronson	576	-	127	524	250	250	56	1,783
445 Princess	843	48	-	264	200	-	767	2,122
Legacy Lane	-	44	363	556	-	-	207	1,170
McMurray	-	210	1,373	294	-	-	(50)	1,827
Total	4,384	1,124	6,763	9,407	1,947	1,000	4,039	28,664

2. A summary of these payments, including whether they were disclosed in the Loan Agreements, is provided in the table below.

(unaudited; \$'000)	TSI/TSSI	MCIL	Davies	Singh	Thompson	Harris	Other	Amount	Disclosed
Referral and broker fees	-	-	-	5,861	-	-	-	5,861	Yes
Dividends	-	-	875	1,125	1,000	1,000	-	4,000	Yes
	-	-	875	6,986	1,000	1,000	-	9,861	
Moscowitz (section 3.2)	-	-	935	-	-	-	-	935	No
Management Fees	-	-	4,069	-	-	-	-	4,069	No
Loans to Shareholders	3,512	602	-	-	-	-	-	4,114	No
Rideau	-	-	-	-	-	-	3,700	3,700	No
Advances to affiliates	-	-	-	-	-	-	339	339	No
	3,512	602	5,004	-	-	-	4,039	13,157	
Other management fees	-	-	500	-	947	-	-	1,447	Note
Consulting	-	-	-	1,485	-	-	-	1,485	Note
Repayment of loan	-	-	-	650	-	-	-	650	Note
Notary fees	-	-	-	330	-	-	-	330	Note
Family members	-	-	422	-	-	-	-	423	Note
Other	872	522	55	306	-	-	-	1,755	Note
	872	522	977	2,771	947	-	-	6,089	
Less: receipts	-	-	(93)	(350)	-	-	-	(443)	
Total	4,384	1,124	6,763	9,407	1,947	1,000	4,039	28,664	

Note: The Receiver is unable to determine if these transactions are permitted under the Loan Agreements. More information is required.

3. The Receiver's counsel has reviewed the Loan Agreements and other documents provided to Investors ("Ancillary Documents") to determine whether the payments to the Shareholders were disclosed and/or are prohibited. A list of the Ancillary Documents reviewed by the Receiver's counsel is attached as Appendix "S".

Disclosure

- a) **Referral and broker fees (\$5.861 million):** These amounts were disclosed in the Loan Agreements; however, the referral fees paid to Tier 1 Advisory were approximately \$69,000 greater than permitted (discussed in section 3.4 below).
- b) **Dividends (\$4 million):** Entities related to Davies, Thompson, Singh and Harris received \$4 million in dividends. These are disclosed in the Loan Agreements. They were to be paid from the "excess proceeds after the Property has been acquired". In each instance, the dividends were paid immediately after the applicable Davies Developer received the funds from the Trustee Corporation, and after the dividend was paid and related party transactions, the applicable Davies Developer had essentially no further monies to advance its project. These payments contributed to or may have caused each such Davies Developer to become insolvent, if they were not already insolvent at the time of payment. Additionally, the Receiver questions why dividends would be payable from a fundraising, particularly because the Shareholders had not created value for the Investors, no profits were generated (which is typically the source of

dividends) and all of the Davies Developers which paid dividends had negligible or no equity either prior to or shortly following the payment of the dividends.

Prohibited Payments

- c) **Payments to Moscowitz Capital Mortgage Fund II (“Moscowitz”) (\$935,000):** Moscowitz is not a mortgagee on the property owned by McMurray; however, it is a mortgagee on Davies’ home. A copy of a title search for Davies’ home reflecting the mortgage owing to Moscowitz is attached as Appendix “T”. The McMurray Loan Agreement prohibits these payments.
- d) **Management fees (\$4.069 million):** These amounts were paid to Aeolian from Oakville, Kitchener, Burlington, Scollard, McMurray and Legacy Lane. These payments are prohibited under the Loan Agreements with each of these entities.
- e) **Loans to TSI, TSSI and MCIL (\$4.114 million):** The Davies Developers made loans of approximately \$4.114 million to TSI, TSSI and MCIL, the parent companies of the Textbook Entities and the Memory Care Entities. Each loan was made by cheque and the memo line on each of the cheques indicated that payment was a “loan”. The Loan Agreements do not permit the Davies Developers to make loans. The Receiver is unaware of the terms of these loans and whether they were documented, but the Receiver notes that no interest was received by any Davies Development in respect of any loan.
- f) **Textbook (256 Rideau Street) Inc. (“Rideau”) (\$3.7 million):** The Davies Developers made payments of \$3.7 million to Rideau. The Loan Agreements do not permit the Davies Developers to make these payments and these amounts were not used by the applicable Davies Developer to advance the Project for which the funds were raised.
- g) **Advances to affiliates (\$339,000):** These amounts are comprised of \$324,000 to Lafontaine and \$15,000 to Memory Care Investments (Victoria) Ltd. (“MC Victoria”). Davies is the sole director and officer of Lafontaine and MC Victoria (the shareholders of these entities are not known to the Receiver).
- Lafontaine: The Receiver understands that Lafontaine was incorporated to discontinue the operations of the retirement facility on the Kitchener Property at the time it was purchased by 237. The payments to Lafontaine were made by Scollard, Legacy Lane, Burlington and Oakville. These payments contravene these entities’ Loan Agreements as the payments do not relate to their Projects.
 - MC Victoria: Davies has advised the Receiver that MC Victoria was considering a project in Victoria, British Columbia. The payments to MC Victoria were made by Legacy Lane. This payment contravenes Legacy Lane’s Loan Agreement as it did not relate to the Legacy Lane project.

Payments for which Additional Information is Required

- h) **Other management fees (\$1.447 million):** Pursuant to Section 7.02(c) of the Loan Agreements with Bronson, 445 Princess, 525 Princess, 555 Princess and Ross Park, ordinary course payments to shareholders for amounts related to the management, development and operation of the Property are permitted, provided such payments are reasonable in relation to the services rendered. The amounts paid by these entities to their indirect shareholders were \$500,477 (to Aeolian) and \$947,200 (to 132). Davies has advised the Receiver that none of the Davies Developers entered into a management agreement with any party, including with him or any of the Shareholders.
- i) **Consulting and diligence fees (\$1.485 million):** All consulting and diligence fees were paid to Tier 1 Advisory or RSCG. These amounts do not appear to be referenced or disclosed in the Loan Agreements or Ancillary Documents reviewed by the Receiver and its counsel. The consulting fees that were referenced and disclosed in the Ancillary Documents were exhausted by the payment of the referral and broker fees (i.e. 15% to 16% of amounts raised from Investors).
- j) **Repayment of loan to Singh (\$650,000):** The Receiver has no information concerning this loan, including whether a loan was made. The Receiver has asked Harris for information concerning this loan, but it has not been provided as of the date of this Report.
- k) **Notary fees (\$330,000):** These amounts were paid to Tier 1 Advisory by the Davies Developers to have each investor's loan documents notarized. The Receiver has no knowledge of the documents that were notarized and whether these fees are reasonable in the circumstances.
- l) **Payments to Davies' family members (\$423,000):** The permissibility of these payments depends on the services provided, if any, by these individuals. The Receiver has no knowledge of the services provided.
- m) **Other (\$1.755 million):** This amount is largely comprised of payments to TSSI and TSI (\$872,000) and MCIL (\$522,000). The purpose of these payments cannot be determined by the Receiver based on the available books and records. Their permissibility would likely depend on the services provided and the reasonableness of the amounts charged. Given the general prohibition in the Loan Agreements with respect to payments to shareholders, the Receiver and its counsel have concerns regarding these payments.

3.2.1 Textbook and MCIL

1. TSI and TSSI are shareholders of the Textbook Entities. TSI and TSSI received a net amount of \$4.384 million from the entities listed in the table below. Of the amount advanced to TSI and TSSI, \$3.512 million was advanced by way of a loan, which is prohibited, as noted in 3(e) above.

(unaudited; \$000)	Amount
Ross Park	1,554
525 Princess	1,080
445 Princess	843
555 Princess	786
Other	122
	<u>4,384</u>

2. MCIL is the direct shareholder of Oakville and Kitchener, and the indirect shareholder of Burlington. MCIL received a net amount of \$1.124 million from the entities listed in the table below. Of the amount advanced to MCIL, \$602,000 was advanced by way of a loan, which is prohibited as noted in 3(e) above.

(unaudited; \$000)	Amount
Entities owned by MCIL	
Kitchener	128
Burlington	199
Oakville	305
	<u>632</u>
Entities not owned by MCIL	
McMurray	210
Scollard	181
Legacy Lane	44
445 Princess	48
Other	9
	<u>492</u>
Total	<u>1,124</u>

3. TSI, TSSI and MCIL are not subject to insolvency proceedings, and neither the Receiver nor the Trustee has access to their bank statements and/or accounting records. Accordingly, the Receiver is unable to confirm whether the amounts advanced to them were used for development purposes for any of the Davies Developers. As part of the relief sought by the Receiver, the Receiver is seeking an order compelling TSI, TSSI and MCIL to make their books and records available to the Receiver.

3.2.2 Davies Entities

1. The Davies Entities received a net amount of \$6.763 million from the Davies Developers. A summary of the funds received by the Davies Entities is provided below.

(unaudited; \$000)	Amount
Management fees paid to Aeolian	
Scollard	1,244
Oakville	1,112
Kitchener	506
Burlington	592
Legacy Lane	341
McMurray	274
	<u>4,069</u>
Ross Park	249
Other entities	251
	<u>500</u>
	4,569
Dividends paid to Aeolian	
525 Princess	250
555 Princess	250
Ross Park	250
Bronson	125
	<u>875</u>
Payments to family members	
Judith Davies	365
Sarah Davies	29
Y2 Media Group Ltd. (owned by son of John Davies)	14
Jessica Davies	14
	<u>422</u>
Payments to Moscowitz	935
Payments to Davies	55
Less: receipts from Aeolian	(93)
Total	<u>6,763</u>

2. The table reflects that:
 - a) Aeolian received management fees of \$4.569 million, of which \$4.069 million is prohibited under the Scollard, Oakville, Kitchener, McMurray and Burlington Loan Agreements. As noted, Davies has advised the Receiver that there are no management agreements between Aeolian and any of the Davies Developers;
 - b) Aeolian received dividends of \$875,000 from 525 Princess, 555 Princess, Bronson and Ross Park;

- c) Davies' family members and entities related to Davies' family members received approximately \$422,000, including \$365,000 by Judith Davies, Davies' wife; and
- d) McMurray paid \$935,000 to Moscowitz. Moscowitz is not a registered mortgagee on McMurray's real property or any of the other of the Davies Developers' real property. It is a registered mortgagee on Davies' personal residence.

3.2.3 Singh Entities

1. Singh and entities related to Singh (the "Singh Entities") received a net amount of \$9.407 million from the Davies Developers. A summary of the funds received by the Singh Entities is provided below.

(unaudited; \$000)	RSCG	Tier 1 Advisory	Raj Singh	Total
Broker and referral fees	-	5,861	-	5,861
Due diligence and consulting				
Scollard	113	217	-	330
Kitchener	-	116	-	116
Burlington	-	78	-	78
Oakville	158	138	-	296
525 Princess	113	-	-	113
555 Princess	113	-	-	113
445 Princess	226	-	-	226
Bronson	100	-	-	100
Ross Park	113	-	-	113
	936	549	-	1,485
Dividends				
525 Princess	250	-	-	250
555 Princess	250	-	-	250
Ross Park	250	-	-	250
Bronson	375	-	-	375
	1,125	-	-	1,125
Loan payments (Kitchener)	-	-	650	650
Notary fees	-	330	-	330
Unknown	56	250	-	306
Less: receipts	-	(250)	(100)	(350)
Total	2,118	6,740	550	9,407

2. The table reflects:
 - a) Tier 1 Advisory received broker and referral fees of approximately \$5.861 million. (This is discussed in Section 3.4 below);
 - b) RSCG and Tier 1 Transaction received \$1.485 million in due diligence and consulting fees;
 - c) RSCG received \$1.125 million in "dividends" from 525 Princess, 555 Princess, Bronson and Ross Park;

- d) Singh received \$650,000 from Kitchener, which is characterized in the books and records as a loan repayment;
 - e) Tier 1 Advisory received \$330,000 as a reimbursement of notary fees from several Davies Developers (as discussed in Section 3.2 above).
3. Additionally, as a shareholder of 237, Singh participated in the gain on the sale of Kitchener. This transaction is not reflected in the table above. The gain appears to be approximately \$2.365 million; however, the Receiver has asked Harris to provide an accounting for this transaction.

3.2.4 Thompson Entities

1. 132 received \$1.947 million from the Davies Developers, comprised of a total of \$1 million in dividends from 525 Princess, 555 Princess, Bronson and Ross Park (\$250,000 from each entity) and \$947,000 in management fees from 525 Princess, 555 Princess, 445 Princess and Ross Park. The Loan Agreements for 525 Princess, 555 Princess, 445 Princess and Ross Park permit the payment of management fees; albeit such amounts are required to be reasonable. Davies has advised that none of the Davies Developers had a management services agreement with any party, including Thompson and entities controlled by Thompson.

3.2.5 Harris Entities

1. Dachstein received \$1 million in "dividends" from 525 Princess, 555 Princess, Bronson and Ross Park (\$250,000 from each entity). This is in addition to \$2.4 million in legal fees paid to Harris, which is discussed in Section 3.5 below.
2. As a shareholder of 237, Harris participated in the gain on the sale of Kitchener.

3.2.6 Rideau

1. Rideau is neither subject to these receivership proceedings nor is it a Davies Developer. Rideau is the registered owner of real properties municipally described as 256 Rideau Street, Ottawa and 211 Besserer Street, Ottawa (jointly, the "Ottawa Property").
2. The officers and directors of Rideau are Davies and Thompson.
3. According to title searches, the Ottawa Property was purchased by Rideau for \$11 million on or around November 6, 2015. Kingsett has two mortgages totalling \$8.25 million (before interest and fees, which continue to accrue) registered on title to the Ottawa Property.
4. The Receiver identified payments of \$3.7 million by the Davies Developers to Rideau, including \$2.75 million paid on October 27, 2015 by 555 Princess (\$1.39 million), Kitchener (\$111,000) and Ross Park (\$1.25 million).
5. As set out in the Receiver's Third Report to Court dated May 16, 2017 (the "Third Report"), it appears that monies transferred to Rideau from 555 Princess, Kitchener and Ross Park were used to finance the acquisition of the Ottawa Property. These payments contravene the Loan Agreements of 555 Princess, Kitchener and Ross Park as they are not related to the development of their Projects.

6. On May 16, 2017, the Receiver sought an order that the registrar issue and register Certificates of Pending Litigation (“CPLs”) on and against title to the real property owned by Rideau. On May 17 2017, the Court made the order and the CPLs were subsequently registered (the “May 17 Order”). A copy of the May 17 Order and the Third Report (without appendices) are attached as Appendix “U”, together with the Court’s endorsement. No party has contested the May 17 Order or the Receiver’s Third Report in support of the May 17 Order.

3.3 Interest and fees

1. The Davies Developers paid interest and fees of \$14.529 million, comprised of \$12.191 million in interest paid to the Trustee Corporations and \$2.338 million in interest and fees paid to the Other Lenders.
2. The interest payments to the Trustee Corporations were disclosed in the Loan Agreements.

3.4 Brokers

1. The Brokers and Tier 1 Advisory promoted and sold the syndicated mortgage investments to Investors. The Brokers sold the mortgages through other brokers, who would receive a fee for doing so. The Receiver is not aware of the sharing arrangement between the individual brokers and Tier 1 Mortgage/FCMC.
2. Each of the Loan Agreements includes a provision requiring the Davies Developer to pay:
 - a) 1% of the amounts raised by the relevant Trustee Corporation as a brokerage fee to the Brokers; and
 - b) 15% to 16%²⁰ of the amounts raised by the Trustee Corporation as a referral fee to an entity directed by the Brokers (collectively, the “Broker and Referral Fees”).
3. Broker and Referral Fees totalling \$15.848 million were paid by the Davies Developers, comprised of \$5.861 million to Tier 1 Advisory, \$9.768 million to FCMC and \$219,000 to other referring brokers. Based on the Receiver’s review, the broker and referral fees paid in connection with Kitchener, Burlington and McMurray are \$113,915 greater than permitted under the Loan Agreements, as reflected below.

(unaudited; \$000)		Permitted	Actual	
	Paid to	Referral Fees	Referral Fees	Variance
Kitchener	Tier 1	1,692,288	1,733,088	(40,800)
Burlington	Tier 1	1,328,416	1,356,231	(27,815)
McMurray	Various brokers	480,000	525,300	(45,300)
		3,500,704	3,614,619	(113,915)

4. The remaining referral fees appear to be consistent with the referral fees set out in the various Loan Agreements.

²⁰ Except the McMurray Loan Agreement, which provides fixed referral fees of \$445,000 (12.7% of the funds raised).

3.5 Professional fees

1. A summary of the professional fees paid by the Davies Developers is reflected in the table below.

(unaudited; \$000)	Elliot			
Davies Developer	Harris	Law Firm	Other	Total
Kitchener	189	49	32	270
Oakville	402	68	48	518
Bronson	160	23	61	244
445 Princess	255	29	186	470
Burlington	168	49	42	259
Scollard	308	32	107	447
555 Princess	181	26	11	218
525 Princess	188	26	11	225
Legacy Lane	96	26	27	149
Ross Park	274	26	11	311
McMurray	185	-	62	247
Total	2,406	354	598	3,357

2. The table reflects that:
 - a) \$2.406 million was paid to Harris. The Loan Agreements provide a combined estimate for Harris' legal fees of \$748,060, plus disbursements and HST. Pursuant to the Loan Agreements, Harris was to charge fees ranging \$25,000 to \$35,000 on the first advance under a Loan Agreement and \$15,000 to \$20,000 on subsequent advances. Harris has advised the Receiver that his law firm provided services to the Davies Developers in addition to those contemplated in the Loan Agreements. The Receiver is reviewing Harris' invoices, which were recently provided to it by Harris;
 - b) \$354,000 was paid to Elliot Law Firm ("Elliot"), counsel to the Trustee Corporations. The Loan Agreements provide a combined estimate for Elliot's legal fees of \$287,020, plus disbursements and HST; and
 - c) \$598,000 was paid in other professional fees.

3.6 Traditions Development Company

1. The Memory Care Entities and Legacy Lane made payments to Traditions Development Company ("Traditions") totaling \$1.487 million.
2. Davies has advised the Receiver that:
 - a) the fees paid to Traditions were development management fees relating to the Memory Care Entities and Legacy Lane Projects;

- b) there is no consulting or other agreement between Traditions and either the Memory Care Entities or Legacy Lane; and
 - c) the principal of Traditions, Bruce Stewart, was formerly a director and officer of the Memory Care Entities and Legacy Lane.
3. Harris has provided the Receiver with copies of the directors', officers' and shareholders' registers for each of the Memory Care Entities and Legacy Lane. A copy of the registers is attached as Appendix "V".
 4. The Legacy Lane Loan Agreement prohibits the payment of management and consulting fees to Legacy Lane's directors and officers.

4.0 Davies Developer Transactions

1. The table below illustrates that the Davies Developers routinely transferred monies between entities in contravention of the Loan Agreements. The Loan Agreements require that funds advanced from Investors are to be used solely for the Project for which the funds were raised. A summary of the transactions between Davies Developers is provided in the table below.

(unaudited, \$000) Davies Developer	Amounts Received from Other Davies Developers	Amounts Advanced to Other Davies Developers	Net Received/ (Advanced)
McMurray	4,137	401	3,736
Scollard	5,980	2,906	3,074
Legacy Lane	1,023	773	250
Ross Park	838	247	591
555 Princess Street	55	24	31
525 Princess Street	57	80	(23)
Burlington	2,178	2,571	(393)
Bronson	281	1,087	(806)
Kitchener	1,225	2,943	(1,718)
445 Princess	61	1,732	(1,671)
Oakville	1,368	4,439	(3,071)
	17,203	17,203	-

2. The details of the transactions among the Davies Developers is provided in Appendices "G" to "Q".

5.0 Disposition by Davies of His Cottage and a Home

1. The Receiver understands that Davies recently sold his cottage and is in the process of selling his house. In this regard:
 - a) on April 25, 2017, Davies sold his cottage for \$3 million. A copy of the title search for the cottage is attached as Appendix “W”; and
 - b) Davies has sold his home, which is jointly owned with his wife; however, based on the title search, it appears that the transaction has not yet closed. The listing price for the house was \$1.6 million.²¹ The Receiver does not know the current balance of the mortgage (Moscowitz is the registered mortgagee) and whether there is any equity in the house.
2. The Receiver has also been advised that Davies and/or his family, either directly or indirectly, own a property in Arizona in the United States. The Receiver has no other information regarding this property.

6.0 Conclusion and Recommendation

1. Based on the Receiver’s findings as detailed throughout this Report, the Receiver recommends that the Court issue orders: (i) granting an interim Mareva injunction against Davies and Aeolian, and (ii) compelling TSI, TSSI and MCIL to forthwith provide a copy of its books and records to the Receiver. Certain of the Receiver’s critical findings are summarized below:
 - a) The Davies Developers raised a total of approximately \$125 million to develop eleven Projects, including approximately \$93.975 million from Investors. Notwithstanding the substantial monies raised, each of the Projects is in the early stages of development and none has any capital to further develop its Project. Each is insolvent.
 - b) Millions of dollars were paid by the Davies Developers to the Shareholders in respect of management fees, consulting fees, dividends, loans and other amounts. A substantial portion of these payments contravenes the Loan Agreements.
 - c) Davies and entities or individuals related to him received a net amount of \$6.763 million from the Davies Developers, including at least \$4.069 million in prohibited management fees, \$875,000 in dividends, over \$900,000 in payments to Moscowitz, and over \$422,000 paid to family members. This does not consider any amounts that he may have received from TSI, TSSI and MCIL, which, on a combined basis, received over \$5.5 million from the Davies Developers. The Receiver believes it is appropriate to investigate further, *inter alia*, the use of the monies by TSI, TSSI and MCIL.
 - d) Of the amounts paid to Davies and parties related to Davies, Aeolian received \$5.444 million, including the prohibited management fees and dividends. Aeolian is also a shareholder of TSI, TSSI and MCIL.

²¹ The selling price is not known to the Receiver.

- e) Moscowitz is the mortgagee on Davies' personal residence. Moscowitz is not the mortgagee on any of the Davies Developers' real estate, including McMurray, which is the entity from which these payments were sourced.
- f) Entities related to the Shareholders received \$4 million in dividends. Although the intention to pay these dividends was disclosed in the applicable Davies Developer Loan Agreements, no value was created to justify the payment of the dividends and each entity had no or negligible equity after related party transactions and the payment of dividends. It is possible that the entities were insolvent at the time these amounts were paid, or that the payment of them contributed to their insolvency.
- g) The Davies Developers' transactions are poorly documented and their books and records are incomplete.
- h) There are numerous other breaches of the Loan Agreements, including: i) in the case of the Memory Care Entities, Scollard and McMurray, the granting of security interests on their real estate in priority to the security interests granted to the applicable Trustee Corporations; and ii) the routine transfer of dollars among the Davies Developers.
- i) Davies recently closed the sale of his cottage. His house has been sold and to the Receiver's knowledge, has not yet closed. In light of those dispositions and Davies' other conduct described in this Report, the Receiver is concerned that Davies is attempting to dissipate assets so that they are out of reach of creditors.

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,
1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS
STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “B”

Overview of Development Management Fees

Summary:

Raj Singh, Tier 1's President and director and officer of the Trustee Corporations, and Greg Harris, Tier 1's lawyer, were fully aware and completely on-side with the Davies Developers charging 5% of the total project costs for development management fees. Prior to closing, each Tier 1 project was studied in considerable detail and both Singh and Harris were provided with detailed development pro-forma calculations which set out the projected costs and revenues of the project, including the 5% development management fee. The Trustee Corporations were also provided with multiple iterations of the pro-forma projections as pre-development work advanced. These development management fees, which were consistent with industry-standard development management costs, were submitted to the individual development companies for payment on a monthly basis.

Background:

McMurray Lofts and Condos

The subject of development management fees being invoiced to the individual development companies was first addressed in April 2012 when Singh wrote to Davies regarding the pro-forma for McMurray Lofts and Condos to request clarification as to which party would receive development management fees for project development services on McMurray and which party would receive the construction management fees.

Davies wrote to Singh on April 22, 2012, prior to the Tier 1 McMurray closing, and specified that the development management fee would be paid by McMurray for development management services. There were no further conversations pertaining to development management fees being charged in relation to the McMurray project.

Memory Care Oakville

By spring of 2012, Davies and Bruce Stewart (an original officer, director and shareholder of Memory Care Investments Ltd.) had spent approximately 12 months studying the feasibility of the Memory Care initiative. Singh had been introduced to the opportunity in late 2011 or early 2012. The first Memory Care development site on Garden Drive (at Lakeshore Blvd.) in Oakville was put under contract in the fall of 2011. Harris, who represented Tier 1 and Memory Care, incorporated Memory Care Investments (Oakville) Ltd. in May 2012 and the purchase occurred in October 2012.

During the due diligence period prior to closing, Davies and Stewart produced pro-forma sensitivity studies that were circulated to Singh and Harris. These studies set out all of the projected costs and revenues, including development management fees calculated at 5% of total hard and soft costs.

Davies, Stewart, Singh and Harris had a number of discussions about all the projected costs and revenues contained in the pro-forma, including the development management fees. These conversations took place prior to the Oakville closing. Harris and Singh initially took the position that they too should share in the development fees with Stewart and Davies. Davies and Stewart explained that the development management fees covered all of their overhead, including staff costs, office expenses and out of pocket costs, in addition to management fees paid to Davies and Stewart.

To facilitate invoicing of development management fees, Harris incorporated 'Memory Care Management Ltd.' in January 2013. Memory Care Management was owned 50/50% by Davies and Stewart and was specifically incorporated as the company that would invoice and receive development management fees from the Memory Care (and other) development entities (though it was never ultimately used for this purpose).

Scollard Development Corp.

For seven months, commencing in the fall of 2012 and throughout the winter and spring of 2013, Davies, Stewart and Singh explored the opportunity of developing a luxury, high-rise residential condominium project located at 50 Scollard Street on the site of the former sales and presentation centre for the 'Four Seasons Residences' condo in Yorkville.

Singh was responsible for sourcing financing while Davies and Stewart studied the redevelopment options for the property. Stewart and Davies prepared pro-forma projections of the costs, revenues and potential profit of the Scollard venture. Initial pro-forma studies indicated the project, as conceived, would cost approximately \$80 million to construct. Singh advised Davies and Stewart he thought that a 5% development management fee (\$4 million) was too high. Singh also advised that some investors wanted Davies to consider taking reduced development fees until such time as sufficient sales targets had been met to ensure the availability of construction financing.

Davies and Stewart explained to Singh the costs were attributed to the large number of new staff that would need to be hired to manage such a major project over four years. Davies, Stewart, Singh and Harris subsequently met to discuss the issues of fee timing and quantum and the parties agreed to reduce the development management fee for Scollard to 4%. All subsequent pro-forma projections for Scollard carried the 4% development management fee and there were no further discussions regarding the quantum or timing of fees. Tier 1 was ultimately unable to raise financing and the purchase option on the property expired.

Legacy Lane Residential Development, Huntsville

The Legacy Lane property was known to Stewart through his design and development consulting work for Chartwell, who owned and operated an adjacent retirement residence to the Legacy Lane site. As with the other projects, Davies and Stewart studied the opportunities and constraints associated with the project and submitted pro-forma analyses to Singh and

Harris in advance of closing on the property. The Legacy Lane project pro-forma included a 5% development management fee carried in the budget. Neither Singh nor Harris disputed this proposed fee.

Memory Care Burlington and Kitchener

As with Memory Care Oakville, Davies and Stewart prepared detailed financial projection pro-formas for both the Burlington and Kitchener Memory Care projects. Each pro-forma included a development management fee calculated at 5% of the total projected project cost. These pro-formas were circulated to Harris and Singh prior to closing, and Singh and Harris received updated financial reports (post-closing) throughout the pre-development phase. There were no discussions or questions raised by Singh or Harris about the development management fees.

'Boathaus' Condominiums, Whitby

Davies and Stewart were introduced to this prime redevelopment site by the former planning director of the Town of Whitby. Initially conceived as a 4-storey condominium project containing 256 suites, the development team added a fifth storey in response to robust early sales. Pro-forma studies were prepared by Davies and Stewart and were later refined by Davies and Chris Giamou (who had been hired by Davies as Sr. VP Finance). Prior to closing, pro-forma projections (which included a 5% development management fee) were prepared and presented to Singh and Harris. Based on the development's potential for success, Singh agreed to work to secure SMI financing to acquire the property. No issues were raised by Singh or Harris about any aspect of the pro-forma, including the 5% development management fee.

Invoicing of Development Fees

There is considerable correspondence between Davies, Stewart, Harris and Singh from early in their business relationship regarding the development management fees and their payment by the development companies to the Davies Developers. This correspondence includes questions from Singh and Harris about the quantum of fees, what costs are included, the growth of the enterprise and who should receive a share of the fee. Those questions were addressed to everyone's satisfaction and, as detailed above, the projects proceeded.

Singh and Harris were aware that development management fee payments flowed directly to Aeolian Investments Ltd. Neither of them ever raised any issues with this payment flow or advised the Davies Developers that taking this action was contrary to the terms of the Loan Agreements. Indeed, following Stewart's departure from the Memory Care enterprise, both Singh and Harris began invoicing Aeolian for a pro-rata share of the monthly Memory Care management fee draw that was previously payable to Stewart.

In addition, and as noted above, Harris incorporated Memory Care Management Ltd. in January 2013 to invoice development management fees and other overhead to the various development projects. This action, together with Singh and Harris' invoicing of Aeolian for a share of Stewart's management fee draw and the parties' interactions regarding pro-formas,

reflect Singh and Harris' consent to the payment of development management fees as an ordinary course expense in connection with the development of the various projects.

Quantum of Development Fees

As noted above, the Davies Developers had the approval of Singh and Harris to act as the development manager (or co-developer) for each of the development entities, and to charge an industry-standard 5% development management fee for their services. From these fees, the Davies Developers were responsible to pay management compensation and other staff costs, office expenses and over-head necessary to advance the projects through the predevelopment phase.

It was understood and agreed that the Davies Developers had full responsibility for developing the various projects, and had the authority to retain architects, engineers, planners, consultants and other experts. The Davies Developers advanced the projects and invoiced for development management fees in accordance with the pro-formas that were submitted to and approved by Singh, Harris and the Trustee Corporations.

The quantum of fees (charged on a project by project basis) reflected the progress achieved on each of the developments. Accounting records confirm that development management fees were invoiced on a monthly basis through the course of pre-development work on each project. Appropriate fee reserves were maintained so each project could be taken to 'shovel readiness' by the time the 5% fee had been fully disbursed.

TSI / TSSI

Textbook Suites Inc. and Textbook Student Suites Inc. were created to manage the development activities of the student housing project initiative. As with the Memory Care and other predecessor companies, a 5% development management fee was included as a development cost in every Textbook pro-forma.

Appendix “C”

Aeolian Investments Ltd.

Reconciliation of Payments to Aeolian

For the Period October 1, 2012 to May 29, 2017

(unaudited; \$000s)

	<u>Note</u>	<u>Aeolian Report</u>	<u>Fourth Report</u>	<u>Difference</u>
Management fees				
Scollard		1,248	1,244	4
Oakville	1	1,137	1,112	25
Kitchener	2	481	506	(25)
Burlington	3	433	592	(159)
Legacy Lane	4	316	341	(25)
McMurray		272	274	(2)
		<u>3,887</u>	<u>4,069</u>	<u>(182)</u>
Other entities		<u>500</u>	<u>500</u>	<u>-</u>
		<u>4,387</u>	<u>4,569</u>	<u>(182)</u>
Dividends paid to Aeolian				
525 Princess	5	-	250	(250)
555 Princess		250	250	-
Ross Park		250	250	-
Bronson		125	125	-
		<u>625</u>	<u>875</u>	<u>(250)</u>
Other				
Reimbursement of costs – McMurray	6	236	-	236
Profit from the sale of Kitchener	7	344	-	344
		<u>580</u>	<u>-</u>	<u>580</u>
Total		<u><u>5,592</u></u>	<u><u>5,444</u></u>	<u><u>148</u></u>

General Note:

1. Differences between the current report and the Fourth Report are due to several factors including availability of new information and the different classification of certain payments. For example, certain payments reflected as being paid to Aeolian in the Davies Developers' accounting records appear to have been paid to other entities on behalf of Aeolian. The significant variances are discussed below.

Notes:

1. Aeolian's bank statements include a receipt of \$25,000 from Oakville that was not reflected in Oakville's accounting records. This information was not available to the Receiver as at the date of the Fourth Report.
2. Kitchener's accounting records includes two payments to Aeolian totaling \$25,326 that were not reflected in Aeolian's bank statements. These payments appear to be expenses paid by Kitchener on behalf of Aeolian and include a \$20,000 wire to Identity Construction.
3. Burlington's accounting records include two payments to Aeolian totaling approximately \$160,000 that were not reflected in Aeolian's bank statements. These payments appear to be expenses paid by Kitchener on behalf of Aeolian and include a \$134,510 payment to Identity Construction.
4. Legacy Lane's accounting records include a payment of \$25,000 to Aeolian that was not reflected in Aeolian's bank statements. This amount is recorded in Aeolian's general ledger; however, the funds were not received in the bank account. It is unclear where these funds were deposited.
5. 525 Princess' general ledger includes a \$250,000 dividend paid to Aeolian that was not reflected in Aeolian's bank statements. Based on an answer to an undertaking given by John Davies, it appears that this was paid from a Harris & Harris LLP trust account, on behalf of Aeolian, to repay a loan owing to RS Consulting Group Inc., an entity controlled by Raj Singh.

6. Aeolian's bank statements include a receipt in the amount of \$235,938 related to McMurray which was not reflected in McMurray's bank statements. This amount was received by Aeolian from Gowling WLG International Limited ("Gowling") as reimbursement of costs paid by Aeolian on behalf of McMurray and was not reflected in McMurray's bank statements. The source of the funds received from Gowling is unknown.
7. Aeolian's bank statements included a receipt in the amount of \$344,052 from Harris & Harris LLP (proceeds generated from the sale of the Kitchener property) that was not reflected in Kitchener's bank statements.

Appendix “D”

John Davies
Assets and Liabilities
as of June 14, 2017

Assets	Value	Location
1) 24 Country Club Drive (Residence)	1,600,000	Ontario
2) Davies Arizona Trust - Discretionary Beneficiary	unknown	Arizona
3) Household Furniture / Misc	75,000 (est.)	Ontario
4) 2011 Toyota Venza (159,000 km)	2,500	Ontario
5) 2008 Range Rover Sport (175,000 km)	12,000	Arizona
6) 2008 Cobalt (boat)	30,000	Ontario
	<u>Total Assets</u>	
	<u>1,719,500</u>	

Liabilities	Value	Location
1) First Mortgage 24 Country Club	1,050,000 (est.)	Ontario
2) CRA Liens (24 Country Club)	600,000 (est.)	Ontario
3) Accounts Payable		
Enbridge	400	Ontario
Hydro	500	Ontario
Auto One	5,980	Ontario
407	2,000	Ontario
Rogers	800	Ontario
Bickle Maintenance	700	Ontario
Condo Fees	650	Ontario
Loan	10,000	Ontario
Clublink, Water/Sewage Fees	6,300	Ontario
4) Financing Guarantee - 28 McMurray Street Inc. (Pillar Financial)	300,000	Ontario
	<u>Total Liabilities</u>	
	<u>1,977,330</u>	

Appendix “E”

Aeolian Investments Ltd.
 Assets and Liabilities
 as of June 14, 2017

Assets	Value	Location
1) Various % Shareholding Interest		
- McMurray Street Investments Inc.	0	Ontario
- Textbook Ross Park Inc.	0	Ontario
- Textbook (774 Bronson Avenue) Inc.	0	Ontario
- Textbook (445 Princess Street) Inc.	0	Ontario
- Generx Byward Hall Inc	0	Ontario
- Textbook Suites Inc.	unknown	Ontario
	<u> </u>	
Total Assets	<u> </u>	unknown

Liabilities		
1) Automobile Lease Residual obligations (net)		
- 2014 Range Rover (net after sale)	12,000	Ontario
- 2013 Ford Escape (net after sale)	10,000	Ontario
2) CRA		
HST	50,000 (est.)	Ontario
Taxes	<u>100,000 (est.)</u>	Ontario
Total Liabilities	<u>\$ 172,000</u>	

Appendix “F”

John Davies
Assets and Liabilities
as of June 14, 2017

Assets	Value	Location
1) 24 Country Club Drive (Residence)	1,600,000	Ontario
2) Davies Arizona Trust - Discretionary Beneficiary	unknown	Arizona
3) Household Furniture / Misc	75,000 (est.)	Ontario
4) 2011 Toyota Venza (159,000 km)	2,500	Ontario
5) 2008 Range Rover Sport (175,000 km)	12,000	Arizona
6) 2008 Cobalt (boat)	30,000	Ontario
	<u>Total Assets</u>	
	<u>1,719,500</u>	

Liabilities	Value	Location
1) First Mortgage 24 Country Club	1,050,000 (est.)	Ontario
2) CRA Liens (24 Country Club)	600,000 (est.)	Ontario
3) Accounts Payable		
	Enbridge	400 Ontario
	Hydro	500 Ontario
	Auto One	5,980 Ontario
	407	2,000 Ontario
	Rogers	800 Ontario
	Bickle Maintenance	700 Ontario
	Condo Fees	650 Ontario
	Loan	10,000 Ontario
	Clublink, Water/Sewage Fees	6,300 Ontario
4) Financing Guarantee - 28 McMurray Street Inc. (Pillar Financial)	300,000	Ontario
5) Personal Loan - Don Mintz	100,000	Ontario
	<u>Total Liabilities</u>	
	<u>2,077,330</u>	

Appendix “G”

Aeolian Investments Ltd.
Assets and Liabilities
as of June 14, 2017

Assets	Value	Location	Shareholding Percentage
1) Various % Shareholding Interest			
- McMurray Street Investments Inc.	0	Ontario	30%
- Textbook Suites Inc.	unknown	Ontario	35%
- Textbook Student Suites Inc.	unknown	Ontario	30%
- Scollard Development Corporation	unknown	Ontario	50%
- Legacy Lane Investments Ltd.	unknown	Ontario	50%
- Memory Care Management Ltd.	unknown	Ontario	100%
- Memory Care Investments Ltd.	unknown	Ontario	50%
- 2372519 Ontario Ltd.	unknown	Ontario	50%
	<u> </u>		
Total Assets	<u> </u>		
	<u> </u>		
	unknown		

Liabilities

1) Automobile Lease Residual obligations (net)			
- 2014 Range Rover (net after sale)	12,000	Ontario	
- 2013 Ford Escape (net after sale)	10,000	Ontario	
2) CRA			
HST	50,000 (est.)	Ontario	
Taxes	100,000 (est.)	Ontario	
	<u> </u>		
Total Liabilities	<u>\$ 172,000</u>		

Appendix “H”

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Court File No. CV-1711822-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) WEDNESDAY, THE 7TH
)
MR. JUSTICE MYERS) DAY OF JUNE, 2017

B E T W E E N :

KSV KOFMAN INC. IN ITS CAPACITY AS RECEIVER AND MANAGER
OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION,
MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE
INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC.,
LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS
STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.
Plaintiff,

- and -

JOHN DAVIES AND AEOLIAN INVESTMENTS LTD.
Defendants.

This is the Cross-Examination of JOHN EVAN DAVIES, a
Defendant herein, on his affidavit sworn June 14, 2017,
taken at the offices of Network Court Reporting, 1 First
Canadian Place, 100 King St. West, Suite 3600, Toronto,
Ontario, on June 16, 2017.

A P P E A R A N C E S :

Jonathan Bell for the Plaintiff
Sean H. Zweig
David McCutcheon for the Defendants
ALSO PRESENT:
Noah Goldstein KSV representative

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TABLE OF CONTENTS

INDEX OF EXAMINATIONS:

JOHN EVAN DAVIES: SWORN	5
CROSS-EXAMINATION BY MR. BELL	5

INDEX OF UNDERTAKINGS

Undertakings are noted by U/T and are found on the following pages: 17, 21, 24, 25, 32, 43, 45, 47, 49, 50, 52, 53, 93, 96 and 117.

INDEX OF REFUSALS

Refusals are noted by R/F and are found on the following pages: 20.

INDEX OF UNDER ADVISEMENTS

Under advisements are noted by U/A and are found on the following pages: 35, 38, 63 and 116.

*** The list of undertakings, refusals and under advisements is provided as a service to counsel and does not purport to be complete or binding upon the parties.

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INDEX OF EXHIBITS

Exhibit No.	Description	Page No.
1	Affidavit of John Davies sworn June 14, 2017.	5
2	Cheque from 1416958 Ontario Inc. to Aeolian Investments Limited dated March 25, 2013 for \$136,842.53.	85
3	Two cheques, one dated December 17, 2014 for \$104,800 and one dated April 1, 2015 for \$100,000, both from 2174217 Ontario Inc. to Aeolian Investments Limited.	89
4	Cheque from Tier 1 to Aeolian for \$200,000 dated February 27, 2015 and cheque for \$121,000 dated October 20, 2014.	98
5	Business account statement for Aeolian Investments dated December 31, 2013 to January 31, 2014.	100

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INDEX OF EXHIBITS (Continued)

Exhibit No.	Description	Page No.
6	Cheques from Aeolian Investments Limited to RBC Royal Bank of Canada dated July 16, 2015, September 9, 2015 and January 28, 2016.	102
7	Bundle of cheques starting with cheque from Aeolian to Royal Bank of Canada for \$200,000 dated September 11, 2015 re wire U.S. dollars to Davies Arizona Trust.	103
8	Cheques re Chase Davies Trust.	107
9	Cheque dated March 24, 2013 from Aeolian to Royal LePage Your Community Realty Inc. for \$15,000.	109

1 --- Upon commencing at 1:41 a.m.

2 JOHN EVAN DAVIES: SWORN

3 CROSS-EXAMINATION BY MR. BELL:

4 1. Q. Good morning, sir.

5 A. Good morning.

6 2. Q. Can you state your name for the
7 record?

8 A. John Evan Davies.

9 3. Q. I'm going to show you an affidavit
10 that you swore June 14, 2017. Can you just
11 confirm that you did in fact swear that
12 affidavit?

13 A. I did swear this affidavit.

14 4. Q. Are there any corrections you would
15 like to make to the affidavit?

16 A. No.

17 MR. BELL: Let's mark that as Exhibit 1.

18 MR. MCCUTCHEON: Just a moment. Actually,
19 you can mark it as Exhibit 1.

20 EXHIBIT NO. 1: Affidavit of John Davies
21 sworn June 14, 2017.

22 MR. MCCUTCHEON: Is the house in your
23 name?

24 THE DEPONENT: The house I believe is in
25 -- I'm certain the house is in both my name, in

1 both my wife and I.

2 MR. BELL: Okay.

3 MR. MCCUTCHEON: Okay. I think that's the
4 only change.

5 BY MR. BELL:

6 5. Q. That's the only change. That's
7 helpful. We'll go through that, but that's
8 helpful. Thank you.

9 And I understand that you're attending
10 today in both your personal capacity and as a
11 corporate representative for Aeolian. Do I have
12 that correct?

13 A. Yes.

14 6. Q. And so do I understand that your
15 answers today will bind Aeolian?

16 A. Yes.

17 7. Q. And I understand that you're the sole
18 director and officer of Aeolian. Do I have that
19 right?

20 A. Yes.

21 8. Q. And who are the shareholders of
22 Aeolian?

23 A. The shareholders of Aeolian are my
24 four children: Andrew Davies, Sarah Davies,
25 Jessica Davies and Jack Davies.

1 9. Q. And do they each own a 25 percent
2 share of the company?

3 A. Yes.

4 10. Q. And how old are your children?

5 A. My son Andrew is 32. My daughter
6 Sarah is 28. My daughter Jessica is 26. My son
7 Jack is 16.

8 11. Q. And what does Aeolian do?

9 A. Aeolian is a company that was formed
10 for the benefit of my four children. It was
11 expected that various development activities that
12 I was undertaking would benefit the children in
13 the long term. Aeolian's role was really a
14 holdco, for lack of a better word, for my
15 children's long-term benefit.

16 12. Q. And do your children have any
17 involvement in Aeolian other than being passive
18 shareholders?

19 A. No.

20 13. Q. And does Aeolian have any employees?

21 A. No.

22 14. Q. So other than you as the officer and
23 director, there's no one else that performs any
24 work, for example, on behalf of Aeolian?

25 A. No.

1 15. Q. And does Aeolian have any offices?
2 Does it have a corporate office?

3 A. No.

4 16. Q. Now, going to -- do you have a copy
5 of your affidavit in front of you?

6 A. Yes.

7 17. Q. I just want to turn to Exhibit "A" to
8 your affidavit and start with your assets and
9 liabilities, and you don't list a bank account.
10 Do you have a personal bank account?

11 A. No.

12 18. Q. And do you have a personal investment
13 account?

14 A. No.

15 19. Q. RRSPs?

16 A. No.

17 20. Q. So do you have joint bank accounts?

18 A. No.

19 21. Q. So if someone were to give you a
20 cheque, how do you cash it or do you just not
21 cash cheques personally?

22 A. I can't cash a cheque.

23 22. Q. And have you never had a bank account
24 or when is the last time you had a bank account?

25 A. Not for seven or eight years.

1 23. Q. And so how do you live day to day
2 with living expenses?

3 A. I use an Aeolian bank card or my wife
4 pays for it.

5 24. Q. And so the bank card -- sorry, just
6 take that in steps. So the Aeolian bank card,
7 Aeolian has a bank account?

8 A. Aeolian has a bank account.

9 25. Q. Does it have more than one bank
10 account?

11 A. No.

12 26. Q. And the bank account it has is the
13 RBC account?

14 A. That's right.

15 27. Q. And is that -- do you know off the
16 top of your head if that's account number
17 4421013069?

18 A. I don't know.

19 28. Q. But it has one account at RBC?

20 A. There's only one account at RBC.

21 29. Q. And as I understand, that account
22 currently has a thirteen-dollar balance. Does
23 that fit roughly with your understanding?

24 A. I didn't know it was that high.

25 30. Q. Wealthy.

1 A. Exactly.

2 31. Q. And so I assume that before this
3 Mareva happened, you weren't living off the
4 Aeolian bank card. So you said your wife
5 provides the money. Is that right?

6 A. My wife has gone back to work as a
7 result of the activities over the last eight or
8 nine months.

9 32. Q. And what does your wife do?

10 A. She assists a real estate agent with
11 scheduling and working on their website and
12 things like that.

13 33. Q. And she now works full time?

14 A. No.

15 34. Q. Part time?

16 A. Part time.

17 35. Q. And previous to her going -- we can
18 go off the record just for a second.

19 --- Off-the-record discussion 10:46 a.m.

20 --- Upon resuming 10:47 a.m.

21 BY MR. BELL:

22 36. Q. And so I want to focus on the last
23 five years in particular. Over the last five
24 years, how have you funded your living expenses
25 largely?

1 A. By receiving development fees from
2 the various projects, entities that we've been
3 working on.

4 37. Q. Has that been your only employment
5 over the last five years?

6 A. Yes.

7 38. Q. And when you say, "receiving
8 development fees", through which entities did you
9 receive the development fees that ultimately
10 funded your living expenses?

11 A. Well, indirectly through Memory Care
12 Management and from Memory Care Management to
13 Aeolian.

14 39. Q. And so if you had an expense, and I
15 realize this may -- I'm talking generally
16 speaking over the last five years, you would pay
17 it from funds that went through Aeolian. Is that
18 correct?

19 A. More or less, yeah.

20 40. Q. And you had an Interac card for the
21 RBC account at Aeolian?

22 A. Yes.

23 41. Q. And was there a corporate credit
24 card?

25 A. No.

1 42. Q. And do you have an American Express
2 credit card?

3 A. I do.

4 43. Q. And whose account is that American
5 Express credit card on?

6 A. It's a corporate card from GenerX
7 Corporate Development Partners Inc.

8 44. Q. And who are the shareholders of
9 GenerX?

10 A. Me.

11 45. Q. And so other than the American
12 Express on the GenerX account, do you have any
13 other credit cards?

14 A. No.

15 46. Q. And what's the credit limit on the
16 American Express account?

17 A. No credit limit.

18 47. Q. DreamX. I've got to get one of
19 those. Does GenerX have a bank account?

20 A. No.

21 48. Q. It only has an American Express
22 account?

23 A. Correct.

24 49. Q. And how is the American Express bill
25 paid, the GenerX American Express? Is that paid

1 out of Aeolian as well?

2 A. Yes.

3 50. Q. And since Aeolian no longer has
4 money, how is the American Express card paid
5 going forward or how was it paid up to the
6 Mareva, till last Wednesday?

7 A. I've been selling assets that belong
8 to my children.

9 51. Q. And what are you doing with the funds
10 that you get from selling those assets?

11 A. Put them in -- up until last week,
12 deposited them into Aeolian.

13 52. Q. Into the Aeolian's bank account,
14 that's in there?

15 A. Yes.

16 53. Q. And what assets have you sold of your
17 children in the last five years?

18 A. In the last five years?

19 54. Q. Yes.

20 A. Oh, I haven't sold any of my
21 children's assets in the last five years, only in
22 the last eight months.

23 55. Q. So what have you sold in the last
24 eight months?

25 A. Artwork. Yeah, artwork.

1 56. Q. And do you know roughly how much you
2 got for that artwork?

3 A. About 150 -- \$130,000.

4 57. Q. And is there more artwork left in
5 your children's name?

6 A. No. It's...

7 58. Q. It's all gone. And so other than the
8 Aeolian bank account, we've spoken about the
9 GenerX American Express card, what other bank
10 accounts do you have signing authority for?

11 A. I have signing authority or cosigning
12 authority on all of the active development
13 companies.

14 59. Q. And other than those?

15 A. Or formerly active. No others. None
16 others. No others or none others? None.

17 60. Q. So other than the active development
18 companies, the Aeolian RBC account and the GenerX
19 American Express account, you don't have signing
20 authority on any other banking facilities. Is
21 that right?

22 A. No.

23 61. Q. That's right?

24 A. Yes. Yes. Affirmative.

25 62. Q. And you're married to Judith Davies?

1 A. I am.

2 63. Q. And where does she bank?

3 A. TD.

4 64. Q. And she has a bank account?

5 A. Yes.

6 65. Q. And do you have access -- do you have
7 an Interac card on her bank account?

8 A. No.

9 66. Q. So if you wanted money, you have to
10 get it from her and she takes it out and gives it
11 to you?

12 A. More or less, yeah.

13 67. Q. You don't have signing authority on
14 her account?

15 A. No.

16 68. Q. And if I can get you to turn to the
17 second page of Exhibit "A" to your affidavit, you
18 have listed some shareholders of Aeolian. Do you
19 see that?

20 A. Yes.

21 69. Q. And is that a complete listing of all
22 the shareholdings held by Aeolian?

23 A. No, the Memory Care projects are not
24 listed there.

25 70. Q. Right. And so let's go through

1 those. So in addition to what's listed there,
2 what other shareholdings does Aeolian have?

3 A. Memory Care Investments (Oakville),
4 Memory Care Investments (Burlington), Memory Care
5 Investments (Kitchener).

6 71. Q. And what about Memory Care
7 Investments Limited?

8 A. Oh, yeah. MCIL, yeah. It doesn't
9 really do anything. It pays the rent on the
10 office and things.

11 72. Q. But it has --

12 A. Yes, I have signing authority on that
13 account as well.

14 73. Q. So let's take those in order, and
15 then there's also a company called -- before we
16 take them in order, there is a company called
17 TSSI; right?

18 A. Textbook Suites -- Textbook Student
19 Suites Inc.

20 74. Q. Right. And Aeolian has a
21 shareholding in that as well, right?

22 A. Yes.

23 75. Q. And that's not listed there as well,
24 right?

25 A. Correct.

1 76. Q. And there's also Legacy Lane,
2 correct?

3 A. Legacy Lane and Scollard, yeah.
4 There would be Memory Care Investments Limited,
5 MCIL and... am I missing something?

6 MR. MCCUTCHEON: I'm trying to think are
7 you missing anything?

8 THE DEPONENT: TSI, Textbook Suites Inc.

9 BY MR. BELL:

10 77. Q. Textbook Suites Inc. is on the --
11 okay. So rather than do this by way of a memory
12 test, I would like an undertaking for you to
13 update the Schedule "A" that's attached to your
14 affidavit and provide a detailed listing of all
15 the shareholdings held by Aeolian, as well as the
16 percentage shareholding in each of the companies.

17 U/T MR. MCCUTCHEON: We will make that inquiry
18 and provide you with a list to the best of our
19 information.

20 MR. BELL: Perfect. Thank you.

21 BY MR. BELL:

22 78. Q. And I should have said this before.
23 You personally, do you have any shareholding in
24 any companies?

25 A. No.

1 79. Q. And other than Aeolian, does your
2 wife or your children have any shareholdings in a
3 company in which you're involved?

4 A. No.

5 80. Q. Their interests are always all
6 through Aeolian? Yes?

7 A. Yes.

8 81. Q. And we talked about the banking
9 authority you had on the active development
10 companies. Am I right that you also have banking
11 or signing authority on the banking facility for
12 MCIL? Did I hear you say that correctly?

13 A. I'm pretty sure I do, yes.

14 82. Q. And other than you, who has signing
15 authority for the banking facility for MCIL?

16 A. Just me.

17 83. Q. And where does MCIL bank?

18 A. Royal Bank, the same Royal Bank as
19 all the other companies.

20 84. Q. As all the other companies?

21 A. Yes.

22 85. Q. And is the same true for TSI?

23 A. Yes.

24 86. Q. And TSSI?

25 A. Yes.

1 87. Q. As in you're the only person with
2 banking authority for those three entities?

3 A. I haven't thought about these in a
4 while. Walter Thompson will for all of the
5 Textbook-related companies, and Dianna Cassidy,
6 our bookkeeper, has signing authority. I think
7 it's up to \$5,000 just in case we weren't
8 available and somebody needed to pay a supplier,
9 but hers is limited to, I think it's 5,000. It
10 might be ten but I'm pretty sure it's 5,000.

11 88. Q. And so just turning to your living
12 expenses currently, you've set out your assets
13 and liabilities. Do you have a list of what your
14 monthly living expenses are currently?

15 A. Maybe 1500 or \$2,000 a month.

16 89. Q. You're financing those off your
17 wife's salary?

18 A. She has not yet received a paycheque.
19 She's only recently started with this person.

20 90. Q. So how are you funding your living
21 expenses currently?

22 A. Well, whatever money has been left
23 over from the sale of the assets up until this
24 point, we've, you know -- going forward, that's a
25 good question. We're faced with that right now.

1 91. Q. Okay. And how are you paying for
2 Denton's services?

3 R/F MR. MCCUTCHEON: Don't answer that
4 question. That's privileged.

5 MR. BELL: You won't be surprised I don't
6 accept that, but I hear your position.

7 BY MR. BELL:

8 92. Q. On your house, and we'll get to the
9 house in more detail, you have a mortgage?

10 A. Yes.

11 93. Q. How large is the mortgage?

12 A. I believe it's about 950,000.

13 94. Q. And what are the monthly servicing
14 fees for the mortgage?

15 A. That I don't know because -- can I
16 explain how we get there?

17 MR. MCCUTCHEON: Go ahead.

18 THE DEPONENT: We had a cottage in
19 addition to our house and the mortgages were
20 collateralized. The cottage had equity in it.
21 The house did not. So the -- when the cottage
22 sold, there was a balance left because the
23 mortgage company took a disproportionate amount
24 of proceeds from the sale of the cottage to pay
25 down debt on the house.

1 So presently I believe there's about
2 950,000 left. I can't -- it sounds odd that I
3 can't tell you exactly, but I know they took all
4 of the money they could out of the cottage sale
5 and we're left with a balance owing on the house,
6 which I believe to be approximately 950,000 plus
7 or minus 25,000.

8 MR. BELL: And I would like an undertaking
9 to have Mr. Davies go back and review his records
10 to be able to give us the exact number of the
11 mortgage, the quantum of the mortgage outstanding
12 on the house.

13 U/T MR. MCCUTCHEON: We'll go back and review
14 them and give you our best information.

15 MR. BELL: I appreciate that.

16 BY MR. BELL:

17 95. Q. So let's just take that in bite-size
18 chunks, sir. You talk about the sale of the
19 cottage. Who owned the cottage prior to its
20 sale?

21 A. The Davies Family Trust.

22 96. Q. And when was that cottage purchased?

23 A. 2008.

24 97. Q. Was it purchased by the Davies Family
25 Trust?

1 A. It was.

2 98. Q. And we'll get to the Davies Family
3 Trust in a second, but was the mortgage placed on
4 the cottage at the time of the purchase or was
5 there a mortgage subsequently placed on the
6 cottage?

7 A. There was one mortgage placed on the
8 cottage at the time of purchase and a second
9 mortgage was placed on it about a year later.

10 99. Q. And who was the first mortgage with?

11 A. TD Bank.

12 100. Q. And the second mortgage was with?

13 A. Moskowitz Capital.

14 101. Q. And it's the Moskowitz Capital one
15 that's cross-collateralized to the house?

16 A. That's correct.

17 102. Q. And how much was the cottage sold
18 for?

19 A. \$3 million.

20 103. Q. And what was the outstanding
21 mortgages at the time?

22 A. The TD Bank Mortgage was
23 approximately 900,000. The Moskowitz mortgage
24 was about 1.9 million, again, cross-
25 collateralized, so dual security, and there were

1 a couple of liens on the property.

2 104. Q. And so when you say 1.9 million, you
3 mean that's total that was cross-collateralized
4 against both the house and the cottage?

5 A. Correct.

6 105. Q. And what liens were on the cottage?

7 A. There was a lien for \$345,000 from
8 the Oshawa Generals and Generals Hockey Holdings,
9 and there were interest payments and arrear
10 payments, and I don't know if they were
11 registered as liens, but they were registered as
12 encumbrances against the property. In what
13 vehicle, I can't specifically tell you, but to
14 Moskowitz Capital, \$140,000 in interest, future
15 interest owing, because there is another year of
16 term left and they wanted the remaining term
17 paid, and there was approximately \$140,000 of
18 arrears, payment arrears, on the cottage and the
19 house at the time of the sale, which was April
20 20th.

21 106. Q. And so you paid, if I have the
22 numbers right, and I'm doing a rough math,
23 950,000 to TD from the sale?

24 A. Yes. Approximately 1.4 to Moskowitz.

25 107. Q. Okay.

1 A. And again, I'm -- and some of the 1.4
2 would include the arrear payments. So they might
3 have paid off 1.1 or 1.2 of the principal amount
4 of the cross-collateralized, but they also took
5 the payment of their interest owing and their
6 arrears payment out of that as well. So perhaps
7 it was 1.4 or 1.50, but it was in that range.

8 108. Q. And then there's the 350,000-dollar--

9 A. There's the 350,000-dollar lien.
10 There was unpaid realty taxes of about 35- or
11 \$40,000, legal fees of 10- or 15,000 and real
12 estate commissions to take it to \$3 million.

13 109. Q. So how much equity did you -- did
14 Davies Family Trust ultimately get from the sale?

15 A. Zero.

16 MR. BELL: None. And, counsel, I would
17 like an undertaking to produce whatever documents
18 Mr. Davies has related to that flow of funds
19 discussion, the sale of the cottage, and perhaps
20 we can have the workings of that and get
21 specifics on the numbers.

22 U/T MR. MCCUTCHEON: I'll give you that
23 undertaking. So you want the documentation with
24 respect to the sale of the cottage and the full
25 funds?

1 MR. BELL: Yes, please. And I think I
2 already have it but to the extent it's not
3 covered, also the -- how the allocation and
4 cross-collateralization with the mortgage worked.
5 I imagine it's all in the same document.

6 U/T MR. MCCUTCHEON: It may be, but if it's
7 not, we'll advise you.

8 MR. BELL: I appreciate that.

9 BY MR. BELL:

10 110. Q. And, sir, you live -- the house we're
11 talking about is at 24 Country Club Drive;
12 correct?

13 A. Yes.

14 111. Q. And who owns that property?

15 A. It's either Judith Davies and myself
16 or just Judith Davies. I will find out.

17 U/T MR. MCCUTCHEON: We'll have to check that.

18 MR. BELL: Okay. If you could let me
19 know, I would appreciate it.

20 BY MR. BELL:

21 112. Q. And when was that property purchased?

22 A. July of 2011.

23 113. Q. And you don't know how that mortgage
24 is being served currently. Do I have that right?

25 A. It's not being served at all. It's

1 going into arrears every month.

2 114. Q. And am I right that there was a time
3 when McMurray was paying Moskowitz in relation to
4 that mortgage?

5 A. McMurry was paying -- indirectly
6 McMurray was paying Davies Family Trust and
7 Davies Family Trust was directing that money from
8 McMurray to Moskowitz.

9 115. Q. So your understanding is that
10 McMurray never actually sent the money directly
11 to Moskowitz but it went through the Davies
12 Family Trust?

13 A. Well, I think it probably did get
14 sent directly to Moskowitz but it was on behalf
15 of monies owed -- McMurray owed money to Davies
16 Family Trust.

17 116. Q. On what basis?

18 A. Davies Family Trust purchased the
19 land in Bracebridge where the McMurray Street
20 property is located.

21 117. Q. Just so I have that right, the
22 property that's for the McMurray development was
23 purchased from the Davies Family Trust?

24 A. Correct.

25 118. Q. And where did the Davies Family Trust

1 get that land?

2 A. Where did it --

3 119. Q. Where did it purchase it? When did
4 it purchase it? Let's start with that.

5 A. Late 2009 or early 2010, prior to the
6 formation of McMurray Street Investments.

7 McMurray Street Investments was incorporated to
8 become the development entity of that property.

9 MR. BELL: Just go off the record for a
10 second.

11 --- Off-the-record discussion 11:03 a.m.

12 --- Upon resuming 11:04 a.m.

13 BY MR. BELL:

14 120. Q. Other than the McMurray property, did
15 any entity you were involved in, so either that
16 you had a shareholding in or a Davies Trust
17 entity, sell any property to the project
18 developments?

19 A. Sell any projects?

20 121. Q. Yes, sell any property to the project
21 developments.

22 A. No, just the McMurray property.

23 122. Q. And how much did McMurray pay for the
24 -- that property?

25 A. \$650,000.

1 123. Q. And your understanding --

2 A. I'm sorry, how much did McMurray pay?

3 124. Q. Yes.

4 A. The Davies Family Trust paid

5 \$650,000.

6 125. Q. So the Davies Family Trust paid

7 \$650,000 when it purchased it?

8 A. Correct.

9 126. Q. How much did McMurray pay from the
10 Davies Family Trust?

11 A. Via the payments directed from

12 Moskowitz?

13 127. Q. Yes.

14 A. About 900 in total when you take 650
15 plus the annual interest for seven or eight
16 years.

17 128. Q. And was there a purchase and sale
18 agreement for the property between the Davies
19 Family Trust and the McMurray project?

20 A. No. It was just letters and e-mails
21 between myself and Greg Harris and discussion
22 with Greg, that at some point in time Davies
23 Family Trust is going to be looking to get their
24 money back.

25 129. Q. Was there an agreed-upon price paid

1 at the time of the sale or was it simply kind of
2 left open that these periodic payments would
3 happen to Moskowitz?

4 A. The agreement, there was a couple of
5 ways to look at it. We could have sold it. I
6 think the Davies Family Trust would have been in
7 its right to sell it for the appraised value,
8 which was 1.9 million, but DFT, Davies Family
9 Trust, sold it for what it paid with an
10 understanding that it was owed that money.

11 130. Q. And at the time the sale took place,
12 and I realize it wasn't papered, was an actual
13 agreed-upon sale price agreed to between the
14 Davies Family Trust and the McMurray entity?

15 A. As I said, it was going to either be
16 calculated based on appraised value at 1.9 or
17 what I paid for it. I believe that I would be
18 entitled or the Davies Family Trust would have
19 been entitled to get the appraised value, but...

20 131. Q. And I understand that there had been
21 a proposed sale of your house in place. Is that
22 correct?

23 A. Yes.

24 132. Q. And is that sale being -- are you
25 proceeding with that sale?

1 A. No. The purchaser has backed out of
2 the transaction citing overextended.

3 133. Q. What was the proposed sale price?

4 A. 1,635,000.

5 134. Q. And I should have asked you this
6 before. Who bought your cottage? Was it a
7 related party or a third party that you didn't
8 know?

9 A. A Chinese investor, an unrelated
10 party. I've never met the people.

11 135. Q. And is your house currently listed
12 for sale?

13 A. It has not been relisted. We're
14 waiting to hear from Moskowitz as to what their
15 intentions are. Let me elaborate. There is a
16 second... there's a full year of interest owing
17 on the house and that interest is about 120,
18 \$118,000, \$115,000. If we sold the house, that
19 interest is due to Moskowitz. If I let Moskowitz
20 sell it power of sale, they can't collect the
21 interest on it.

22 So I'm attempting to make an arrangement
23 with Moskowitz that either he lets me live in the
24 house interest-free, while I burn off the
25 interest reserve that he's going to get on the

1 sale of the property or he's going to tell me
2 he's going to foreclose, in which case I think I
3 would re-list the property for sale to try to
4 have some measure of control over what the sale
5 price is.

6 136. Q. And you have no intention of moving
7 away, though? That is not why the house is
8 listed? You're not planning on moving, are you?

9 A. Not at all.

10 137. Q. And on the Davies Family Trust, when
11 was that trust settled or created?

12 A. I believe it was 2002 or 2003.

13 138. Q. And who -- with what funds was it
14 settled? Was it you? Were you the settlor?

15 A. Yes.

16 139. Q. And are you the trustee?

17 A. I'm one of the trustees.

18 140. Q. Who are the other trustees?

19 A. Judith Davies and Greg Harris.

20 141. Q. And who are the beneficiaries?

21 A. My four children and my wife, Judith.

22 142. Q. And what assets does the Davies
23 Family Trust have?

24 A. Nothing.

25 143. Q. It has no assets?

1 A. No.

2 144. Q. It doesn't own any property?

3 A. No.

4 145. Q. Does it have a bank account?

5 A. No.

6 146. Q. And I'm right that it's a 30 percent
7 shareholder in the McMurray company, right?

8 A. That's correct.

9 147. Q. So it has shares in McMurray. Does
10 it own any other shares in any other companies?

11 A. No.

12 148. Q. It has no assets?

13 A. No assets.

14 149. Q. And let's start with the Davies --
15 oh, before we go on to that, I would like an
16 undertaking to produce a copy of the Declaration
17 of Trust of whatever founding documents there are
18 for the Davies Family Trust.

19 U/T MR. MCCUTCHEON: If we can find it, we'll
20 produce it.

21 MR. BELL: I appreciate it.

22 BY MR. BELL:

23 150. Q. Switching to the Davies Arizona
24 Trust, when was that trust settled or created?

25 A. Late in 2013.

1 151. Q. And who settled that trust? Were you
2 the settlor?

3 A. I'm not sure.

4 MR. MCCUTCHEON: The children were the
5 settlors.

6 BY MR. BELL:

7 152. Q. And what funds were used to settle
8 the trust?

9 A. I'm not sure how to answer that
10 question. I'm not sure what that means.

11 MR. MCCUTCHEON: Well, he's just asking
12 what funds were used to set up the trust
13 initially.

14 THE DEPONENT: The legal fees to set up
15 the trust?

16 BY MR. BELL:

17 153. Q. Well, when the trust was created, did
18 it have any assets after it was created?

19 A. The minute it was created?

20 154. Q. Yes.

21 A. No. It was used to purchase a house.

22 155. Q. And what was the source of the funds
23 used to purchase the house?

24 A. Some of my own funds from Aeolian.

25 156. Q. And who is the trustee of the

1 Arizona -- the Davies Arizona Trust?

2 A. To the best of any knowledge, it's my
3 wife, Judith, and myself.

4 157. Q. And who are the beneficiaries of the
5 Davies Arizona Trust?

6 A. There are my -- I haven't looked at
7 it in a while. All of my children...

8 158. Q. Yes.

9 A. ...my grandchildren, grandchild, my
10 wife, Judith, myself, my wife's parents, my
11 wife's siblings, and I believe it's set up as any
12 other family members that arrive later.

13 159. Q. May arrive from that group?

14 A. May arrive from that.

15 160. Q. And I see in your assets attached to
16 Exhibit "A" of your affidavit setting out your
17 assets, you describe yourself as being a
18 discretionary beneficiary.

19 Can you just explain to me what you meant
20 by discretionary beneficiary? I'm happy to have
21 your counsel answer that.

22 A. I don't know the legal definition of
23 discretionary beneficiary, to be honest with you.

24 MR. MCCUTCHEON: There's no vested
25 entitlement to any interest in the trust. He is

1 named as the beneficiary in the discretion of the
2 trustees whenever any distribution may come
3 along.

4 MR. BELL: And I would like an undertaking
5 to produce the Declaration of Trust and any other
6 consummating documents for the Davies Arizona
7 Trust as well.

8 U/A MR. MCCUTCHEON: I'm going to take that
9 under advisement for today because I just don't
10 have enough information and I don't know if we
11 can get it or not get it.

12 MR. BELL: Okay. You'll let us know?

13 MR. MCCUTCHEON: I will.

14 BY MR. BELL:

15 161. Q. And you said to purchase a property.
16 Is the property that you're referring to -- well,
17 why don't you tell me? What property was the
18 Davies Arizona Trust created to purchase?

19 A. The address is 35410 North 66th
20 Place, Carefree, Arizona, 85377.

21 162. Q. And other than that Arizona property,
22 does the Davies Arizona Trust own any other real
23 property?

24 A. No.

25 163. Q. Does it have any other assets?

1 A. No.

2 164. Q. Does it have any bank accounts?

3 A. It has a bank account.

4 165. Q. Where is that bank account?

5 A. Chase Bank in Carefree, Arizona.

6 166. Q. And other than the bank account at
7 Chase Bank, does it have any other bank accounts,
8 investment accounts, anything of that nature?

9 A. No.

10 167. Q. So it has the property in Arizona and
11 a bank account at Chase Bank. Correct?

12 A. Yes.

13 168. Q. That's it?

14 A. Yes.

15 169. Q. And the property in Arizona, when was
16 it purchased?

17 A. Late 2013.

18 170. Q. And how much was paid for it?

19 A. 1.2 million.

20 171. Q. And does it have a mortgage?

21 A. It has a mortgage, \$600,000 even.

22 172. Q. And who's the mortgage with?

23 A. Bank of Internet.

24 173. Q. And are there any other liens on the
25 property in Arizona?

1 A. No.

2 174. Q. And do -- I know you don't have any.
3 Does your wife have any banking facilities or
4 anything in Arizona?

5 A. No.

6 175. Q. And other than the Davies Family
7 Trust and the Davies Arizona Trust, are you a
8 trustee, settlor or beneficiary of any other
9 trusts?

10 A. No.

11 176. Q. And do you have -- I think I've
12 already asked this, but other than what's
13 disclosed in your affidavit, I don't think
14 there's any -- you don't personally have a
15 shareholding in any corporations. Do I have that
16 right?

17 A. On the shareholdings that were listed
18 and what we've discussed today, nothing beyond
19 that.

20 177. Q. And those are Aeolian's shareholdings
21 but you personally don't own any shares in any
22 companies?

23 A. No. John Davies does not, no.

24 178. Q. And other than -- and I can do this
25 by undertaking because I know there's a lot. So

1 I'm going to ask your counsel for an undertaking
2 to provide me with a list of all companies for
3 which you were either an officer or a director.

4 U/A MR. MCCUTCHEON: For the moment I'm going
5 to take that under advisement because I don't
6 think I know a complete list and some of them may
7 be relevant and some of them may not be. I am
8 assuming they're all relevant but I want to check
9 that before I respond to that undertaking.

10 MR. BELL: You'll let me know?

11 MR. MCCUTCHEON: I will. So it's director
12 or officer?

13 MR. BELL: Yes.

14 BY MR. BELL:

15 179. Q. And, sir, what's your relationship
16 with Holden Willits LLP?

17 A. Holden Willits is a law firm in
18 Phoenix, Arizona that I retained on behalf of the
19 the trust to represent the trust in a dispute
20 with a contractor.

21 180. Q. And does Holden Willits hold any
22 funds in trust for or retainer for either you,
23 your wife or any of the family trusts?

24 A. We sent them a retainer to represent
25 us of 5,000 U.S. I don't know much of that has

1 been disbursed for work that they've done on the
2 file. So 5,000 or less.

3 181. Q. And we've talked -- let's go to TSI.
4 When I say TSI, you know what company I'm
5 referring?

6 A. I do.

7 182. Q. Textbook Suites Inc.

8 A. Suites Inc.

9 183. Q. And what does Textbook Suites Inc.
10 do?

11 A. It's a holdco responsible for other
12 activities of the various Textbook companies.

13 184. Q. And does it have any employees?

14 A. Well, it did have many employees
15 recently, but they've all been -- they weren't
16 fired. I guess they were let go.

17 185. Q. Laid off?

18 A. Laid off, that's the word. I don't
19 know if Walter Thompson and I qualify as
20 employees of it in the strictly legal sense. I'm
21 not sure, are we employees or just --

22 186. Q. I understand your relationship.

23 MR. MCCUTCHEON: I don't think it's going
24 to matter.

25 BY MR. BELL:

1 187. Q. That's not going to matter. My
2 question is more limited to -- like, I had
3 understood it was a holdco, but did it have any
4 active operations? Did it do anything other than
5 hold the shares in the companies in which it held
6 shares?

7 A. No. I mean, it might have paid some
8 rent or overhead or a phone bill that it paid out
9 of it but...

10 188. Q. It didn't have any active operations?

11 A. No. No.

12 189. Q. And you see, and I'm happy to take
13 you to the reference in the report, the
14 receiver's report, but the receiver's report sets
15 out that it appears as though -- well, let me
16 just take a step back.

17 So that was Textbook Suites Inc. and then
18 there was another company TSSI, which is
19 Textbook...

20 A. Student Suites.

21 190. Q. Suites Inc. And am I right that it's
22 the same thing, that it too was a holdco that
23 didn't have any active operations?

24 A. The shareholdings of that company
25 changed, which is why we formed TSI. TSI is a

1 subsequent to TSSI.

2 191. Q. I see.

3 A. I don't know whether TSSI was unwound
4 to become TSI or whether it still exists and TSI
5 exists as well, but the shareholdings of the
6 company changed from TSSI to TSI because of
7 discussions among the shareholders.

8 192. Q. But you agree with me that both TSI
9 and TSSI were never anything other than holdcos,
10 right?

11 A. Yes.

12 193. Q. And none of them had any active
13 operations?

14 A. That's correct.

15 194. Q. And then as set out in the receiver's
16 report, and I'm happy to take it to you if it
17 helps, but I don't think anything turns on the
18 specific numbers, it appears as though
19 approximately \$3.5 million was transferred from
20 the various Textbook -- sorry, from the Davies
21 developers to TSI and TSSI. Does that roughly
22 fit with your understanding?

23 MR. MCCUTCHEON: Do you know?

24 BY MR. BELL:

25 195. Q. Do you know one way or another?

1 A. I don't know.

2 196. Q. As I understand -- well, why don't
3 you take my word on it being 3.5 million, but if
4 you ultimately dispute the number, we can cross
5 that bridge when we get to it.

6 A. Well, let me -- point of
7 clarification then.

8 197. Q. Sure.

9 A. I'm not sure if it was transferred to
10 TSI or TSSI or what the quantum was. It might
11 have only gone to one of them. It might have
12 gone to both of them but -- I'm not trying to be
13 vague, just I don't know.

14 198. Q. No, understood. I'm sorry.
15 Understood, but what was your understanding of
16 the basis for those transfers of funds to TSI
17 and/or TSSI?

18 A. Well, I think there was probably a
19 transfer of funds on and off for a long period of
20 time. Is there a specific transaction that
21 you're referring to?

22 199. Q. Well, my understanding is they were
23 done pursuant to loans. Does that fit with your
24 understanding?

25 A. Yes. Companies made -- each of the

1 companies at various times made intercompany
2 loans.

3 200. Q. And are there any loan agreements for
4 these intercompany loans?

5 A. We papered them and evidenced them
6 and signed notes and things whenever it took
7 place. So notes were signed and what have you.

8 MR. BELL: And so I would like an
9 undertaking to produce the loan agreements
10 between the companies, any of the Davies
11 developers and TSI, TSSI, and we'll get to it,
12 but I might as well throw it in now, MCIL as
13 well.

14 U/T MR. MCCUTCHEON: We'll see what we've got.
15 I'm not sure what's left.

16 MR. BELL: I appreciate that.

17 MR. MCCUTCHEON: But whatever we've got,
18 if it shows that, we'll provide it to you. So
19 the loans, just so we're clear...

20 MR. BELL: The loans between the Davies
21 developers and TSI, TSSI and MCIL.

22 U/T MR. MCCUTCHEON: We will search.

23 MR. BELL: Perfect.

24 BY MR. BELL:

25 201. Q. And then are you aware if the Davies

1 developers charged interest on those loans?

2 A. I don't know.

3 202. Q. We'll see when we get the loan
4 agreements then.

5 A. My partner is a CA. He made those
6 decisions.

7 203. Q. And your partner being?

8 A. Walter Thompson.

9 204. Q. I assume that's what you meant, but I
10 just wanted to make sure we had it for the
11 record.

12 And did anyone or did you ever receive any
13 funds from TSI or TSSI?

14 A. Not that I recall.

15 205. Q. And do you know if anyone in your
16 family ever received any funds from TSI or TSSI?

17 A. They never would have.

18 206. Q. And when I say anyone in your family,
19 I'm also referring to the family trusts.

20 A. Correct. Well, let me check on that.
21 I don't ever recall a TSI or TSSI cheque being
22 directed, you know, to Aeolian, but it may have
23 happened. But certainly TSI and TSSI I do not
24 believe ever wrote a cheque to the trust.

25 207. Q. I'm going to ask your counsel for an

1 undertaking to have you go and check what you can
2 to determine whether or not, and I'm just going
3 to add MCIL to this and we will get it, during
4 whether or not TSI or TSSI or MCIL ever
5 transferred any money to Mr. Davies, a family
6 member of Mr. Davies, the Davies Family Trust,
7 which would include the Davies Arizona Trust
8 and/or Aeolian.

9 U/T MR. MCCUTCHEON: That's fine, we'll make
10 the inquiry.

11 MR. BELL: Thank you. And then I would
12 also like, and I'm happy to do this by way of
13 undertaking too, a list of all the projects in
14 which TSI, TSSI or MCIL have an interest or had
15 an interest.

16 U/T MR. MCCUTCHEON: We'll give you that
17 undertaking and see what we can find for you.

18 MR. BELL: Appreciate it.

19 MR. MCCUTCHEON: As -- no, that's fine.
20 We're not going to complicate that.

21 BY MR. BELL:

22 208. Q. And I told you we'd get to MCIL, so
23 now we will. I understand you founded MCIL.
24 Correct?

25 A. Myself and Greg Harris.

1 209. Q. And can you tell -- and you know what
2 company I'm referring to when I say MCIL?

3 A. Memory Care Investments Limited. And
4 Bruce Stewart, Bruce Stewart was a founding
5 shareholder as well.

6 210. Q. And you said Bruce? Is that what you
7 said?

8 A. Hm-hmm.

9 211. Q. Can you just explain to me what Bruce
10 Stewart's role was in these companies?

11 A. He was an active everyday partner.
12 He had 25 years of experience as a developer and
13 operator, partner, management person in the
14 seniors housing business.

15 212. Q. And what did MCIL do?

16 A. MCIL didn't really do anything. It
17 was really just an umbrella company in which
18 subsidiaries were formed that -- shareholdings
19 flowed up to MCIL. It didn't have an active
20 day-to-day development portfolio on its own. It
21 was a holdco.

22 213. Q. It was a holdco with no operations?

23 A. In the same -- in exactly the same
24 way as Textbook.

25 214. Q. TSI and TSSI?

1 A. Yeah. No real difference.

2 215. Q. And this too is set out in the
3 receiver's report, but I understand about \$1.1
4 million was transferred from the Davies
5 developers to MCIL, and to the extent those funds
6 were transferred, that too would have been done
7 pursuant to loan agreements?

8 A. Yes.

9 216. Q. I think I've already asked for that
10 undertaking, but to the extent I haven't, I would
11 like the loan agreements.

12 U/T MR. MCCUTCHEON: I think you've already
13 asked and if you didn't, we'll give you the
14 undertaking assuming we can find it. Best
15 efforts.

16 BY MR. BELL:

17 217. Q. And when we go through the records,
18 and this is set out in the receivership, the
19 receiver's fourth report, there are descriptions
20 of loan, like, funds flowing. It's described as
21 loans, but then there's another approximately
22 \$1.5 million that appears to have been
23 transferred from the Davies developers to TSSI,
24 TSI and MCIL that isn't described as a loan.
25 There's no description for it.

1 Do you have any understanding of any funds
2 flowing other than pursuant to intercompany
3 loans?

4 A. No.

5 218. Q. And as far as you understand, every
6 time there was an intercompany loan, there's a
7 loan agreement; right?

8 A. Yes.

9 219. Q. And then turning to the Kitchener
10 entity, you know what I'm referring to in that,
11 do you or any entity related to you, just so -- I
12 mean, any company in which you have a
13 shareholding or family member or one of the
14 Davies Family Trust, did you or any entity
15 related to you, were you a shareholder in the
16 numbered company 2375219 Ontario Limited, which
17 is the original owner of the Kitchener property?

18 A. We had a shareholding interest, but I
19 don't know, can't recall who held the
20 shareholding interest in 237. It might have been
21 Aeolian and it might have been me, but we'll...

22 220. Q. You can't undertake to do it. I have
23 to ask your counsel. So I will ask your counsel
24 for an undertaking.

25 A. Well, I'll try to find out.

1 U/T MR. MCCUTCHEON: Okay. Well, we'll try to
2 find out. Don't do that again.

3 THE DEPONENT: I'm trying to be helpful.
4 I'm trying to be helpful.

5 MR. MCCUTCHEON: Don't.

6 THE DEPONENT: Sorry. Sorry.

7 BY MR. BELL:

8 221. Q. You might get into trouble if you try
9 to be too helpful.

10 A. I don't want him to hit me.

11 222. Q. And do you know sitting here today
12 what the gain was on the sale of the property
13 that 237 made from...

14 A. I know exactly what it was. We
15 purchased the property for 1,585,000 and we sold
16 it to Memory Care Investments (Kitchener) for 3
17 million 950.

18 MR. BELL: And just following up on my
19 undertaking, in addition to who owned, we'll call
20 it the Davies collection of entities, I would
21 like an undertaking, if you have it, to let us
22 know what the shareholding structure was in total
23 for the number company 2375219 Ontario Limited.

24 MR. MCCUTCHEON: Sorry, give me that
25 number again.

1 MR. BELL: 2375219.

2 THE DEPONENT: No, 2519.

3 MR. MCCUTCHEON: No, don't screw me up
4 like this, guys. What is it?

5 THE DEPONENT: 2372519 Ontario.

6 MR. BELL: There you go. We can send it
7 to you again. It's the original owner of the
8 Kitchener property.

9 THE DEPONENT: Right.

10 U/T MR. MCCUTCHEON: Okay.

11 BY MR. BELL:

12 223. Q. And was there an appraisal done of
13 that property when it was sold to the Kitchener
14 entity? Do you know?

15 A. I believe there was, yes.

16 MR. BELL: And I would like an undertaking
17 for a copy of that to the extent that Mr. Davies
18 has it.

19 U/T MR. MCCUTCHEON: If we have it, we'll
20 produce it.

21 BY MR. BELL:

22 224. Q. And sir, are you aware of a company
23 Lafontaine Terrace Management Corporation?

24 A. I am.

25 225. Q. And what is the purpose of that

1 company?

2 A. Lafontaine was started to --
3 incorporated to be the operator of the bankrupt
4 nursing home on the site that 237 purchased. 237
5 purchased the property but the property came with
6 an operating retirement home on it with 48
7 residents and twenty-some-odd employees. It had
8 debts and liabilities.

9 So Lafontaine Terrace Management was
10 formed to be the operator, provide management.
11 We found locations for the 48 residents and --
12 found new locations for them. We negotiated with
13 the union. There were some union issues with
14 employees. We settled grievances with former
15 employees, settled all the debts of the company,
16 wound it up and sold it to -- well, 237 sold it
17 to -- but it was the day-to-day operator of the
18 facility that we took over.

19 226. Q. Who owns this Lafontaine company?

20 A. Lafontaine was owned by John Davies
21 and it may have been Aeolian, Bruce Stewart, and
22 it may have been his company Traditions, Greg
23 Harris, and it may have been through his mother's
24 company and Raj Singh, which I believe was
25 through Raj Singh's consulting company, RS

1 Consulting.

2 MR. BELL: And again, I'm going to ask for
3 an undertaking. To the extent Mr. Davies has
4 records that indicate that, I would like him
5 to...

6 U/T MR. MCCUTCHEON: We don't have any problem
7 with that. We'll search and see what we have.

8 MR. BELL: I appreciate it.

9 BY MR. BELL:

10 227. Q. And then you said you had an interest
11 but you said it was either you had it or he had
12 it through Aeolian.

13 A. I don't recall how that interest was
14 held.

15 228. Q. And you were the sole officer and
16 director of Lafontaine, were you not?

17 A. I thought it was Bruce Stewart and I,
18 but it may have just been me. I don't
19 specifically recall.

20 229. Q. I have a corporate profile report,
21 but I don't think a lot turns on it. But you
22 were an officer and director of Lafontaine?

23 A. Oh, yes, yeah.

24 230. Q. And I understand again, this is set
25 out in the receiver's report and I don't expect

1 you to know the exact dollar amount, but it's set
2 out that \$324,000 was transferred from Scollard,
3 Legacy Lane, Burlington and Oakville to
4 Lafontaine.

5 Do you have an understanding of those
6 entities transferring money to Lafontaine?

7 A. I don't. My understanding was it
8 came from Burlington.

9 231. Q. And what was the basis for Burlington
10 transferring the money to Lafontaine?

11 A. It was a loan to purchase the
12 property and to fund the losses that the property
13 was -- paid consultants, and we had a number of
14 consultants who were working on it at the time.

15 MR. BELL: And I would like an
16 undertaking, to the extent you have it, to
17 produce any loan agreements between any of the
18 Davies developers and Lafontaine.

19 U/T MR. MCCUTCHEON: Yes, we'll look.

20 BY MR. BELL:

21 232. Q. And does Lafontaine still exist or
22 has it been wound up?

23 A. I think it probably still exists. I
24 don't think anybody has filed any paperwork to
25 unwind it. I think it's still floating around

1 somewhere.

2 233. Q. And do you know if it has a banking
3 facility?

4 A. It had a bank account, yeah. It had
5 a bank account at Royal Bank in the same branch
6 as all the other accounts.

7 234. Q. And you would have had signing
8 authority on that bank account?

9 A. Yes.

10 235. Q. And do you know if anyone else did?

11 A. I don't believe so, other than
12 perhaps Dianna Cassidy for \$5,000.

13 236. Q. Switching gears slightly, on Bronson,
14 my understanding is that the loan agreement
15 provided that each of Aeolian and RSCG, being Raj
16 Singh's company, would receive dividends of
17 \$250,000 but that Aeolian only received 125,000
18 and RSCG received 375,000.

19 Do you have any recollection of that or
20 any understanding of why Mr. Singh's company
21 appeared to receive \$125,000 more than it was
22 otherwise entitled to?

23 A. Well, you're missing two other
24 beneficiaries in there.

25 237. Q. Yes. Fair enough.

1 A. So, no, I don't recall why.

2 238. Q. And for the record, just so we're
3 clear, when you say I misinterpreted that,
4 because RSCG is not just Raj Singh's company. Is
5 that what you're suggesting?

6 A. No. I mean that 1321 something or
7 other numbered company or 1131, anyway, Walter
8 Thompson and Greg Harris' mother, I think it was
9 Dachstein Holdings also received 250,000 each.

10 239. Q. I see what you're saying. Okay. But
11 you have no recollection of why Aeolian only
12 received 125 and RSCG received 375?

13 A. I don't. I don't recall right now.

14 240. Q. And then shifting gears again to
15 management fees, and the number is set out again
16 in the receiver fourth report, but the receiver
17 has determined that 4.569 million in management
18 fees were paid from the Davies developers to
19 Aeolian.

20 Were there any management agreements
21 provided for those fees between any of the Davies
22 developers and Aeolian?

23 A. Yeah. Originally -- would it be
24 appropriate for me to provide some history?

25 MR. MCCUTCHEON: If you have to answer the

1 question, you should answer it fully.

2 THE DEPONENT: I have to answer the
3 question by backing up to speak to something that
4 is not specific to those particular projects that
5 receive fees.

6 We had undertook about eight months' worth
7 of work on a property on Scollard Street in
8 Toronto, the former sales centre for the Four
9 Seasons tower directly across the street. Menkes
10 was selling it, and Raj Singh and I and Greg
11 Harris and Bruce Stewart decided that this would
12 be a terrific condo site, recently come on the
13 market for sale and we explored the feasibility
14 of developing that project as a condo.

15 We prepared pro forma budgets and analysis
16 for discussion with Raj specifically and Greg,
17 but Stewart and I developed a number of financial
18 projections for the Scollard development that
19 included a 5 percent development management fee
20 in the pro forma.

21 As Singh specifically and to a lesser
22 extent Harris went through the analysis and the
23 pro forma projections, the question of the
24 development fee was raised and questions about
25 the appropriateness of the percentage and what

1 work was involved, and I think Singh's biggest
2 question to me in writing was doesn't the four-
3 million-dollar development fee seem excessive to
4 you?

5 And we went back and forth with him to
6 explain what was involved in undertaking a
7 project of a hundred-million-dollar condo
8 project, and in the course of those conversations
9 we provided Singh and Harris with a lot of detail
10 about the staffing requirements that would have
11 to be undertaken. It certainly wasn't going to
12 be Stewart and I running a hundred-million-dollar
13 development project and collecting that fee.
14 That fee would have been -- first of all, would
15 have been impossible to oversee the project of
16 that nature with two people.

17 So we went through a whole analysis with
18 Singh and Harris about what development fees are,
19 and this is really the first time that it
20 happened other than on McMurray to a lesser
21 extent. Singh asked for the breakdown on
22 development fees versus development charges. He
23 wasn't sure what the difference between
24 development fees and development charges were.

25 So we came to an agreement at the end or

1 during our Scollard negotiations that Stewart and
2 I would receive a 4 percent development fee on
3 Scollard.

4 Scollard never happened and we were then
5 at the point in the fall of 2012 ready to close
6 the Memory Care (Oakville) project. Singh had
7 agreed that Tier 1 would raise syndicated
8 mortgage funds for that, and in support of
9 Singh's efforts, we prepared financial
10 documentation, pro forma studies, ideas about how
11 much square footage could be prepared on that,
12 and in the course of that, carried our 5 percent
13 development fee and submitted that to Singh and
14 Harris.

15 As a result of that, Harris incorporated a
16 company called Memory Care Management. He
17 incorporated a company called Memory Care
18 Investments (Oakville). He incorporated MCIL
19 more or less in a sixty-day period.

20 MCIL was owned by Harris, Aeolian and
21 Stewart and whatever their respective nominee
22 corporations were. I think Stewart was
23 Traditions and I believe Memory Care (Oakville)
24 was Harris' mother again, and then we had a side
25 agreement with Singh where Singh got 50 percent

1 of the deal but he was not -- he did not want to
2 be listed on any of documents as a shareholder.
3 He didn't want anybody to know of his 50 percent
4 ownership of Memory Care (Oakville).

5 But in respect to the fees, Memory Care
6 Management Ltd. was owned fifty-fifty by Stewart
7 and it was set up specifically for Stewart and I
8 to invoice our development management fees, our 5
9 percent to the developer entity, which was Memory
10 Care (Oakville), and any other subsequent Memory
11 Care or other projects. It was really our own
12 personal management company to invoice fees to.

13 So we had an agreement that -- with Harris
14 and Singh that Stewart and I were allowed to bill
15 up to 5 percent of total project costs. We
16 agreed that we would in the 5 percent cover staff
17 costs and rent, office overhead, so that the
18 management of the development -- predevelopment
19 process would be within the 5 percent. The 5
20 percent would be used up when we obtained final
21 design approval, did all the studies, in other
22 words, ready to go to construction.

23 So in terms of your question, I would say
24 that the management agreement was the existence
25 of the Memory Care Management Limited and all of

1 the discussions that took place up until that
2 point to allow Stewart and I and our respective
3 companies to invoice fees against the projects.

4 BY MR. BELL:

5 241. Q. And you invoiced it through Aeolian,
6 correct?

7 A. Yeah. You know, I spoke to my
8 accountant about it and I said, we've set this
9 company up. I guess the way it's envisioned is
10 that Memory Care Management Limited would
11 invoice, send an invoice to Memory Care
12 (Oakville) or Memory Care (Burlington) and then
13 Memory Care Management would remit a cheque to
14 Aeolian, and that never really happened.

15 I mean, it might have initially happened a
16 couple of times, but I mean, instead of writing a
17 cheque, depositing it into Memory Care
18 Management, then turning around and writing a
19 cheque for Memory Care Management to Aeolian, I
20 think over time we just sent the cheque directly
21 to...

22 242. Q. From the projectcos to Aeolian?

23 A. From the projectcos to Aeolian and
24 Stewart's holdco as well.

25 243. Q. And just so I have it, do you know

1 what holdco Stewart was --

2 A. I'm pretty sure it was Traditions
3 Development Inc. It might have been a numbered
4 company but I believe it was Traditions
5 Development Inc.

6 244. Q. And was there a correlation between
7 how much Aeolian was charging for management fees
8 and how much Stewart's company was charging for
9 management fees?

10 A. We charge the exact same amount.

11 245. Q. And how did you go about determining
12 the amount to be charged? Was it simply this 5
13 percent?

14 A. Well, that was the gross amount. So
15 the gross amount had to have included our
16 salaries, employees, rent, other miscellaneous
17 costs, cars, cell phones. All that stuff had to
18 come out of the 5 percent.

19 We went to Harris and Singh and produced a
20 three-year cash flow wherein the 5 percent would
21 be essentially used over three years or... and we
22 proposed that we would each be able, as a draw
23 against the 5 percent, that Stewart and I would
24 each take 42,700 plus, plus HST to take us to
25 50,000 a month.

1 So Stewart and I, up until the time Bruce
2 left the company, each invoiced 42,000 a month as
3 a draw and then other bonus monies at various
4 times throughout the project on a
5 project-by-project basis.

6 246. Q. And just so I -- I think I have it
7 right. When you say, like, that's net of -- you
8 had to pay employees. You had to pay costs.
9 Those costs were paid directly by the projectcos,
10 right? They weren't paid by Aeolian. They were
11 paid by the projectcos and then your draw and/or
12 bonuses would then be paid to Aeolian, correct?

13 A. From the projectco?

14 MR. MCCUTCHEON: That was complicated.

15 BY MR. BELL:

16 247. Q. I'm happy to break it down. When you
17 talk about the need to pay employees, it was the
18 projectcos that were paying the employees;
19 correct?

20 A. Yeah, up to the 5 percent.

21 248. Q. Right. And so any funds that went to
22 Aeolian or Stewart's holdco were not funds you
23 paid to employees but were residuals over and
24 above your draw and/or the bonus, right?

25 A. I'm not sure I really understand the

1 way you're phrasing it. Let me explain it.

2 We had a global amount of money equal of 5
3 percent, equal to 5 percent of the total project
4 costs. Let's assume for round numbers that was
5 1.5 million. From the 1.5 million, the
6 development company would pay the developer up to
7 5 percent of its costs. So within that 5 percent
8 the development company paid all of the costs
9 we've talked about including Stewart's and my 42.

10 249. Q. Perfect. I think that makes sense.
11 And then did Aeolian then remit HST on these
12 management fees?

13 A. Yes.

14 MR. BELL: And I don't think I've asked
15 for it. It may have been covered by today's
16 document discovery order, but to the extent it's
17 not, I would like an undertaking for both Mr.
18 Davies and Aeolian's tax returns for the last
19 five years.

20 MR. MCCUTCHEON: Can we have an off-record
21 discussion about this?

22 MR. BELL: Certainly.

23 --- Off-the-record discussion 11:44 a.m.

24 --- Upon resuming 11:45 a.m.

25 U/A MR. MCCUTCHEON: We've agreed off the

1 record that I will take this under advisement and
2 we'll see if we can work out some terms on which
3 those can be produced for the receiver.

4 BY MR. BELL:

5 250. Q. Changing gears again, sir, Rideau,
6 you know what I'm talking about with that
7 company?

8 A. Absolutely, 256 Rideau.

9 251. Q. And so who owns the Rideau company?

10 A. Rideau, 256 Rideau is owned by TSI.
11 It might have originally been owned by TSSI, but
12 I think it's now owned by -- when TSSI changed
13 shareholdings, I believe it is now a sole -- a
14 subsidiary corporation of TSI.

15 252. Q. And are you an officer or director of
16 256 Rideau?

17 A. I am.

18 253. Q. Are you the sole officer and
19 director?

20 A. No, Walter Thompson and I are.

21 254. Q. And do you -- you tell me, what
22 assets does 256 Rideau have?

23 A. The property at 256 Rideau in Ottawa.

24 255. Q. And other than that property, does it
25 have anything else?

1 A. No.

2 256. Q. Does it have a bank account?

3 A. Yes, it does.

4 257. Q. And where is its bank account?

5 A. At Royal Bank, the same as everyone,
6 as all the other companies.

7 258. Q. And how did the 256 Rideau company
8 purchase the -- how did it finance the purchase
9 of the property at 256 Rideau?

10 A. 8,250,000 was by way of an advance
11 from Kingsett Capital and 2,750,000 was from TSI.

12 259. Q. And is there a loan agreement between
13 TSI and Rideau?

14 A. I would have to check. I wouldn't
15 have been the one to create it.

16 260. Q. Sorry, I may have jumped the gun on
17 it. Was your understanding that it was a loan
18 from TSI to Rideau? Is that your understanding?

19 A. No, I think it was a loan from other
20 companies to TSI to purchase the property.

21 261. Q. And I've already asked for those, and
22 then TSI just invested that money in the Rideau
23 property; correct?

24 A. That's correct.

25 262. Q. And so Mr. Goldstein tells me that

1 the bank statements show that the funds flowed
2 directly from the 555 Princess entity and Ross
3 Park to Rideau. Does that fit with your
4 understanding?

5 A. No, that's not my understanding. My
6 understanding was that those loans went to TSI
7 and then my belief is that a cheque from TSI was
8 sent to Harris + Harris.

9 If that's not the case, then -- I don't
10 believe three cheques went to Harris + Harris to
11 make up our -- there are three companies that
12 contribute the 2 million 750, but I believe those
13 monies were deposited into TSI and then one
14 cheque was sent to Harris + Harris for the
15 closing.

16 263. Q. And other than 256 -- maybe we should
17 do this by way of undertaking too, because it's
18 going to be too burdensome to ask you to do it
19 sitting here today. So I'm going to ask for an
20 undertaking for all of the companies in which
21 TSI, TSSI or MCIL have a shareholding.

22 MR. MCCUTCHEON: Stop for a second. I
23 think we've covered some of this ground already
24 and I don't want to cover it again. If the
25 witness has an answer today, it's fine but, you

1 know, to the extent it's already answered, I
2 prefer not to cover the ground again.

3 MR. BELL: Certainly that's fair, and I'm
4 happy to canvass it with him before we get to the
5 undertaking.

6 BY MR. BELL:

7 264. Q. Other than the Davies development
8 companies, other than the companies that we've
9 set out in the receiver's fourth report, let's do
10 it that way, are you aware of TSI or TSSI or MCIL
11 having any shareholdings in any other companies
12 that aren't set out in the receiver's fourth
13 report?

14 A. No.

15 265. Q. And then that probably does go --

16 MR. MCCUTCHEON: That probably gets us to
17 the same place.

18 MR. BELL: That's right. It makes your
19 life a little easier.

20 MR. MCCUTCHEON: Thank you.

21 MR. BELL: That's fine.

22 BY MR. BELL:

23 266. Q. And, sir, we'll switch gears again.
24 Memory Care Investments (Victoria) Ltd., who owns
25 that company?

1 A. It originally would have been
2 incorporated with Bruce Stewart and his
3 Traditions, Aeolian and Greg Harris with a side
4 agreement with Raj Singh, where Raj Singh would
5 have owned, had it gone forward, would have owned
6 50 percent of the company.

7 267. Q. And this side agreement whereby Raj
8 Singh would own 50 percent, that was at his
9 request because he didn't want to be registered
10 as a shareholder? He wanted to have a beneficial
11 50 percent interest?

12 A. Correct.

13 268. Q. And you were the sole officer and
14 director of MC Victoria, correct?

15 A. I believe at the time of the
16 incorporation, I might have been president and
17 Bruce Stewart would have been secretary/
18 treasurer.

19 269. Q. We have a report. Not much hinges on
20 it, but you were an officer and director?

21 A. I was an officer and director. I
22 don't believe I was the only one.

23 270. Q. And does MC Victoria own any
24 property?

25 A. No.

1 271. Q. And does it have a bank account?

2 A. It might but it's not active.

3 272. Q. And if it did, would it be at RBC,
4 the same branch?

5 A. Yes. Yes.

6 273. Q. And did you have any interest or
7 involvement in Tier 1 Transaction Advisory
8 Services Inc.?

9 A. You mean as a partner or a
10 shareholder?

11 274. Q. Yes.

12 A. No, no, just as a borrower.

13 275. Q. And how about RS Consulting Group?

14 A. No, just they were partners in deals.

15 276. Q. You had no interest in them?

16 A. No.

17 277. Q. Or no involvement in them? When I
18 say involvement, I mean, like, you don't do any
19 work for them?

20 A. No.

21 278. Q. You're not an officer or director of
22 them?

23 A. Well, I'm not an officer or director
24 of them.

25 279. Q. And just can you briefly explain to

1 me what you understood Tier 1 Transaction
2 Advisory Services Inc. to do?

3 A. In terms of their global fundraising
4 for us?

5 280. Q. Yes.

6 A. Yeah. Tier 1 Transaction was an
7 organization created by Raj Singh to raise
8 syndicated mortgage funds to fund various
9 projects, our projects and other people's
10 projects. Singh had a network of mostly former
11 mutual fund salespeople that were licensed to
12 sell this kind of product.

13 Tier 1 would -- well, and our various
14 development companies would prepare a brochure
15 about the investment opportunity on a project-by-
16 project basis. We created those with Harris and
17 Singh, told the story about the project and who
18 was behind it and the various aspects of it.

19 Harris and Singh approved it. Singh then
20 took the 2,000 copies and distributed them to his
21 network of broker relationships who then
22 presented that to the various people that were
23 interested or proposed to be interested in
24 investing.

25 Singh through -- with his lawyer Harris

1 worked with Olympia Trust. Funds flowed to
2 Olympia Trust from the RSP money over to them or
3 cash over to them, and Singh was the president of
4 Tier 1 who oversaw that activity.

5 281. Q. And is the same true for RS
6 Consulting Group? Did it have the same role?

7 A. No. RS Consulting was Singh's
8 personal holding company and did not -- was not
9 involved in the -- well, I'm making a statement
10 that I don't have the facts for. I don't believe
11 the RS Consulting side of it did any -- was not a
12 Tier 1. I think it was Singh's -- I think RS
13 consulting was Raj's private holding company.

14 282. Q. And is what you described to me, at
15 least in relation to Tier 1, was it that role
16 that accounted for why Tier 1 was paid consulting
17 and diligence fees? Was it the role you
18 described? Is that what it was paid for?

19 A. Well, Tier 1 was paid -- it started
20 out that Tier 1 on McMurray came to us and said
21 that the fee was 12 percent, and they were going
22 to take and pay from the 12 percent fee, they
23 were going to pay the brokers their various
24 amounts of money.

25 When we looked at doing Scollard, that did

1 not go forward, Singh came to us and said that
2 it's not 12 anymore. It's 15. The brokers want
3 a bigger piece of 12 percent. Since there's not
4 enough for Tier 1, we're going to have to make it
5 15.

6 Later Singh came to me and said, Tier 1 is
7 not making enough money on the 15. We need to
8 make it 16. I believe it was phrased to me, I
9 have a lot of people that would like me to raise
10 money for them and they're all prepared to pay me
11 16. So we're now paying 16.

12 The consulting -- due diligence consulting
13 fee was the later stages of our relationship, I
14 think on the last two deals, actually, where he
15 initially asked for a hundred-thousand-dollar due
16 diligence fee because he was incurring costs
17 greater than his 16 percent would give him, and
18 then I think on the last deal, and just by
19 recollection, I believe it went to 200 for a due
20 diligence fee, and that money was deducted off
21 the closing proceeds and paid to RS Consulting.

22 283. Q. Paid to RS Consulting, not Tier 1?

23 A. I believe so, yeah. I believe it was
24 paid to RS Consulting.

25 MR. BELL: And we can just go off the

1 record for a second.

2 --- Off-the-record discussion 11:56 a.m.

3 --- Upon resuming 11:57 a.m.

4 BY MR. BELL:

5 284. Q. And, sir, was what we described in
6 relation to the consulting fees paid by Tier 1 --
7 paid to Tier 1 and RS Consulting, was there
8 written agreements that set that out or was it
9 just an understanding that the Davies developers
10 had with Mr. Singh and his companies?

11 A. The 12 or 15 or 16 percent was set
12 out in the loan agreements, and the side
13 agreements were Singh asking for due diligence
14 fees, which we told Harris, fine, pay him and
15 deduct it off the proceeds.

16 285. Q. And when you say, "side agreements",
17 are those oral side agreements or written side
18 agreements?

19 A. I believe Singh produced an invoice
20 to the development company in respect of the
21 companies for his due diligence fee.

22 286. Q. Do we have those?

23 A. I don't have them. I believe Harris
24 has them.

25 287. Q. That will stop me from asking the

1 undertaking. We'll save your counsel from having
2 to answer.

3 And then I understand that the RSCG, which
4 I guess is the RS Consulting Group, sold its
5 interest in several of the projects, being
6 McMurray, Kitchener, Burlington and Oakville. Is
7 that your understanding?

8 A. No.

9 288. Q. You never sold its interest in them?

10 A. No.

11 289. Q. I won't ask you how much you paid for
12 them then.

13 A. Square root.

14 290. Q. Right.

15 MR. BELL: We should go off the record for
16 a second.

17 --- Off-the-record discussion 11:58 a.m.

18 --- Upon resuming 11:59 a.m.

19 BY MR. BELL:

20 291. Q. So we may come back to that, sir, and
21 I think we've discussed this, but just so I have
22 it, none of your children or your wife were
23 involved in the Davies development projects
24 whatsoever. Right?

25 A. Well, I wouldn't say whatsoever.

1 292. Q. Okay.

2 A. That's not accurate.

3 293. Q. So what involvement did they have in
4 them?

5 A. My daughter Sarah was employed by the
6 development companies to -- her function was as a
7 marketing director.

8 294. Q. Okay.

9 A. And she started in 2013 and was let
10 go in the fall.

11 295. Q. So she was employed by --

12 A. Hm-hmm.

13 296. Q. Sorry, which company was she employed
14 by?

15 A. She did work on all of the projects,
16 so I'm not sure how that was organized
17 corporately, whether the projects paid her her
18 monthly salary or whether it was from MCIL or it
19 might have been from -- I don't recall offhand
20 how she was paid.

21 297. Q. And do you recall what her monthly
22 salary was?

23 A. She started at 3300 a month and then
24 we raised her salary, I think, to 3600 and gave
25 her a 400-dollar car allowance because she was

1 using a lot of her own mileage. So we gave her a
2 400-dollar car allowance.

3 298. Q. Other than Sarah, did any of your
4 other children, were they ever employed by any of
5 the Davies developers related companies?

6 A. Yes. My daughter Jessica was the
7 receptionist for the McMurray sales centre for
8 one summer.

9 299. Q. And other than that, anyone else?

10 A. Yeah. My son Andrew owns a company
11 called Y2 Media and Andrew made recommendations
12 on advertising rates and suggestions about what
13 advertising we might want to do for the various
14 companies, specifically McMurray and the
15 Boathouse condo project in Whitby.

16 What Y2 does is -- Andrew's background is
17 in sales with a number of magazines but most
18 notably Toronto Life. He is very well connected
19 with all of the companies that own billboards,
20 all of the print ads, radio. He provides service
21 to a number of companies that use him to secure
22 very aggressive advertising rates because of the
23 book of business that he has.

24 So Andrew's Y2 Media sold or provided us
25 with advice on ads and he received a commission

1 of 8 percent for whatever ads we agreed to buy
2 and that was coordinated through our advertising
3 agency P+B Marketing.

4 300. Q. And other than that? You mentioned
5 one other child. The other, I don't remember
6 which one is left.

7 A. That's Jack. Sixteen-year-old Jack
8 does not want to have anything to do with
9 anything in the real estate development business.

10 301. Q. Fair enough. And your wife never
11 worked with any of the Davies development
12 companies?

13 A. Not in a formal capacity, no.

14 302. Q. And did she ever draw a salary or
15 issue an invoice or anything of that nature?

16 A. No.

17 303. Q. And then just so -- we're going back
18 to the point about Mr. Singh or RS Consulting
19 Group selling its interest, sir. I'm not
20 suggesting that you were being inactive because
21 it may be different companies, but I just want to
22 direct you to -- I've given you a copy of your
23 affidavit you swore in the CCAA proceeding. Do
24 you recall swearing this affidavit?

25 A. Yeah. Yes, I do.

1 304. Q. And have a read through anything you
2 want, but paragraphs 37 through 39, paragraph 39
3 appears to me to talk about Mr. Singh no longer
4 having a shareholding interest in Scollard,
5 McMurray and MCIL Holding, which I --

6 A. That is -- number 37 is true.
7 Thirty-eight is true. Let me say that he --
8 Singh was never a shareholder in any of the
9 companies and still isn't. Singh has executed --
10 we executed what was called -- Harris called it a
11 participation agreement. So he was never, ever a
12 shareholder.

13 So, yeah, that is true, applicants and the
14 brokerage fees payable and the participation
15 agreement. So his equity or ability to receive a
16 portion of the proceeds, distributable proceeds
17 from the sale of a project, was related to his
18 participation agreement.

19 305. Q. I see. All right. And then just so
20 we're clear for the record, the paragraphs we're
21 referring to were from Mr. Davies' affidavit
22 sworn December 6, 2016 from the CCAA proceeding.
23 I don't think we need to mark that as an exhibit,
24 although I'm happy to do if you want to. We all
25 know what it is.

1 All right. And in relation to the
2 Kitchener, Burlington and Oakville entities, sir,
3 who are the preferred shareholders for those
4 companies? Do you know?

5 A. What does "preferred shareholder"
6 mean?

7 306. Q. It's a special class of shareholders
8 of preferred shares. Do you just not know who
9 the preferred shareholders were?

10 A. I didn't even know we had that.

11 307. Q. And who has signing authority over
12 the bank accounts for Kitchener, Burlington and
13 Oakville?

14 A. I do and Dianna Cassidy to a limited
15 extent.

16 308. Q. To the five-thousand-dollar limit?

17 A. Hm-hmm.

18 309. Q. And we've talked about Traditions
19 Development Company. I'm right that that's Mr.
20 Stewart's?

21 A. Bruce Stewart, yes.

22 310. Q. And it's his equivalent of Aeolian
23 for a short name?

24 A. That's right.

25 311. Q. And do you have any interest in that

1 company?

2 A. No.

3 312. Q. And as far as you know, it's Mr.
4 Stewart's company?

5 A. Oh, yes.

6 313. Q. And what title or roles did Mr.
7 Stewart have with MCIL?

8 A. Well, I don't believe either Bruce or
9 I had any title in MCIL. We only had titles on
10 the -- kind of the Memory Care development.

11 314. Q. And what --

12 A. I mean --

13 315. Q. Sorry. Go ahead.

14 A. I may have been president and he may
15 have been secretary/treasurer but I don't know.
16 I can't specifically tell you.

17 MR. MCCUTCHEON: I don't want you to guess
18 at this stage.

19 BY MR. BELL:

20 316. Q. No, no, and nor do I, sir. If you
21 don't know, it's fine to say you don't know.

22 A. I don't know.

23 317. Q. Can you just briefly describe for me
24 what Mr. Stewart's role was in the Memory Care
25 entities? That would be helpful.

1 A. Didn't you already ask me that
2 question?

3 MR. MCCUTCHEON: I thought we covered that
4 about an hour ago.

5 THE DEPONENT: Yeah, you asked me.

6 BY MR. BELL:

7 318. Q. I thought you told me he was involved
8 in the operation but I didn't know we got into
9 the specifics of what he actually did at each of
10 the projects. But if we did --

11 A. I did send a lengthy response to that
12 question to KSV where I outlined in detail --

13 319. Q. Perfect. Well, let's not retread
14 those waters then.

15 So, sir, I want to talk to you about
16 Aeolian's bank account in the RBC -- the RBC bank
17 account which we talked about.

18 MR. MCCUTCHEON: Just before you start
19 that, can we go off for a second?

20 MR. BELL: For sure.

21 --- Off-the-record discussion 12:06 p.m.

22 --- Upon resuming 12:14 p.m.

23 BY MR. BELL:

24 320. Q. So, sir, as I think you're aware,
25 pursuant to the Mareva order that the receiver

1 obtained, we were entitled to request bank
2 records from various entities, Aeolian and your
3 bank account. There's only the Aeolian RBC bank
4 account.

5 So we now have the bank records for
6 Aeolian for the last five years including the
7 backup documents that the bank has. So I just
8 wanted to ask you some questions about those.

9 A. Sure.

10 321. Q. The first question I have is in
11 relation to a cheque that Aeolian received from
12 an entity, I just want you to see it, named
13 1416958 Ontario Inc., and are you able to let me
14 know what 1416958 Ontario Inc. is?

15 A. It is a developer of a project called
16 Guildwood Condominiums.

17 322. Q. Who owns Guildwood Condominiums?

18 A. Raj Singh.

19 323. Q. And do you have any interest in
20 Guildwood Condominiums?

21 A. Unwritten. I was supposed to receive
22 a 15 percent profit of the project if it ever got
23 built, but it appears to me at this point in time
24 that it's not going to be built.

25 324. Q. And that's an unwritten right to the

1 15 percent, you said?

2 A. Yeah. It's nothing in writing. I
3 asked a few times if we could evidence that but
4 it never got papered, and Greg Harris and I were
5 splitting that fifty-fifty I should say.

6 325. Q. And why was Aeolian getting this
7 payment for the cheque that I showed you for
8 \$136,842.53 on March 25th of 2013?

9 A. Development consulting fees.

10 326. Q. And other than this cheque, are you
11 aware of 1416958 Ontario Inc. paying any other
12 funds to Aeolian or any other entities related to
13 you?

14 A. It would have continued to pay one of
15 the other development entities, either Memory
16 Care Limited or something. Let me clarify.

17 When I executed the agreement with, or the
18 basis of an understanding with Singh to help him
19 develop the Guildwood project, I was only
20 involved at the time of -- with McMurray.

21 So I wasn't aware that there was going to
22 be a -- well, by the time this invoice got paid,
23 I was, but at the time I made the agreement with
24 Singh, I was really only thinking I was going to
25 be involved in McMurray, and I had the capacity

1 to assist Singh as a private consultant to help
2 Singh get his project designed and planned and
3 blah, blah, blah.

4 So when Bruce and I formed the Memory Care
5 entities and other entities, I rolled that
6 contract, if you will, notional tacit contract
7 that -- for the remaining five-hundred-and-
8 something-thousand dollars that was still left on
9 the fee. I continued to do the work, but Dianna
10 invoiced that numbered company for ongoing fees.

11 So those -- that income went to the
12 benefit of the Memory Care companies.

13 MR. MCCUTCHEON: Sorry, counsel, are you
14 going to mark that?

15 MR. BELL: Yes, I am.

16 MR. MCCUTCHEON: And if you do, I would
17 like copies of everything you put to the witness
18 today.

19 MR. BELL: Happy to do that. Well, let's
20 do that now before we move forward. So let's
21 mark this. I think it's Exhibit 2 to Mr. Davies'
22 examination, and again, just for the record, it's
23 a cheque from 1416958 Ontario Inc. to Aeolian
24 Investments Limited dated March 25th, 2013 in the
25 amount of \$136,842.53.

1 EXHIBIT NO. 2: Cheque from 1416958
2 Ontario Inc. to Aeolian Investments
3 Limited dated March 25, 2013 for
4 \$136,842.53.

5 BY MR. BELL:

6 327. Q. And sorry, sir, just so that I have
7 your evidence clearly on this, other than this
8 invoice, was it your evidence that all other
9 funds were paid on account of your consulting
10 services to the Guildwood project were paid to
11 Memory Care companies? Did I get that right?

12 A. I believe so. There might have been
13 another cheque from RS or the numbered company,
14 but it's in relation to the Guildwood project.
15 My recollection is that when Bruce joined us and
16 we formed Memory Care, that I rolled that
17 consulting contract into the umbrella.

18 328. Q. And I'll show you another... I'm
19 happy to pull out the cheque if it helps you,
20 sir, but are you aware, because you seem to know
21 these numbers, do you remember a numbered company
22 named 1703858 Ontario Limited? Does that number
23 ring a bell?

24 A. 170, yeah. That's -- I can't -- it's
25 one of our Memory Care/Textbook entities. Oh, I

1 know what it is. 170? Pardon me. We bought
2 that company. 170 was the owner of the
3 Burlington land and we wished to purchase the
4 Burlington land to build the Burlington Memory
5 Care project on it. 170 was the company that
6 owned that land, and rather than buy the land
7 from them, there were tax benefit reasons to them
8 to sell us the company. So we purchased 170.

9 329. Q. And do you have an understanding of
10 -- well, sorry. Let me just take a step back.
11 When you say, we purchased, who's we?

12 A. Bruce Stewart, Greg Harris and
13 myself.

14 330. Q. And what was your shareholding in the
15 170 company?

16 A. I believe it was 33 percent.

17 331. Q. It was equal three thirds, and did
18 you hold those shares personally or did you hold
19 them through Aeolian or did Aeolian hold the
20 shares?

21 A. My recollection is that it would have
22 certainly been Aeolian that held those shares.

23 332. Q. And do you know if Aeolian still
24 holds the shares in 1703858 Ontario Limited?

25 A. I'm sure it does.

1 333. Q. And does 1703858 have any assets
2 today?

3 A. To the best of my knowledge, the 170,
4 subject to confirmation, but I believe 170 rolled
5 its interest -- the land got transferred into
6 Memory Care (Burlington).

7 I don't believe 170 still holds the --
8 still holds title to the land. I believe the
9 land was rolled into the Burlington Memory Care
10 project.

11 334. Q. And do you have an understanding of
12 why the 170 company would have paid Aeolian
13 \$277,084 on June 4th, 2014?

14 A. It would have been consulting fees.

15 335. Q. Those are consulting fees as well?

16 A. Yeah.

17 336. Q. And so other than holding the land
18 that the Burlington -- did 1703858 have any other
19 assets?

20 A. No. I believe it was a sole-purpose
21 company. When we did the investigation or
22 searches, we wanted to make sure there was
23 liabilities and things that weren't accruing to
24 us. So I believe it was just a sole-purpose
25 entity to hold that land.

1 337. Q. And did it have a banking facility at
2 RBC as well?

3 A. I believe it did.

4 338. Q. And are you a signing authority for
5 the company?

6 A. I would be, yes.

7 339. Q. The only signing authority?

8 A. Now, yes. Stewart might have been.

9 340. Q. But now it would be just you?

10 A. Yes.

11 341. Q. And do you know the numbered company
12 2174217 Ontario Inc.? Does that ring a bell for
13 you? There's a lot of numbered companies
14 admittedly.

15 A. No, but if you show me the cheque, I
16 might recognize what it's for.

17 342. Q. So I'm going to show you, sir,
18 there's two cheques. Just for the record, we may
19 as well mark them. One is number -- one is a
20 cheque in the amount of \$104,800 dated December
21 17, 2014 and the other is an amount of \$100,000
22 dated April 1st, 2015 and they're both from a
23 company number 2174217 Ontario Inc. made out to
24 Aeolian Investments Limited. I'll show you that,
25 sir.

1 EXHIBIT NO. 3: Two cheques, one dated
2 December 17, 2014 for \$104,800 and one
3 dated April 1, 2015 for \$100,000, both
4 from 2174217 Ontario Inc. to Aeolian
5 Investments Limited.

6 THE DEPONENT: Oh, that's Raj Singh. Oh,
7 that's Don Mintz. Pardon me, that's Don Mintz.
8 Yeah, that's a lender. This is a loan.

9 BY MR. BELL:

10 343. Q. Sorry, when you say, "this", that's--

11 A. The hundred-thousand-dollar amount is
12 a loan as is this.

13 344. Q. And the cheque dated December 17,
14 2014, the memo line says, Balance of funds held
15 in trust re Whitby mortgage. What was that
16 related to?

17 A. A loan on Whitby, yeah.

18 345. Q. So it was a loan on Whitby?

19 A. Hm-hmm.

20 346. Q. And can you explain to me --

21 A. Oh, no, the security was the -- we
22 did a 700,000-dollar loan on Whitby.

23 347. Q. And this is part of that?

24 A. No, this is a separate loan for me.

25 348. Q. And so do you understand why the memo

1 line on the cheque says the balance of the funds
2 held in trust to Whitby mortgage?

3 A. I would have to ask Don Mintz.

4 349. Q. And then the other cheque, the one
5 dated April 1st, 2015 for a hundred thousand
6 dollars, just had memo: Loan.

7 A. That's a loan.

8 350. Q. And so do I have it your evidence is
9 that Aeolian borrowed a total of 214,000 --
10 sorry, \$204,800 from this numbered Ontario
11 company?

12 A. Yeah. Yeah.

13 351. Q. And did Aeolian pay back those funds?

14 A. No.

15 352. Q. And if I go to your assets, is that
16 listed as one of the liabilities on the assets
17 and liabilities to your affidavit?

18 A. No, it's not.

19 353. Q. And is it your position that you
20 still -- that Aeolian still owes 2174217 Ontario
21 Inc. \$204,800?

22 A. Yes.

23 354. Q. And what did Aeolian do with the
24 funds it borrowed?

25 A. I don't recall offhand.

1 355. Q. Why did Aeolian have to borrow funds
2 in 2014 and 2015?

3 A. I imagine it was in support of the
4 renovation of the house in Arizona.

5 356. Q. And speaking of that, how much was
6 spent on the renovation of the house in Arizona?

7 A. Almost 2 million.

8 357. Q. Two million?

9 A. Hm-hmm.

10 358. Q. And was it Aeolian that funded that?

11 A. Yes.

12 359. Q. In its entirety?

13 A. Yes.

14 360. Q. And then Andrew Davies is your son,
15 right?

16 A. Yes.

17 361. Q. Do you have any understanding of why
18 Andrew Davies would have provided a cheque to
19 Aeolian for \$40,000 on May 8th of this year?

20 A. Yeah, I know exactly why.

21 362. Q. Can you tell me why?

22 A. Andrew referred a real estate agent
23 to the sale of the cottage and he got a referral
24 fee.

25 363. Q. No. I think, sir -- sorry. I think

1 I have it right, yes. I'll show you the cheque
2 just so you have it, but I actually think it's
3 the other way around. I think Andrew provided
4 \$40,000 to Aeolian.

5 A. Oh, he did. He got a referral fee and
6 gave it to Aeolian.

7 364. Q. I see what you're saying. So he got
8 the referral fee and deposited the cheque in
9 Aeolian.

10 And then related to -- we see a lot of
11 transfers in from TSI and TSSI to Aeolian. Would
12 those similarly be --

13 A. Fees.

14 365. Q. Sorry, management fees?

15 A. Hm-hmm.

16 366. Q. And did Aeolian invoice TSI or TSSI
17 for those management fees?

18 A. Yes.

19 367. Q. And you have copies of those
20 invoices, do you?

21 A. I imagine Dianna would.

22 368. Q. And I'm going to ask your counsel,
23 don't get in trouble, for an undertaking for any
24 invoices related to management fees paid by TSI,
25 TSSI or MCIL to Aeolian.

1 U/T MR. MCCUTCHEON: We'll search for those
2 and see what we can find.

3 BY MR. BELL:

4 369. Q. And other than -- sorry, switching
5 gears to MCIL, I know I jump around. So other
6 than its interest in Kitchener, the Kitchener,
7 Burlington and Oakville companies, does MCIL have
8 any other assets that you're aware of?

9 A. Well, no, other than perhaps the 170
10 other numbered Burlington company, but to the
11 best of any knowledge, no.

12 370. Q. And who has signing authority over
13 MCIL's bank account?

14 A. I do.

15 371. Q. And MCIL transferred approximately
16 \$176,000 to Aeolian over a period of time. We
17 have the invoices. Would that too have been
18 management fees?

19 A. Yes.

20 372. Q. We've covered that off. And even
21 though it's TSI and TSSI and MCIL that are paying
22 in part some these management fees, those are in
23 relation to the Davies development company?

24 A. That's right.

25 373. Q. Aeolian didn't provide any specific

1 services to TSI, TSSI or MCIL; right?

2 A. No, just globally.

3 374. Q. And when we talk about management
4 fees, it's the fees for the services that you
5 were providing; right?

6 A. That's correct.

7 375. Q. No other services?

8 A. No.

9 376. Q. And then there's a cheque from -- and
10 I'm happy to show it to you. It's not a memory
11 test, but there's a cheque from Tier 1
12 Transaction Advisory Services Inc., which we've
13 already discussed, to Aeolian in the amount of
14 321 -- sorry, \$121,000 on -- dated October 20th,
15 2014, and do you have any understanding of why
16 Tier 1 would be paying \$121,000?

17 MR. MCCUTCHEON: Sorry, I think it's dated
18 2015.

19 THE DEPONENT: You're talking about the
20 two-hundred-thousand-dollar cheque?

21 BY MR. BELL:

22 377. Q. I'm sorry, that explains what's going
23 on. I have two different cheques. I'll hand
24 them both to you. I apologize.

25 There's a cheque from Tier 1 to Aeolian

1 for \$200,000 dated February 27, 2015 and then
2 there's another cheque, which is the one I was
3 looking at, for \$121,000 dated October 20th,
4 2014. I'll give those both to you, and are you
5 able to explain to me what those two cheques
6 represent?

7 A. Yeah, loans to Aeolian.

8 378. Q. From Tier 1?

9 A. Yeah.

10 379. Q. And did you list those in the
11 liabilities attached to your affidavit?

12 A. No, they were repaid. The reason
13 Tier 1 advanced me 200,000 in this case and 120
14 in this, 121 is different than the 200. The
15 200,000 was repaid out of the 250,000-dollar
16 bonus. So he loaned me 200 and got 250 back.

17 So Harris directed my share of the
18 dividend payment to Singh in satisfaction of the
19 200,000-dollar loan.

20 380. Q. Oh, what we were talking about
21 earlier where you got the 125 and RSCG got 375?

22 A. I guess that's the reason. That's
23 coming back, but this 200,000, I got the 250
24 bonus dividend payment. My share went to satisfy
25 that.

1 381. Q. And the dividend payment from which
2 company?

3 A. I don't recall. Whatever, one of the
4 four 250,000-dollar dividends we got.

5 382. Q. And is there any paper record of the
6 fact that you forewent the 250,000-dollar
7 dividend you're entitled to to repay the loan to
8 Mr. Singh's company?

9 A. Harris would have it. It came out
10 with the closing. When the closing of the 200 --
11 the million-dollar dividends were paid, mine was
12 directed to Singh.

13 383. Q. I'm going to ask your counsel to
14 produce any records that relate to that and ask
15 Mr. Harris to the extent that they're with him.

16 U/T MR. MCCUTCHEON: He's not here. I think
17 this witness doesn't have it. I will make the
18 inquiry again and see what we can find.

19 MR. BELL: I appreciate it.

20 MR. MCCUTCHEON: I'm not sure Mr. Harris
21 falls inside the supervision here.

22 MR. BELL: That's fair.

23 BY MR. BELL:

24 384. Q. Did Mr. Harris ever act as your
25 lawyer for any of these transactions, sir, or

1 Aeolian's counsel?

2 A. No.

3 385. Q. He was always just a business
4 partner?

5 A. He got a share of the deal but he was
6 acting -- the borrower always pays the legal
7 fees. He was Singh's lawyer.

8 386. Q. So Harris was Singh's lawyer
9 throughout the transaction, and you told me
10 that -- sorry, what was the purpose of borrowing
11 the \$200,000 in February 2015?

12 A. Normal requirements that I had at the
13 time, just didn't want to wait for the 250.

14 387. Q. And what was the purpose for
15 borrowing the \$121,000?

16 A. The same.

17 388. Q. Sorry?

18 A. The same.

19 389. Q. You have no specific recollection of
20 needing either the 121,000 or the \$200,000?

21 A. I need \$121,000 today.

22 390. Q. That's fair. My question is slightly
23 different. Do you have any recollection of
24 needing the funds at the time you borrowed them
25 from Mr. Singh?

1 A. I don't recall why specifically.

2 MR. BELL: We should mark those two
3 cheques collectively as Exhibit 4.

4 EXHIBIT NO. 4: Cheque from Tier 1 to
5 Aeolian for \$200,000 dated February 27,
6 2015 and cheque for \$121,000 dated October
7 20, 2014.

8 BY MR. BELL:

9 391. Q. And then, sir, on the flip side of
10 the expenditures from Aeolian's account, we see,
11 and I think we've talked about this, a number of
12 cheques over the years to your wife, Judith
13 Davies, and is that because -- I think you
14 explained this, because you didn't have a bank
15 account, so that when you needed money, the fund
16 flow would go from Aeolian to your wife and then
17 ultimately to you for living expenses?

18 A. It was part of it. I think I recall
19 that we --

20 MR. MCCUTCHEON: You've got to hear the
21 end of the question before you answer.

22 THE DEPONENT: Sorry.

23 BY MR. BELL:

24 392. Q. I'm now done.

25 A. Yeah, income splitting was the

1 recommendation from our accountants, you know,
2 don't leave this all. You can save income tax if
3 you start diverting some of your money to -- and
4 let Judith have a portion of your income as
5 income. It's just a way to reduce my...

6 393. Q. So was there a regular pattern then
7 of monies flowing into Aeolian and then being, as
8 you say, income split out to Judith?

9 A. I wouldn't say a regular pattern. I
10 think, you know, from time to time we used
11 Judith's tax returns to reduce my income tax
12 burden.

13 394. Q. Your income tax burden?

14 A. Yeah, John Davies' income tax burden.

15 395. Q. I'll show you another document, sir,
16 and here this is, just for the record, it's the
17 business account statement for Aeolian
18 Investments dated December 31st, 2013 to January
19 31st, 2014.

20 I'm going to direct your attention, sir,
21 to page 2 of the document I'm sending you which
22 refers to a Royal Foreign Exchange withdrawal in
23 the amount of \$325,000, and that was on December
24 23rd, 2014.

25 I just want to know if you can recall the

1 circumstances by which the Royal Foreign Exchange
2 withdrawal was made for \$325,000 in December
3 2014.

4 A. Where does it show that?

5 396. Q. I'll show you. It's on page 2 right
6 there.

7 A. Oh, that's the purchase of our home
8 in Arizona.

9 397. Q. So that went towards the purchase of
10 the house?

11 A. Yes.

12 398. Q. And when was the house in Arizona
13 purchased?

14 A. I'm going to say the closing was the
15 27th or 28th of December.

16 399. Q. 2014?

17 A. 2013.

18 400. Q. 2013?

19 A. Yeah. We had to close it. The laws
20 were changing in the States about your ability to
21 get Canadians to get VTB mortgage financing.

22 MR. BELL: And we'll mark that account
23 statement Mr. Davies just looked at as Exhibit 5.

24 EXHIBIT NO. 5: Business account statement
25 for Aeolian Investments dated December 31,

1 2013 to January 31, 2014.

2 MR. MCCUTCHEON: Just for the record, I
3 take it that was the trust purchase of the
4 property?

5 THE DEPONENT: That's right.

6 BY MR. BELL:

7 401. Q. And then, sir, I'm going to show you
8 another series of cheques. For the record, these
9 are from Aeolian Investments Limited to RBC Royal
10 Bank of Canada, and the memo line reads: Wire
11 Davies Family Trust, on the first one which is in
12 the amount of \$310,000 and dated July 16, 2015,
13 and then the next one is a cheque from Aeolian to
14 Davies Family Trust in the amount of \$2,000 dated
15 September 9, 2015, and the final cheque is a
16 cheque made out to Royal Bank of Canada but the
17 re line is: Wire Davies Family Trust in the
18 amount of \$4,000 dated January 28, 2016.

19 A. Yeah, all related to the renovations
20 of the house in Arizona.

21 402. Q. And those are the \$2 million in
22 renovations we talked about earlier?

23 A. Yes, that's right.

24 MR. BELL: And then let's mark this series
25 of cheques as Exhibit 6 to Mr. Davies'

1 examination.

2 EXHIBIT NO. 6: Cheques from Aeolian
3 Investments Limited to RBC Royal Bank of
4 Canada dated July 16, 2015, September 9,
5 2015 and January 28, 2016.

6 BY MR. BELL:

7 403. Q. And then, sir, I'm going to show
8 you -- those were the Davies Family Trust. I'm
9 going to show you a series of cheques and I don't
10 propose to read them all through onto the record
11 because there's too many of them to do, but the
12 first one I'll read because it's the largest.
13 It's from Aeolian to Royal Bank of Canada, and
14 the memo line is: Wire U.S. dollars to the
15 Davies Arizona Trust and it's for \$200,000 dated
16 September 11, 2015 but then there's a series of
17 cheques, sir, all indicating they're being made
18 to the Davies Arizona Trust, and you need not
19 verify my math, but it appears to me that the
20 cheques total \$311,000.

21 I wondered if you had recollection of the
22 circumstances by which Aeolian was making these
23 payments to the Davies Arizona Trust.

24 A. All related to the renovations of the
25 house in Arizona.

1 404. Q. And so then the renovations weren't
2 just funded by the Davies Family Trust, but they
3 were also funded by the Davies Arizona Trust. Is
4 that right?

5 A. They were all funded by the Davies
6 Arizona Trust. I think the memo, from Davies
7 Family Trust, should say, Davies Arizona Trust.

8 405. Q. So the source -- was the source for
9 the entire two-million-dollar, was that all from
10 Aeolian?

11 A. Yes.

12 406. Q. And it would have flowed through the
13 trust then?

14 A. Yes.

15 MR. BELL: Let's mark that as the next
16 exhibit, being Exhibit 7, the bundle of cheques
17 to Mr. Davies' affidavit -- examination.

18 EXHIBIT NO. 7: Bundle of cheques starting
19 with cheque from Aeolian to Royal Bank of
20 Canada for \$200,000 dated September 11,
21 2015 re wire U.S. dollars to Davies
22 Arizona Trust.

23 BY MR. BELL:

24 407. Q. Then, sir, earlier today when you
25 talked about the liens, you mentioned that the

1 Oshawa Generals hockey team had a lien on your
2 house. Can you just explain to me how that came
3 to be?

4 A. Yes. The Davies Trust purchased the
5 Oshawa Generals in 2003 and ran it until 2008,
6 when we sold our shares of the team. It was a
7 two-tier transaction but the result of it was we
8 sold 50 percent, then sold the balance to a
9 gentleman named Rocco Tullio from Windsor and his
10 partners.

11 When we sold the team, we initially had an
12 understanding that Tullio would take on the
13 liability, if you would, of the contracts of the
14 head coach and the president of the team.
15 However, in the interim period before closing,
16 the president of the team was dismissed, and when
17 the closing went through, Tullio said that I had
18 the -- that Davies Family Trust had the
19 responsibility to pay them and the coach who
20 Tullio subsequently fired, and since the
21 contracts were pre-existing, Davies Family Trust
22 had the responsibility to pay those burdens on
23 the team.

24 Davies Family Trust disagreed and a
25 lawsuit was commenced between the Oshawa Generals

1 and Davies Family Trust such that after toing and
2 froing, the Oshawa Generals were by court order
3 forced to pay those employees, and I made a
4 settlement with the Oshawa Generals of about
5 \$600,000, and the 345,000 was the -- and they
6 secured my obligation by a lien on the cottage
7 and on the house, and the 345,000 was the balance
8 owing.

9 408. Q. And then, just a couple of questions
10 on that. We see a number of cheques, I don't
11 need to put them to you, of roughly 10,000-dollar
12 payments to the Oshawa Generals.

13 A. Right. I made an agreement with the
14 Generals that I would satisfy the obligation by
15 giving them 10,000 a month, and if I ever came
16 into any money, I would pay the balance off, but
17 the agreement was that I had 48 -- they were
18 going to allow 48 months of receipts. Let's see
19 where we are in that 48 months, pay off the
20 balance, or if additional funds became available,
21 I would pay it off sooner.

22 409. Q. And despite the fact that it was the
23 Davies Family Trust that owned the Oshawa
24 Generals, the lien was put on both the cottage
25 and your house?

1 A. And the house.

2 410. Q. Can you tell me what the Chase Davies
3 Trust is?

4 A. There is no Chase Davies Trust.

5 411. Q. So do you know what this memo is
6 referring to? because there's a couple of cheques
7 that refer to the bank wires being made to the
8 Chase Davies Trust.

9 A. Well, the Davies Arizona Trust's bank
10 is at Chase.

11 412. Q. So is that your handwriting on the
12 memo line?

13 A. No, it's just my signature.

14 413. Q. Do you know who is filling out the
15 memo line on the cheques?

16 A. Dianna Cassidy.

17 414. Q. And so when we see cheques being made
18 to the Chase Davies Trust or the Davies Chase
19 Trust, that's likely the Davies Arizona Trust
20 just with its bank account at Chase Bank?

21 A. It's not likely. It's a hundred
22 percent.

23 415. Q. And you've reviewed those cheques I
24 just showed you?

25 A. Yeah.

1 MR. BELL: Let's mark those as Exhibit 8
2 to Mr. Davies' examination.

3 EXHIBIT NO. 8: Cheques re Chase Davies
4 Trust.

5 BY MR. BELL:

6 416. Q. And then there's a number of payments
7 from Aeolian to an Auto One. That name I assume
8 rings a bell for you?

9 A. Every month.

10 417. Q. And is that -- I'm assuming that's
11 for car leases?

12 A. It is.

13 418. Q. And which cars are currently leased
14 under Auto One?

15 A. My daughter's Range Rover Evoque 2014
16 or '15 and my daughter's Ford Escape 2013, I
17 believe.

18 419. Q. And are the leases -- is Aeolian the
19 signatory on the leases or are your daughters the
20 signatories?

21 A. No, I am through Aeolian.

22 420. Q. You are through Aeolian?

23 A. Yeah.

24 421. Q. And it's just those two cars?

25 A. There were more. They've gone back.

1 There were two others, one lease from me, one
2 lease from my wife, and as a result of the recent
3 cash flow, we returned the cars and carried that
4 balance owing on the Aeolian -- we have \$5,000
5 payout and nine hundred and something in arrears
6 payments.

7 422. Q. And that's what that is, referred to
8 in the liabilities attached to your affidavit?

9 A. Yeah.

10 423. Q. And then there's a cheque to a
11 Mayberry Fine Art for \$81,000. Tell me what that
12 relates to. Do you recall?

13 A. That was the -- Mayberry was where I
14 purchased a piece of art from them which has been
15 sold.

16 424. Q. And when was the art sold?

17 A. I sold it -- I would say there was
18 snow on the ground. Probably January, February.

19 425. Q. What did you do with the proceeds
20 from the sale of the art?

21 A. They were deposited into Aeolian. I
22 sold the piece for 80,000.

23 426. Q. And the funds were deposited into
24 Aeolian's account?

25 A. Yes.

1 427. Q. And I'm just going to show you
2 another cheque from Aeolian to Royal LePage Your
3 Community Realty Inc. from March 24th, 2013 for
4 \$15,000. Then the memo line I believe refers to
5 Skyview.

6 A. Right.

7 428. Q. I don't have a copy of it with me. I
8 believe there's two such cheques. Do you recall
9 there being two 15,000-dollar cheques?

10 A. Yeah. There were insufficient
11 proceeds from the sale of 2 Skyview, our former
12 residence, and we gave them some postdated
13 cheques to clear out the balance of their
14 commissions.

15 429. Q. And it would total \$30,000? That
16 sits with your recollection?

17 A. Yeah. It was the shortfall. That
18 seems correct.

19 MR. BELL: We'll mark the one cheque I did
20 show you which is dated March 24, 2013 as Exhibit
21 9.

22 EXHIBIT NO. 9: Cheque dated March 24,
23 2013 from Aeolian to Royal LePage Your
24 Community Realty Inc. for \$15,000.

25 BY MR. BELL:

1 430. Q. And who's Goodman & Griffin?

2 A. It sounds like a law office.

3 431. Q. It does. I'll show you and it may
4 help. There's a cheque from Goodman & Griffin --
5 sorry, from Aeolian to Goodman & Griffin in Trust
6 dated December 12, 2013 in the amount of
7 \$18,921.02 and then the memo line says to Skyview
8 Maple Trust.

9 A. That would have been the same -- that
10 would have been, I guess, the law firm acting for
11 Royal LePage.

12 432. Q. And what was Skyview?

13 A. It's a house.

14 433. Q. And where was it?

15 A. Aurora.

16 434. Q. Who owned it?

17 A. I believe the Davies Family Trust
18 owns Skyview.

19 435. Q. They still own Skyview?

20 A. No, no. It was sold. That's the
21 arrears.

22 436. Q. That's the arrears?

23 A. Yes.

24 437. Q. And I think we talked about this, but
25 other than the Arizona property, neither the

1 Davies Family Trust nor the Davies Arizona Trust
2 own any other real property; correct?

3 A. Correct.

4 438. Q. What's Enduro Sport Inc.? Does that
5 name ring a bell?

6 A. Yeah. A triathlon store. It's not
7 me that competes in triathlon.

8 439. Q. Me neither.

9 A. Just thinking if you guys are
10 wondering. I thought maybe you were thinking,
11 he's a triathlon as well as a business
12 entrepreneur.

13 440. Q. And Identity Construction, \$350,000
14 through four payments between October 2014 and
15 December 2014?

16 A. A contractor in Arizona.

17 441. Q. So that's the same \$2 million we
18 talked about?

19 A. Yes.

20 442. Q. And then Cohen Highley LLP?

21 A. Law firm.

22 443. Q. And what were they acting for in
23 2013?

24 A. Closing of the house in Arizona.

25 444. Q. And then you refer to CRA liens in

1 your affidavit and attachment. Can you just
2 describe to me what the circumstances were of the
3 CRA liens registered on your house?

4 A. Arrears for personal income tax.

5 445. Q. Your personal income tax?

6 A. Yes.

7 446. Q. And then I see payments to AIG
8 Canada. Do you have insurance policies with AIG
9 Canada?

10 A. Yeah, car and house, though.

11 447. Q. Just car and house?

12 A. Just car and house.

13 448. Q. Do you have a life insurance policy?

14 A. No.

15 449. Q. And then Reuben & Christie?

16 A. Law firm.

17 450. Q. And what did they act for you in?

18 A. They initially acted for us when we
19 were dealing with the original order that
20 dismissed Tier 1 when FSCO -- back in October/
21 November.

22 451. Q. I see. And then Arizona Bar IOLTA,
23 I-O-L-T-A, does that ring a bell?

24 A. No. Sorry, say that again. Arizona?

25 452. Q. It's AZ Bar IOLTA, I-O-L-T-A.

1 A. It doesn't ring a bell.

2 MR. BELL: I lied to you. I can't pull
3 something up. So we'll just go over -- go off
4 the record for a second.

5 --- Off-the-record discussion 12:52 p.m.

6 --- Upon resuming 12:52 p.m.

7 BY MR. BELL:

8 453. Q. And then the Distillery Restaurants
9 Group, does that ring a bell? There's a
10 25,000-dollar payment to the Distillery
11 Restaurants.

12 A. My son's wedding.

13 454. Q. Okay. And then Chestnut Lane, a
14 21,000-dollar payment to Chestnut Lane, did that
15 relate to the purchase of property? I can pull
16 it up for you if that would help.

17 A. When was it? When was the cheque?

18 455. Q. Let me pull it up so I can give it to
19 you.

20 A. It sounds like a realtor.

21 MR. MCCUTCHEON: Don't guess.

22 THE DEPONENT: I was talking to you.

23 MR. MCCUTCHEON: We're on the record, so
24 don't guess.

25 MR. BELL: Maybe I can't pull it up for

1 you. Can we go off the record for a second?

2 --- Off-the-record discussion 12:53 p.m.

3 --- Upon resuming 12:54 p.m.

4 BY MR. BELL:

5 456. Q. So, sir, we don't have a paper copy
6 for you. We won't mark it as an exhibit, but I'm
7 happy to have you look at it on Mr. Goldstein's
8 computer. It's a cheque to Chestnut Lane
9 dated...

10 MR. MCCUTCHEON: August 21.

11 BY MR. BELL:

12 457. Q. August 21, 2013, thank you, for the
13 amount of \$21,966 to Chestnut Lane. No
14 recollection?

15 A. It doesn't ring a bell.

16 458. Q. Are you aware of purchasing a
17 property in or around August of 2013?

18 A. No. I can assure you it's not
19 related to the purchase of property.

20 459. Q. And then finally, Windstone Real
21 Estate?

22 A. Yeah. Windstone Real Estate was the
23 listing agent for the sale of the McMurray condos
24 for a period of about two years.

25 460. Q. So that would be the explanation for

1 the 34,000-dollar payment to them?

2 A. Commissions.

3 461. Q. And I don't think I asked this
4 earlier. Is the property that the Family Trust
5 owns in Arizona, is it currently listed for sale?

6 A. No.

7 462. Q. Do you have any intention to sell it?

8 A. Well, let's...

9 463. Q. You're not going to say one way --
10 you just don't know one way or the other?

11 MR. MCCUTCHEON: It depends how this works
12 out.

13 THE DEPONENT: My future is somewhat up in
14 the air. It's certainly never been our intention
15 to sell that house.

16 BY MR. BELL:

17 464. Q. And do you have an appraisal for the
18 property?

19 A. Yes.

20 465. Q. And what's it worth?

21 A. A million, 795.

22 466. Q. And that includes the \$2 million in
23 renovations you put into it?

24 A. Very depressed market.

25 MR. BELL: I would like -- I'm going to

1 ask for an undertaking for a copy of that
2 appraisal.

3 U/A MR. MCCUTCHEON: I'm going to take that
4 under advisement.

5 MR. BELL: Go off the record for one
6 minute.

7 --- Off-the-record discussion 12:56 p.m.

8 --- Upon resuming 12:56 p.m.

9 BY MR. BELL:

10 467. Q. So, sir, earlier we were talking
11 about -- and we are very close to being done,
12 you'll be happy to know. Earlier we were talking
13 about the development fees that Mr. Singh was
14 charging. It started off at 12 percent, then
15 went to 15 percent, then 16 percent. Then I
16 think you said somewhere that it was then a
17 hundred thousand dollars, then it became 200,000?

18 A. That's correct.

19 468. Q. So obviously basic development fees.
20 Is that fair?

21 A. Yes. Well, not development fees,
22 raise fees.

23 469. Q. Raise fees?

24 A. Fees for raising money.

25 470. Q. And were you concerned at the time

1 that the quantum of those fees meant that the
2 projects were not commercially viable?

3 A. No, never.

4 471. Q. It never crossed your mind?

5 A. No. Well, it never -- not only did
6 it not cross my mind, it wasn't demonstrated in
7 the pro forma analysis. The pro formas which we
8 spend -- we spend months on them before we
9 acquire the properties, look at all kinds of
10 different scenarios. So there's sensitivities in
11 terms of the return. So I'm not concerned.

12 472. Q. And who prepared the pro forma
13 analysis?

14 A. Myself, Walter Thompson, Bruce
15 Stewart.

16 MR. BELL: And, counsel, I would like an
17 undertaking for the pro forma analysis that Mr.
18 Davies is referring to.

19 U/T MR. MCCUTCHEON: We'll undertake to find
20 what we can find and give it to you.

21 MR. BELL: I appreciate that. Subject to
22 -- I'm not done.

23 BY MR. BELL:

24 473. Q. So specifically, sir, in relation to,
25 and it relates to the undertaking that your

1 counsel has given, so the answer may be there, I
2 think, but specifically with relation to the 525
3 Princess project, as I understand it, that
4 company raised approximately \$6.4 million from
5 investors. Does that fit with your
6 understanding?

7 A. Yeah.

8 474. Q. Roughly speaking?

9 A. Yeah.

10 475. Q. And then after making payments that
11 were required under the loan agreements,
12 including the dividends, based on the receiver's
13 math, there appears to be approximately \$1.4
14 million available for disbursements that could be
15 used and of that amount, it appears approximately
16 1.3 million was paid to related entities and
17 shareholders, which according to the receiver's
18 math, leaves about a hundred thousand dollars for
19 soft costs and completing the project, and on
20 that example did you ever turn your mind to how
21 you were going to complete the project with only
22 a hundred thousand dollars available for soft
23 costs?

24 A. We were never intending to complete
25 the project with a hundred thousand. As you

1 probably know and as KSV would know, there were
2 subsequent raises contemplated rather than the
3 initial raise and in fact, a number of the
4 projects had a second or a third raise added.

5 The prohibitions of raising money through
6 Tier 1 was governed by the amount of the
7 appraisal. So if the appraisal was \$5 million,
8 we were not permitted to raise anymore than
9 \$5,000 under the FSCO rules.

10 So our modus operandi was the raw land was
11 only worth so much on a residual basis. The
12 appraisal would only support a certain amount
13 going in. We would then take that project. We
14 would advance it further down the road. We might
15 obtain approvals. We might have a much more
16 finite development concept, and if we needed more
17 money, we would reappraise the property and
18 hopefully some value had increased -- the value
19 of the property increased by basis of the work
20 that had been done.

21 So to that extent, we would be able to
22 raise additional funds to keep the project moving
23 forward until such time as we qualified for
24 construction financing, and then we would
25 raise... the Tier 1 money, as you know, was only

1 earmarked for project purchase and predevelopment
2 expenses.

3 476. Q. And then the thought was always that
4 you would do subsequent raises for any of the
5 soft costs and project development?

6 A. That's correct, until such time as
7 we'd qualify for a construction loan.

8 477. Q. And that would apply as much for the,
9 I assume, 555 Princess property as the 525 and
10 the rest of them?

11 A. Yeah, that's exactly right, and in
12 fact, all of the projects. The initial appraisal
13 was not normally sufficient to carry us all the
14 way through.

15 MR. BELL: Why don't we take a one-minute
16 break and we'll come back?

17 --- Break commencing 1:01 p.m.

18 --- Upon resuming 1:04 p.m.

19 MR. BELL: All right, sir, so subject to
20 the undertakings and advisements, anything that
21 come from those, those are our questions.

22 --- Whereupon examination is concluded 1:05 p.m.

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24

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June 16, 2017

JOHN EVAN DAVIES - 121

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I HEREBY CERTIFY THE FOREGOING
to be a true and accurate
transcription of my shorthand notes
to the best of my skill and ability.

Susanna Massa, CSR

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Appendix “I”

BETWEEN:

LENORE JACKSON

- and -

JOHN EVAN DAVIES,

JUDITH LENORE DAVIES

- and -

GREGORY HARRINGTON HARRIS

DAVIES FAMILY TRUST - INDEX

		Page
1	DEFINITIONS	6
1.1	Income	6
1.2	Plural, Gender, etc	6
1.4	Definition of Residence	6
1.5	Issue per Stirpes	7
1.6	Beneficiaries	7
1.7	Time of Division	7
1.8	Children and Issue	8
1.9	Income Tax Act	8
1.10	Expenses	8
1.11	Stock Dividends	8
1.12	Applicable Law	8
1.13	Exercise of Trustees' Discretion	9
1.14	Persons Entitled to Appoint Trustees	9
2	PURPOSE OF THE DAVIES FAMILY TRUST	9
3	PAYMENTS BEFORE TIME OF DIVISION	9
4	DISTRIBUTION AT TIME OF DIVISION	11
4.1	Power of Appointment	11
4.2	Alternative Distribution	11
5	DECISIONS BY TRUSTEES	14
6	INCOME TAX ACT (CANADA) AND INCOME TAX ACT (ONTARIO)	14
7	LIABILITY AND INDEMNIFICATION	15
7.1	Trustees Indemnified - No Liability	15
7.2	No Deemed Indemnity of One Trustee by Another	15
7.3	No Liability unless Wrongful Act	16
7.4	May Rely upon Reports	16
7.5	Lien on Trust Property	16

7.6	No Liability for Losses	17
7.7	Indemnity for Fines Penalties, Damages, etc.	17
7.8	Not Liable for Debts	17
7.9	Insurance Policies	17
7.10	Exercising of Discretions	18
8	DELEGATION OF AUTHORITY OF TRUSTEES AND EXECUTION OF DOCUMENTS	18
8.1	Limited Right to Divide and Delegate Amongst Selves	18
8.2	Execution of Documents	18
8.3	Incapacity of a Trustee	19
9	RECORDS AND ACCOUNTING	19
9.1	Trust Records and Limit on Duty to Account	19
9.2	Successor not Liable for Predecessor Trustee	19
9.3	Final Accounting on Termination and Release	19
10	REPLACEMENT OF TRUSTEES AND PERSONS ENTITLED TO APPOINT TRUSTEES	20
10.1	Incompetency, Bankruptcy, Residency	20
10.2	Resignation in Writing	20
10.3	Appointment of New Trustee	21
10.4	No Interference by Beneficiary	21
10.5	Property Vests in Successor Trustee	21
10.6	Continuing Indemnity to Former Trustees	21
10.7	Notice of Change	21
10.8	Incapacity of the Persons Entitled to Appoint Trustees	22
11	TRUSTEES' POWERS	23
11.1	Widest Latitude and Discretion	23
11.2	Trust Deed Self-Contained	23
11.3	Powers not Exhaustive	24
11.4	General and Specific Powers	24
	Investments	24
	Sale and Disposal	25
	Companies	25
	Realty and Personalty	26
	Business and Commercial Ventures	27
	Insurance	28
	Borrowing and Lending	29
	Administration	29
	Banking	32

12	GENERAL	32
12.1	Third Parties Dealing with the Trust	32
12.2	Trustees Relieved of Bonds	32
12.3	Trustees in their Professional Capacity	32
13	INFANTS	33
14	EXCLUSION OF ILLEGITIMATE RELATIONS	34
15	PERPETUITIES	34
16	COMMUNITY OF PROPERTY	34
17	TRUST IRREVOCABLE	35
18	COMPENSATION OF TRUSTEES	35
19	ACCEPTANCE OF TRUST	35
20	COUNTERPARTS	35
21	HEADINGS	36
	SCHEDULE I	37

WHEREAS John Evan Davies (“Davies”) was issued One Hundred (100) Common Shares in the capital of Muskoka Holiday Properties Ltd. (“the Shares”) on the 7th day of May 1999;

AND WHEREAS it was Davies’ intention to hold legal title to the Shares as a bare trustee, in trust for the benefit of a yet to be established discretionary family trust, to be entitled the “Davies Family Trust”;

AND WHEREAS this Declaration of Trust is made on the 11th day of December, 2000 and constitutes the Davies Family Trust for which Davies was originally holding the Shares.

BETWEEN:

LENORE JACKSON, of the City of London and Province of Ontario

(hereinafter called the “Settlor”)

OF THE FIRST PART

- and -

JOHN EVAN DAVIES, JUDITH LENORE DAVIES and GREGORY HARRINGTON HARRIS, all of the City of Toronto and Province of Ontario

(hereinafter called the “Trustees”)

OF THE SECOND PART

WHEREAS the Settlor desires to establish a trust, to be known as the Davies Family Trust, for the benefit of John Evan Davies, Judith Lenore Davies and the issue of John Evan Davies as hereinafter provided;

AND WHEREAS the Settlor has irrevocably transferred to the Trustees a settlement object described in more detail in Schedule I attached hereto (hereinafter called the “Settlement Object”) (the receipt of which the Trustees hereby acknowledge) together with any property which may from time to time be held by the Trustees in lieu thereof or in addition thereto (all of which is hereinafter called the “Trust Estate”), to be held upon and subject to the trusts hereinafter set out;

NOW THEREFORE THIS INDENTURE WITNESSES THAT the parties hereto have agreed and do hereby covenant and agree as follows.

1. DEFINITIONS

1.1 Income

The expression “net income” when used in this Indenture shall, when used in respect of any particular year, mean all of the income of the Trust Estate for that particular year and shall specifically include any gains realized in respect of the sale or other disposition of any capital property forming part of the Trust Estate less the aggregate of:

- (a) any and all expenses incurred in and about the management of the Trust Estate and the assets thereof as determined by the Trustees to be chargeable to income;
- (b) such further or other sums in each year as the Trustees in their sole and absolute discretion consider to be proper allowances, reserves, deductions, disbursements and/or outgoing in accordance with generally accepted accounting principles; and
- (c) without limiting the generality of the foregoing, such sum in each year as the Trustees shall in their absolute discretion consider necessary and advisable from time to time as being on account of depreciation, depletion, deterioration or obsolescence of any of the assets of the Trust Estate.

1.2 Plural Gender, etc.

The word “Trustees” used herein and any personal pronoun relating thereto and used therewith and any other personal pronoun used herein with reference to the Settlor or to any one or more of the Beneficiaries or to any persons entitled to appoint Trustees shall be read and construed as the gender and number of the party or parties referred to as each case requires.

1.3 For greater clarity and certainty:

- (a) the word “Trustee” or “Trustees” wherever used in this Indenture shall include the present Trustees and shall also include any person or corporation or persons becoming a Trustee or Trustees from time to time in place of any present or other substituted Trustee dying, retiring or being incapable or unwilling to act, or who may be replaced from time to time under the provisions hereof;
- (b) whenever the word “Trustee” or “Trustees” is used herein or when any power or authority is vested in the said Trustees or in the majority of them, the said word “Trustee” shall be taken to include, and the power or authority may be exercised from time to time by those Trustees constituting the Trustees in accordance with the provisions of this Indenture, at such time, and from time to time.

1.4 Definition of Residence

For the purpose of determining the residence, from time to time, of this Trust, under any applicable law, whether taxing or otherwise, the residence of this Trust shall be conclusively

deemed to be that of the state, province, country or other jurisdiction in which the majority of the Trustees reside, and the situs of all property of the Trust shall be conclusively deemed to be in the jurisdiction in which the Trust is from time to time resident, notwithstanding that any such property and assets may be physically located in another geographical or legal jurisdiction.

1.5 Issue per Stirpes

- (a) The word “issue” when used in this Indenture, shall mean “descendants to the remotest degree”.
- (b) In interpreting the expression “issue per stirpes” the stirpital base shall be taken as the generation in lineal descent most immediate to the common ancestor.

1.6 Beneficiaries

“Income Beneficiaries” at any particular time shall mean John Evan Davies, Judith Lenore Davies and the children of John Evan Davies, namely Andrew John Davies, Sarah Ramona Davies, Jessica Deborah Davies and Walter Robert Jackson Davies as well as any future children and issue of John Evan Davies living at such particular time, any one of whom is sometimes referred to herein as an “Income Beneficiary” and all of whom or any two or more of whom are sometimes referred to herein collectively as “Income Beneficiaries”;

“Capital Beneficiaries” at any particular time shall mean John Evan Davies, Judith Lenore Davies and the children of John Evan Davies, namely Andrew John Davies, Sarah Ramona Davies, Jessica Deborah Davies and Walter Robert Jackson Davies as well as any future children and issue of John Evan Davies living at such particular time, any one of whom is sometimes referred to herein as a “Capital Beneficiary” and all of whom or any two or more of whom are sometimes referred to herein collectively as “Capital Beneficiaries”;

“Beneficiary” shall mean an Income Beneficiary or a Capital Beneficiary;

“Beneficiaries” shall mean the Income Beneficiaries and/or Capital Beneficiaries.

1.7 Time of Division

The phrase “time of division” means the earlier of:

- (a) the date which is one day prior to the twenty-first anniversary of the death of the last survivor of the Beneficiaries who are alive at the date of this Indenture;
- (b) such date as the Trustees may determine by instrument in writing signed by each of them and delivered in counterparts to every adult beneficiary living at the time of the signing of such instrument.

1.8 Children And Issue

"Child" and "Children" shall mean all legitimate, natural and adopted (under the law of any jurisdiction whatsoever) children and shall also include any children or issue *en ventre sa mere* who may be born alive at any time hereafter (and for all purposes of this Settlement any such child shall be deemed to be alive during the period in which he or she shall be *en ventre sa mere*) but shall not include a person born outside marriage nor a person who comes within the description traced through another person who was born outside marriage, provided that any person who has legally been adopted shall thereafter be regarded as having been born in lawful wedlock to his or her adopting parents and any person who is born outside marriage and whose natural parents subsequently marry each other or whose parents would be considered spouses within the meaning provided in section 29 of the *Family Law Act* (Ontario) shall thereafter be regarded as having been born in lawful wedlock to his or her parents.

"Issue" shall not be confined to "children" but shall include children and all other lineal descendants.

1.9 Income Tax Act

1.9.1 The term "Income Tax Act", or any reference to a specific provision or specific provisions thereof, shall mean the *Income Tax Act*, S.C. 1970-71-72, c.63, as amended, or such provision or provisions, as amended, from time to time, or any legislation of the Parliament of Canada from time to time in force of like or similar effect.

1.9.2 The term "Preferred Beneficiary" has the meaning set out in subparagraph 108(1) of the *Income Tax Act*.

1.10 Expenses

The expenses in connection with the administration of this Trust, including the remuneration and charges of the Trustees hereinafter provided for and in connection with the investment and reinvestment of any part of the Trust Estate and the collection of income and other sums derived therefrom shall be charged against the income or the capital of the Trust Estate, as the Trustees in their absolute discretion deem advisable.

1.11 Stock Dividends

All dividends paid in the form of stock received by the Trustees in connection with any shares of stock of companies held by them shall be deemed to be and shall be dealt with as capital of the Trust Estate.

1.12 Applicable Law

This Trust shall be interpreted according to the laws of the Province of Ontario.

1.13 Exercise of Trustees' Discretion

To avoid any ambiguity or criticism by any Beneficiary, and consistent with the provisions hereof, all decisions by the Trustees with respect to the division of the annual net income of the Trust Estate in any year, and the capital of the Trust Estate at any time or times, including the time of division, among the Beneficiaries hereof shall be made by the Trustees in their absolute discretion and shall be final and binding on all Beneficiaries hereof, without any appeal therefrom and in making any such decision, and they shall not be required to maintain an even hand among the Beneficiaries and may, in their absolute discretion, completely exclude any one or more of the Beneficiaries.

1.14 Persons Entitled to Appoint Trustees

The phrase "persons entitled to appoint Trustees" means:

- (a) John Evan Davies while he is alive and has the capacity to act;
- (b) upon the death of John Evan Davies, or at other times during the lifetime of John Evan Davies, but during his incapacity to act, any person or persons appointed pursuant to Article 10 hereof by any person designated or appointed in the Last Will and Testament of John Evan Davies to so act, failing which designation or appointment, any person or persons appointed by a majority of the persons who are from time to time appointed to act as, or are acting in the capacity of the Estate Trustees of the Last Will and Testament of John Evan Davies, as the case may be.

2. PURPOSE OF THE DAVIES FAMILY TRUST

2.1 The purpose of the Davies Family Trust is to hold shares or other investments. The Trustees, however, shall not be compelled by any Beneficiary or by any court to dispose of any shares or other interests because of their yield or lack of diversity or for any other reason whatsoever.

3. PAYMENTS BEFORE TIME OF DIVISION

3.1 Subject to Paragraph 3.5 hereof, the Trustees shall hold the Trust Estate and until the time of division they may from time to time pay to or on behalf of the Income Beneficiaries, or such one or more of them to the exclusion of the other or others and in such proportions as the Trustees may determine, all or so much of the net income, if any, derived from the Trust Estate as the Trustees from time to time determine to be appropriate for the respective benefit of the Income Beneficiaries.

3.2 Subject to Paragraph 3.5 hereof, the Trustees shall hold the Trust Estate and until the time of division they may from time to time pay to or on behalf of the Capital Beneficiaries, or such one or more of them to the exclusion of the other or others and in such proportions as the

Trustees may determine, all or so much of the capital of the Trust Estate as the Trustees from time to time determine to be appropriate for the respective benefit of the Capital Beneficiaries.

3.3 Any net income of the Trust Estate which is not paid to or applied in any year to or on behalf of the Income Beneficiaries shall be accumulated by the Trustees and added to the capital of the Trust Estate and dealt with as part thereof.

3.4 Subject to Paragraph 3.5 hereof, after the expiration of the maximum period permitted by law for the accumulation of income, the Trustees shall thenceforth pay to or apply on behalf of the Income Beneficiaries, or such one or more of them to the exclusion of the other or others and in such proportions as the Trustees from time to time determine to be appropriate, the whole of the net income of the Trust Estate.

3.5 Notwithstanding anything in this Article contained:

- (a) no income or capital which by the terms hereof is payable to any one or more of the Beneficiaries shall be so payable on or after any time following a time that such Beneficiary has, by specific or general assignment, transfer or otherwise alienated or disposed of, or attempted to alienate or dispose of, his or her right to such income or capital or any part thereof or interest therein;
- (b) if by reason of any attachment, sequestration, execution, writ, judgment, order or other proceeding (including without limiting the generality of the foregoing, any bankruptcy or insolvency proceeding) or by any other means whatsoever the said income or capital or any part thereof or interest therein can no longer be personally enjoyed by any Beneficiary, or would but for the terms of this Paragraph belong to or become vested in or subject to the control of some other person, persons or corporation, courts or officials, then from and after the happening of any such event the right of such person to receive or be paid the said income or capital shall cease;

but if the reason why any Beneficiary can no longer personally enjoy the income or capital as above-mentioned ceases, then in such case the income or capital shall again be paid over to such Beneficiary until the re-occurrence of any such event, and so often as any such event shall re-occur the right of such Beneficiary to be paid such income or capital shall cease and the Trustees shall deal with it as above provided. For greater certainty, it is hereby declared that the Trustees shall not be compelled by court order or in any other fashion to exercise their discretion in favour of any Beneficiary whose interest has not vested but who, under the terms of this Indenture, but for this provision, is entitled to receive some part or all of the income or the capital of the Trust Estate as the Trustees may in their absolute discretion determine.

4. DISTRIBUTION AT TIME OF DIVISION

4.1 Power of Appointment

Subject to Paragraph 4.3 hereof, if John Evan Davies is alive at the Time of Division, the Trustees shall, at the Time of Division, hold the Trust Estate for the Capital Beneficiaries or such one or more of them to the exclusion of the other or others and in such proportions and on such terms and conditions, as the Trustees may at any time and from time to time in writing either revocably or irrevocably appoint having regard to:

- (a) the needs, both actual and anticipated, of the Capital Beneficiaries for care, maintenance, education, advancement in life or other benefit;
- (b) the ability of the individual Capital Beneficiaries to manage capital for the benefit of themselves, their spouses and their issue;
- (c) the ability and willingness of the various Capital Beneficiaries to be responsible members of their family and of their community; and
- (d) the ability of the individual Capital Beneficiaries to manage businesses.

4.2 Alternative Distribution

In the absence of such appointment or to the extent that such appointment shall not extend or take effect, the Trustees shall at the Time of Division divide the Trust Estate into as many equal shares as shall be necessary to carry out the following provisions:

4.2.1 Subject to Paragraph 4.3 hereof, the Trustees shall set aside and pay one of such equal shares to each of the Children of John Evan Davies living at the Time of Division, provided that the share of each Child who has not then attained the age of twenty-one (21) years shall be held and kept invested by the Trustees and the income or so much thereof as the Trustees in their absolute discretion consider advisable shall be paid to or applied for the benefit of such Child until he or she attains the age of twenty-one (21) years when the balance of the capital of such share then remaining shall be paid or transferred to him or her, and any income not so paid or applied in any year is to be added to the capital of such share and dealt with as part thereof, and provided further that if any such Child should die before attaining the age of twenty-one (21) years, such share or the amount thereof then remaining shall be divided equally among the Children of such deceased Child of John Evan Davies (hereinafter called the "Deceased Child") who are then alive and shall be set aside in a separate trust (hereinafter called the "Survivor's Trust") as a separate trust fund for the surviving Children of such Deceased Child, or if such Deceased Child shall leave no Child surviving him or her, to divide such share or the amount thereof remaining equally among the surviving Children of John Evan Davies alive at the death of such Deceased Child of John Evan Davies, but if any such surviving Child of John Evan Davies shall become entitled to any part of the capital of the Trust Estate pursuant to the terms of this proviso before attaining the age of twenty-one (21) years such Child's part shall be added to

the capital of the share of the Trust Estate hereinbefore directed to be held in trust for such person and shall be dealt with as part thereof.

Notwithstanding anything in this Trust contained, the Trustees are authorized at any time and from time to time to pay or apply to or for the benefit of the Child for whom such share is held in trust such part or parts of the capital of the share or shares held in trust for such Child as the Trustees in their absolute discretion consider advisable without regard to the interests of the Children of such Child or any other person and even to the full amount thereof.

4.2.2 The Trustees shall keep the capital of each Survivor's Trust invested and shall, from time to time, pay the whole or such part of the net income derived therefrom and any amount or amounts out of capital that the Trustees in their absolute discretion may deem advisable for the maintenance, education or benefit of the Children of the Deceased Child, or such one or more of them, in such proportions and in such manner as the Trustees in their absolute discretion consider advisable. Any income not so used in any year shall be added to the capital of the Survivor's Trust and dealt with as part thereof.

On the date when the first of such Children of the Deceased Child (who are alive) has reached the age of twenty-one (21) years (hereinafter called the "Date of Sub-Division"), the funds remaining in the Survivor's Trust shall be divided into as many equal shares as there shall be Children of the Deceased Child then alive. The Trustees shall set aside one (1) of such equal shares for each such Child of the Deceased Child and shall keep such share invested and shall, from time to time, pay the whole or such part of the net income derived therefrom and any amount or amounts out of capital that the Trustees in their absolute discretion deem advisable to or for the maintenance, education or benefit of such Child of the Deceased Child in such proportions and in such manner as the Trustees in their absolute discretion deem advisable. Any income not so used in any year shall be added to the capital of such share of the Survivor's Trust and dealt with as part thereof. On the date (hereinafter called the "Distribution Date") which is the earlier of (a) the date such Child of the Deceased Child attains the age of twenty-one (21) years; and (b) the date twenty-one (21) years after the death of the Deceased Child, such share shall be paid and transferred to such Child of the Deceased Child. If such Child of the Deceased Child dies before the Distribution Date, the share of such Child of the Deceased Child, or the amount thereof then remaining, shall be divided among the remaining Children of the Deceased Child living at the death of such Child of the Deceased Child in equal shares; provided that any part of such share to be paid or transferred to a Child of the Deceased Child shall be governed by and dealt with in accordance with the provisions hereof as if it were a part of the share set aside for such Child of the Deceased Child on the death of the Deceased Child.

4.2.3 If a Child of John Evan Davies (hereinafter called the "Predeceased Child") should predecease the Time of Division and if any Child or Children of the Predeceased Child shall be living at the Time of Division, the Trustees shall set aside in a separate trust (hereinafter also called the "Survivor's Trust") and as a separate trust fund one (1) of such equal portions for the surviving Children of the Predeceased Child.

The Trustees shall keep the funds of the Survivor's Trust invested and shall, from time to time, pay the whole or such part of the net income derived therefrom as the Trustees deem advisable

and any amount or amounts out of capital that the Trustees deem advisable to or for the maintenance, education or benefit of the Children of the Predeceased Child, or some one or more of them, in such proportions and in such manner as the Trustees deem advisable. Any income not so used in any year shall be added to the capital of the residue of the Survivor's Trust and dealt with as part thereof.

On the date when the first of the Children of the Predeceased Child has reached the age of twenty-one (21) years (hereinafter also called the "Date of Sub-Division"), the funds remaining in the Survivor's Trust shall be divided into as many equal shares as there shall be Children of the Predeceased Child alive at the Date of Sub-Division. The Trustees shall set aside one (1) of such equal shares for each such Child of the Predeceased Child and shall keep such share invested and shall, from time to time, pay the whole or such part of the net income derived therefrom and any amount or amounts out of capital that the Trustees in their absolute discretion may deem advisable to or for the maintenance, education or benefit of such Child of the Predeceased Child in such proportions and in such manner as the Trustees in their discretion consider advisable. Any income not so used in any year shall be added to the capital of the residue of such share of the Survivor's Trust and dealt with as part thereof. On the date (hereinafter called the "Alternate Distribution Date") which is the earlier of (a) the date such Child of the Predeceased Child attains the age of twenty-one (21) years; and (b) the date twenty-one (21) years after the death of the Predeceased Child, such share shall be paid or transferred to such Child of the Predeceased Child. If such Child of the Predeceased Child dies before the Alternate Distribution Date, the share of such Child of the Predeceased Child, or the amount thereof then remaining, shall be divided between the remaining Children of the Predeceased Child living at the death of such Child of the Predeceased Child in equal shares; provided that any part of such shares to be paid or transferred to a Child of the Predeceased Child shall be governed by and dealt with in accordance with the provisions hereof as if it were a part of the share set aside on the Date of Sub-Division for such Child of the Predeceased Child.

4.2.4 In the event that a portion of the Trust Estate is set aside for a Child of John Evan Davies or the Child or Children of a Deceased Child or the Child or Children of a Predeceased Child and such portion does not vest in possession in any one or more of such persons prior to the death of the survivor of such persons, such portion of the Trust Estate shall be dealt with in accordance with Paragraph 17.2 hereof.

4.3 Notwithstanding anything in this Article contained:

- (a) no income or capital which by the terms hereof is payable to any one or more of the Beneficiaries shall be so payable on or after any time following a time that such Beneficiary has, by specific general assignment, transfer or otherwise alienated or disposed of, or attempted to alienate or dispose of, his or her right to such income or capital or any part thereof or interest therein;
- (b) if by reason of any attachment, sequestration, execution, writ, judgment, order or other proceeding (including without limiting the generality of the foregoing, any bankruptcy or insolvency proceeding) or by any other means whatsoever the said income or capital or any part thereof or interest therein can no longer be personally enjoyed by any

Beneficiary, or would but for the terms of this Paragraph belong to or become vested in or subject to the control of some other person, persons or corporation, courts or officials, then from and after the happening of any such event the right of such person to receive or be paid the said income or capital shall cease;

but if the reason why any Beneficiary can no longer personally enjoy the income or capital as above-mentioned ceases, then in such case the income or capital shall again be paid over to such Beneficiary until the re-occurrence of any such event, and so often as any such event shall re-occur the right of such Beneficiary to be paid such income or capital shall cease and the Trustees shall deal with it as above provided. For greater certainty, it is hereby declared that the Trustees shall not be compelled by court order or in any other fashion to exercise their discretion in favour of any Beneficiary whose interest has not vested but who, under the terms of this Indenture but for this provision, is entitled to receive some part or all of the income or the capital of the Trust Estate as the Trustees may in their discretion determine.

5. DECISIONS BY TRUSTEES

5.1 All questions requiring action by the Trustees shall be determined by a majority of the Trustees for the time being in office, such majority to include at least one of the Trustees who is not Lenore Jackson or any corporation or individual "related" to any of Lenore Jackson or any corporation "related" to Lenore Jackson within the meaning assigned to that term in the *Income Tax Act*.

6. INCOME TAX ACT (CANADA) AND INCOME TAX ACT (ONTARIO)

6.1 The Trustees shall have full, absolute and unfettered discretion from time to time and at any time or times to make or not to make any election or elections, determinations, distributions and/or allocations for the purposes of the *Income Tax Act* and the *Income Tax Act (Ontario)* or any similar legislation of any other jurisdiction in force from time to time as they in their absolute discretion deem to be in the best interests of the Trust Estate and/or the Beneficiaries, whether or not such election or elections, determinations, distributions, and/or allocations may or would have the effect of conferring an advantage on any one or more of the Beneficiaries or could otherwise be considered but for the foregoing as not being an impartial exercise by the Trustees of their duties under the Indenture or as not being the maintaining of an even hand among the Beneficiaries, and all such exercises of their discretion shall be binding upon all the Beneficiaries and shall not be subject to question by any person, official, authority, court or tribunal whatsoever or whomsoever, provided the Trustees acted bona fide in the exercise of such power.

Without in any way restricting the generality of the foregoing, the Trustees are authorized from time to time to join with any Preferred Beneficiary in making any election, in the prescribed manner, pursuant to any provisions of the *Income Tax Act* enabling them to do so, in order to allocate for purposes of the *Income Tax Act* the whole or any part of the accumulating income in

any taxation year to such Beneficiary. In addition to all other powers conferred upon them by other provisions of this Indenture, the Trustees are authorized at any time to pay to any Preferred Beneficiary an amount out of the accumulating income in any year sufficient to enable such Beneficiary to pay any increased liability of his or hers under the *Income Tax Act* resulting from any election made by such beneficiary and the Trustees pursuant to any provisions of the *Income Tax Act* enabling them to do so, whereby some or all of the accumulating income for that taxation year is allocated to such beneficiary for income tax purposes. Where the Trustees consider it to be in the interests of an infant Preferred Beneficiary, the Trustees are authorized to execute on behalf of such beneficiary an election, in the prescribed manner, pursuant to any provisions of the *Income Tax Act* enabling them to do so, in order to allocate for purposes of the *Income Tax Act* the whole or any part of the accumulating income in any taxation year to such beneficiary.

Notwithstanding that the Trustees and a Preferred Beneficiary in respect of any taxation year jointly elect in the prescribed manner and within the prescribed time set out in the *Income Tax Act* that any part of the accumulating income of the Trust for the year is to be included in computing the income of the Preferred Beneficiary for the year for income tax purposes, the Preferred Beneficiary shall not be entitled thereby to any interest of any kind whatsoever in that portion of the accumulating income of the Trust upon which the Preferred Beneficiary and the Trustees may have from time to time so elected to form part of a Preferred Beneficiary's income for income tax purposes.

7. LIABILITY AND INDEMNIFICATION

7.1 Trustees Indemnified - No Liability

It is understood and agreed that each and every Trustee of this Trust (including successor Trustees) shall be deemed to have assumed his or her office on the express understanding and agreement and condition that each Trustee of this Trust from time to time and his or her heirs, executors, administrators and estate and effects respectively shall, from time to time, and at all times, be indemnified and saved harmless out of the funds of the Trust Estate from and against all claims, including costs, charges and expenses in connection therewith, whatsoever which are brought, commenced or prosecuted against him or her for or in respect of any act, deed, matter or thing whatsoever made, done, permitted by him or her to be done, or omitted in or about the execution of the duties of his or her office, and also from and against all other costs, charges and expenses which he or she sustains or incurs in or about or in relation to the affairs of the Trust, except wrongful acts or breaches of this Indenture, and the Trustees shall not be liable for any error in judgment.

7.2 No Deemed Indemnity of One Trustee by Another

No Trustee shall be deemed to have indemnified any other Trustee or Trustees against any losses, costs, claims, charges or expenses brought against or sustained or incurred or suffered by any other Trustee who has guaranteed or is personally liable for any debt or other obligation of the Trust, notwithstanding that such debt or obligation is incurred or assumed for the benefit of

and in the operation of the Trust, unless such indemnification shall be in writing executed by that Trustee or those Trustees so indemnifying the Trustee or Trustees becoming liable as aforesaid, in their or his or her personal capacity; provided, however, that the Trustees are authorized from time to time to give indemnities from the Trust to any Trustee who has undertaken or is about to undertake any liability on behalf of the Trust or any other person, or firm, or corporation in whom the Trust is interested, and to secure such Trustee (or any other person undertaking any liability on behalf of the Trust) against loss, by mortgage, pledge of, or charge upon the whole or any part of the real and personal property constituting the Trust Estate, by way of security.

7.3 No Liability unless Wrongful Act

No Trustee shall be liable for the acts, omissions, receipts, neglects or defaults of any other Trustee or person, firm or corporation employed or engaged by the Trust, or for joining in any receipt or act of conformity, or for any loss, damage or expense occasioned by the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be placed out or invested, or for any loss or damages arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any monies, securities or property of the Trust shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on his or her part, or for any other loss, damage or misfortune which may happen in the execution of the duties of his or her respective office or in relation thereto, unless the same shall happen by or through his or her own wrongful act.

7.4 May Rely upon Reports

The Trustees may rely and act upon the accuracy of any statement or report prepared by the auditors for the Trust or any report or opinion from any solicitor for the Trust, and shall not be responsible or held liable for any loss or damage resulting from acting upon such statement, opinion or report.

7.5 Lien on Trust Property

The Trustees jointly shall have a first and paramount lien charge on all of the assets from time to time comprising the Trust (subject only to any specific charge or security from time to time given by them in the carrying out of this Trust) as security to them for the payment of all sums and monies which the Trust Estate is charged with paying to them pursuant to the indemnities and protection of their personal estates as provided in this Article and elsewhere in this Indenture. Such lien shall extend to cover and include the capital of the Trust as well as the income therefrom and the future income of the Trust Estate.

For the purpose of enforcing such lien, and in the event that the cash, or income or capital of the Trust Estate in the hands of the Trustees shall at any time, or from time to time, be insufficient for the payment of monies properly due to the Trustees as in this Indenture provided, or as by law provided, then in each such event, and from time to time, the Trustees shall be entitled to sell all or such portion of the Trust Estate and assets comprising the Trust Estate as may be necessary to pay and discharge the monies so payable, and to utilize the proceeds of any such sale for such purpose.

7.6 No Liability for Losses

No Trustee purporting to act in the execution of the Trusts or in the purported exercise of the power and authority hereby conferred or in performing any duties herein imposed shall be liable for any loss unless it be proved that such loss is directly attributable to his or her own dishonesty or to his or her own wrongful act of commission or omission, and known by him or her to be a breach of the terms of this Indenture and, in particular, no Trustee shall be bound to take any proceedings, whether in court or otherwise, against any other Trustee for any breach or alleged breach of Trust committed by any such Trustee, unless he or she shall first receive a full and complete indemnity from the Trust and the Beneficiaries for the time being thereof and an actual cash deposit of his or her costs and expenses in connection therewith.

7.7 Indemnity for Fines Penalties, Damages, etc.

Should the Trustees, for any reason, fail to assess or report or pay any taxes that may be subject to assessment or payment during the currency of this Trust, and for which the Trustees might be responsible, the Trustees shall not be liable for any such failure; and in the event that the Trustees should be called upon to pay any such taxes, or penalties, or other charges thereon, any such money so paid out by the said Trustees shall be returned to them out of the income of the Trust Estate, and if the capital and income have been expended by the Trustees before such payment or disbursement, then and in that event, there shall be refunded to the Trustees out of the capital of the Trust Estate all such monies paid out and expended by them. This provision for indemnity and reimbursement shall also extend to and apply to any other fines, levies, assessments, and damages levied against the Trustees, whether by a court or otherwise, in respect of or arising out of any matter or thing done or omitted to be done in connection with the management and operation and administration and carrying out of this Trust.

7.8 Not Liable for Debts

The Trustees shall not be personally liable for any monies that become due or for any claims against the Trust or upon any investment executed by the Trustees under the provisions hereof, but the Trustees shall have power to bind the Trust Estate without rendering themselves personally liable. The legal title to all property belonging to the Trust shall be and remain vested in the Trustees and their successors until the termination of this Trust as provided by this Indenture.

7.9 Insurance Policies

The Trustees shall not be responsible for the form, genuineness, validity, sufficiency or effect of any policy of insurance at any time forming part of the Trust Estate, or for the act of any person which may render any policy null and void, or for the failure of the insurance company or issuing body to make payment under such policy when proceeds thereunder become due and payable, or for any delay occasioned by reason of any restriction or provision contained in any such policy, or if for any reason (other than failure to pay premiums as provided for in this Trust) any policy shall lapse or the proceeds thereunder otherwise become uncollectible; provided that the Trustees

shall be liable for the payment of premiums only to the extent of the assets from time to time available in their hands to satisfy the premium payments.

7.10 Exercising of Discretions

Every discretion or power in this Indenture or by law conferred on the Trustees shall be an absolute and uncontrolled discretion or power and no Trustee shall be held liable for any loss or damage occurring as a result of the Trustee's concurring or refusing or failing to concur in an exercise of any such discretion or power.

8. DELEGATION OF AUTHORITY OF TRUSTEES AND EXECUTION OF DOCUMENTS

8.1 Limited Right to Divide and Delegate Amongst Selves

The Trustees may divide the duties of their offices between them as they may from time to time deem advisable, and further, any Trustee, with the consent of his, her or its Co-Trustee or Co-Trustees may be relieved of any and all powers, duties and discretions in and by this Indenture vested in or imposed upon him, her or it, by delivering to the other Trustee or Trustees an instrument in writing delegating the same, or any part thereof, to such other Trustee or Trustees (being the remaining Trustee or Trustees) and any act done or decision made pursuant to such written instrument shall be binding upon and not subject to question or challenge by any person whomsoever. The Trustees, by instrument in writing, may provide that only one or more of their number may exercise any and all powers, duties and discretions vested in them jointly, but provided always, that any such delegation of powers, duties and discretions shall only relate to the management and administration and operation of the Trust or any property, business, firm, investment or other asset in which it is interested, and shall under no circumstances apply or permit the delegation of any power, duty or discretion vested in the Trustees in relation to the power to appoint or advance income or capital of the Trust Estate to or amongst any one or more of the Beneficiaries herein.

8.2 Execution of Documents

No contract, document, instrument, promissory note, bill of lading, commercial instrument or other paper writing required to be signed, made on behalf of the Trust and purporting to bind the Trust, shall in fact be binding upon the Trust unless the same is executed in the manner and by the person or persons designated from time to time by the Trustees, and only those contracts, documents, instruments, promissory notes, bills of lading, commercial instruments or other paper writings required to be signed, executed in the foregoing manner shall be valid and binding upon the Trust without further authorization or formality; provided, however, that the Trustees for the time being acting unanimously shall be entitled to vary, alter or amend the provisions contained in this Paragraph, from time to time, and the Trustees shall be entitled in any specific instance to authorize any one or more of their number or any other person, firm or corporation to execute contracts, documents and instruments in writing and cheques, drafts, or orders for payment of

money, and notes, and acceptances and bills of exchange in relation to any accounts operated on behalf of the Trust at any chartered bank or trust company or other financial institution.

8.3 Incapacity of a Trustee

In the event that any Trustee herein shall be so incapacitated by reason of illness or infirmity that he or she is temporarily incapable of acting as a Trustee hereunder and of empowering any other Trustee hereunder to act on his or her behalf as aforesaid, then the other Trustee or Trustees hereunder may act on behalf of the Trustee so incapacitated and any act so performed by the other Trustee or Trustees hereunder shall be as valid and effectual as though the Trustee who is incapacitated had concurred therein, but the incapacitated Trustee shall not be responsible for any loss occasioned by any act of the Trustee or Trustees who shall have acted on his or her behalf. Provided that if the incapacitation of any Trustee be permanent (and for this purpose, but without limiting the generality of the meaning of the term "permanent incapacitation", ninety (90) days of being unable to act shall be deemed to be a permanent incapacitation) then the Trustee shall be deemed to be unable to act and the provision for substitution of a Trustee shall become applicable.

9. RECORDS AND ACCOUNTING

9.1 Trust Records and Limit on Duty to Account

The Trustees shall keep or cause to be kept such records and books of account with respect to the Trust Estate as in their absolute discretion they deem to be adequate to reflect the transactions and dealings of and the assets and liabilities of the Trust.

9.2 Successor not Liable for Predecessor Trustee

No successor Trustee shall be required or be under any duty to examine, question or verify, or audit the books, records or accounts of any predecessor Trustee, and it shall not be necessary for any Trustee who resigns or is removed from office hereunder, or for any other reason, including his or her death, is no longer a Trustee, to account for his or her protection to anyone, provided that the said Trustee or his or her estate, as the case may be, shall have received a release signed by any one of the remaining Trustees who continue in office.

9.3 Final Accounting on Termination and Release

Upon the final termination of the Trusts created under this Trust Indenture, the Trustees shall render a final account and report to the Capital Beneficiaries entitled to receive the Trust Estate at such time and shall be entitled to require such Capital Beneficiaries, prior to the distribution of the Trust Estate in accordance with the provisions of this Indenture, to release and discharge the Trustees of and from every and any claim, demand, accountability, or liability, of every nature whatsoever, and by whomsoever asserted, arising from any matter or thing done or omitted to be done in connection with the agreement or any Trust created by this Indenture, or the administration of any such Trust, during the period in respect of which the account of the

Trustees is being submitted. Every such settlement, release and discharge shall be conclusive and binding upon, and shall be an absolute protection of the Trustees against all claims of any Income Beneficiaries, remaindermen, or other persons who might then or thereafter have or claim any interests under this Indenture, and no such Income Beneficiary, remainderman, or other person shall have any right of accounting or claim, or any cause of action against the Trustees arising from any matter or thing done or omitted to be done in connection with this Indenture or any Trust created by this Indenture or the administration of any such Trust during any such period in respect of which the account of the Trustees shall be so settled.

10. REPLACEMENT OF TRUSTEES AND PERSONS ENTITLED TO APPOINT TRUSTEES

10.1 Incompetency – Bankruptcy - Residency

The office of Trustee shall be ipso facto determined and vacated if any Trustee, being an individual, shall be found to be a mentally incompetent person, or shall enter into bankruptcy or insolvency proceedings (whether voluntary or compulsory) or if he or she shall be declared bankrupt or insolvent, or if such Trustee, being a corporation, shall enter into liquidation, whether compulsory or voluntary (not being merely a voluntary liquidation for the purpose of amalgamation or construction). Notwithstanding the provisions of the *Trustee Act (Ontario)* or any statutory provisions from time to time in force of the same or like effect, no person who from time to time may be a Trustee hereof whether original, substituted or additional, shall at any time be required to be a resident of the Province of Ontario or of the Dominion of Canada.

10.2 Resignation in Writing

Each Trustee has the power and authority to resign his or her Trusteeship at any time during the continuance of the Trust, by directing a letter in writing served personally, or by prepaid registered mail, to that effect to any other Trustee for the time being and to the persons entitled to appoint Trustees, and only such resignations submitted in the foregoing manner shall be of any effect whatsoever in permitting a Trustee to resign and withdraw from this Trust. The said resignation shall be effective from the date on which the said resignation states that it is to be effective, or if it does not state a date, then it shall be effective from the date upon which such resignation is so received.

The persons entitled to appoint Trustees have the power and authority to request the resignation of a Trustee at any time during the continuance of the Trust, by directing a letter in writing served personally, or by pre-paid registered mail, to that effect to the said Trustee. The said Trustee shall be deemed to have resigned effective from the date on which the said letter states that the resignation is to be effective, or if it does not state a date, then the deemed resignation shall be effective from the date of the said letter.

10.3 Appointment of New Trustee

If any Trustee resigns from this Trust either pursuant to a request by the persons entitled to appoint trustees in Paragraph 10.2 or otherwise, or by the terms of this Indenture becomes incapable of acting as a Trustee (hereinafter called the "Departing Trustee"), the persons entitled to appoint Trustees shall appoint a new Trustee to replace such Departing Trustee, such appointment to be effective on a date contemporaneous with the date of the Departing Trustee's incapacity or resignation. Every person so appointed as a Trustee hereunder shall, as well before as after the Trust Estate becomes by law or by acceptance or otherwise vested in him or her, have the same powers, authorities and discretions, and may in all respects act as if he or she had been originally appointed a Trustee by this Agreement.

10.4 No Interference by Beneficiary

No Beneficiary, in their capacity as a Beneficiary, of this Trust shall be entitled to interfere in the selection, removal, resignation and appointment of successor Trustees under this Indenture.

10.5 Property Vests in Successor Trustee

The title of the Trust Estate held by any Trustee who is no longer in office shall vest forthwith in any successor Trustee, without further formality but, in any event, if requested, any resigned or removed or otherwise retired Trustee shall execute all instruments and do all acts necessary to vest such title as he or she may have had in the Trust Estate in any successor Trustee of record, without court accounting or other formality.

10.6 Continuing Indemnity to Former Trustees

All indemnities, protection and liens granted to the Trustees under this Indenture shall continue to run in favour of any Trustee who is no longer holding the office of Trustee, in respect to any losses, claims, damages, expenses, guarantees or other obligations endured, suffered, expended or occasioned by him or her during such time as he or she was a Trustee, or which may continue notwithstanding that he or she is no longer a Trustee, in the same manner as though he or she were still a Trustee.

10.7 Notice of Change

Notices of all changes in Trusteeship by reason of the appointment of a new trustee in accordance with the provisions of this Indenture shall be executed by the party entitled to replace a Trustee or fill a vacancy in the office of Trustee in accordance with the provisions of this Indenture. Notices of all other changes in trusteeship shall be endorsed on or attached to this Agreement and shall be signed by the surviving or continuing Trustees. Each such notice shall be sufficient evidence to any person having dealings with the Trustee for the time being hereof as to the facts to which it relates.

10.8 Incapacity of the Persons Entitled to Appoint Trustees

In the event that all persons entitled to appoint Trustees (hereinafter called the "Disabled Persons") shall be so incapacitated by reason of illness or infirmity that they are temporarily incapable of acting hereunder, then a new person entitled to appoint Trustees or persons in respect of whom such authority may be jointly vested, if any, (hereinafter called the "Other Person"), may act on behalf of the Disabled Persons so incapacitated and any act so performed by the Other Person shall be as valid and effectual as though the Disabled Persons had concurred therein, but the Disabled Persons shall not be responsible for any loss occasioned by any act of the Other Person who shall have acted on their behalf. Provided that if the incapacitation of any Disabled Persons be permanent (and for this purpose, but without limiting the generality of the meaning of the term "permanent incapacitation", ninety (90) days of being unable to act shall be deemed to be a permanent incapacitation) then such person shall be deemed to be unable to act and the provision for substitution of such person shall become applicable.

10.9 The persons entitled to appoint Trustees shall be deemed to be incapable of acting as persons entitled to appoint Trustees hereunder and a new person entitled to appoint Trustees shall be automatically substituted or appointed in accordance with this Article and Paragraph *1.14* hereof upon the death or incapacity of such person entitled to appoint Trustees (or both such persons entitled to appoint Trustees, if jointly named), if such person (or both such persons, if jointly named) shall enter into bankruptcy or insolvency proceedings (whether voluntary or compulsory) or shall be declared bankrupt or insolvent or are desirous of being discharged from the position of persons entitled to appoint Trustees or refuse to so act or continue to act, or (being a company) is put into liquidation (whether voluntary or compulsory) or shall enter into bankruptcy or insolvency proceedings (whether voluntary or compulsory) or otherwise ceases to exist or passes a resolution to the effect that it or they desire to be discharged from the position of persons entitled to appoint Trustees.

10.10 Whenever occasion arises for appointing new persons entitled to appoint Trustees, such new persons entitled to appoint Trustees shall be appointed by deed in writing or by Will or Codicil signed by the persons entitled to appoint the persons entitled to appoint Trustees or his or her delegate as provided for in Paragraph *1.14* and the same shall be effective at the later of the time that the persons entitled to appoint Trustees is by the terms of this Indenture unable to act as persons entitled to appoint Trustees hereunder, and when the document or certified copy thereof effecting the appointment is received by the Trustees who shall cause a memorandum of such appointment to be attached to this Indenture.

10.11 If at any time there is for a period of six months where no persons are entitled to appoint Trustees, the Trustees shall, from the expiration of that period and unless and until any persons entitled to appoint Trustees are appointed, have power themselves to appoint a person other than one of the Trustees to be the persons entitled to appoint Trustees and any appointment duly made by them under this power shall have effect in all respects as if it has been duly made in accordance with this Article.

10.12 If and whenever and so long as there is no persons entitled to appoint Trustees capable of acting, a memorandum to that effect shall be endorsed on, or permanently attached to, this

Indenture and all the provisions of this Indenture shall be read and have effect as though references to the persons entitled to appoint Trustees or the consent of the persons entitled to appoint Trustees were omitted.

10.13 Save as otherwise provided in this Indenture, if at any time there shall be more than one person or corporation holding the office of persons entitled to appoint Trustees or any of the powers or rights appertaining thereto, they shall be required to be unanimous in discharging such office or exercising such power or powers.

10.14 The persons entitled to appoint Trustees shall not owe any fiduciary duty towards nor be accountable to any person or persons from time to time interested hereunder nor to the Trustees for any act of omission or commission of the persons entitled to appoint Trustees in relation to the powers given to the persons entitled to appoint Trustees by this Indenture to the extent that the persons entitled to appoint Trustees shall (in the absence of fraud or dishonesty) be free from any liability whatsoever in relation to such powers.

10.15 The persons entitled to appoint Trustees shall be entitled to reimbursement of all proper expenses incurred by them in relation to the performance of their powers and duties hereunder and to reimbursement of any expenses incurred in the prosecution or defense of any legal proceedings or in seeking counsel's opinion arising in connection with the exercise or non-exercise of their powers and duties hereunder.

11. TRUSTEES' POWERS

11.1 Widest Latitude and Discretion

The term "powers", as used in this Paragraph, shall be deemed to mean and include those things which the Trustees may, in their sole and absolute discretion, do or refrain from doing in the management, supervision and carrying out of this Trust, and the doing or refraining from doing of any act shall not violate any duty to any Beneficiary, or potential Beneficiary, whether of capital or of income of the Trust Estate. Any powers specifically expressed herein shall be deemed to be in addition to all inherent powers which the Trustees otherwise would have by law, and shall be in addition to any powers necessarily or reasonably implied from the terms of this Indenture. The Settlor hereby states and declares that it is the intention that in the management, operation, supervision, administration and carrying out of the terms of this Indenture, the Trustees are to have the widest possible latitude and discretion, and in carrying out their rights and duties hereunder, the Trustees shall have all the powers and capacities that a natural person would have in the investment, management, supervision and administration of his or her own properties, except as limited by the terms of this Indenture.

11.2 Trust Deed Self-Contained

The Trustees shall be entitled to exercise their said powers and authority in their sole and absolute discretion, whenever, and as often, from time to time, as they shall deem advisable until actual and final distribution of the Trust Estate and the termination of the Trust, without

application to or approval by any court, or “Children’s Lawyer” or like official, for any province or state or country, and as to which their judgment shall be final and binding upon all parties interested or potentially interested in this Trust, and no person, firm or corporation having any dealing with the Trustees or the Trust shall be charged with any duty to enquire into the propriety of or the authority for any action, deed or thing done by the said Trustees.

11.3 Powers not Exhaustive

It is further agreed that where, by any provisions of this Indenture, whether expressed or implied, or by any inherent power and authority of the Trustees, an authority or power is conferred upon or is exercisable by the Trustees, or a duty is imposed upon the Trustees, such authority or power shall be exercisable and such duty shall be performed by such Trustees, as there may be from time to time, and as the Trustees in their sole and absolute unfettered discretion determine, and it is further provided that no single exercise of any such power or authority and no one performance or non-performance of any such duty shall be taken to exhaust any such power or authority or to be a complete performance of any such duty where a continued performance thereof shall be necessary, desirable or requisite in the sole and unfettered discretion of the Trustees.

11.4 General and Specific Powers

In order to remove any doubts, and for the sake of greater clarity and certainty, but without in any way limiting the generality and broadness of the powers hereinbefore or hereinafter elsewhere in this Indenture conferred upon the Trustees (and the parties hereto do hereby further declare and agree that the rule of law “expressio unius, exclusio alterius” shall not be applied in the interpretation of this Indenture to curtail or limit in any way the generality and broadness of the powers conferred upon the Trustees) the Trustees shall have, and are declared to have the following powers and authorities:

Investments

11.4.1 To invest and reinvest the Trust Estate and sell (whether by public or private sale and whether for cash or on credit or partly for cash and partly on credit), assign, transfer, mortgage, pledge, hypothecate or otherwise encumber the Trust Estate or any part thereof at any time or times and to make such reinvestment of the proceeds of any such transaction as the Trustees in their absolute discretion may deem expedient or advisable and it is especially declared that the Trustees may make or retain any investments which they consider advisable notwithstanding that such investments may not be in the form of investments in which Trustees are authorized to invest trust funds.

11.4.2 To retain any property as an investment, without regard to the proportion such property or property of similar character so held may bear, to the entire amount of the Trust Estate. If securities or other property at any time constituting a part of the Trust Estate shall come to be regarded as speculative, nevertheless, the Trustees are authorized to retain such securities or other property in their discretion either for salvage or for permanent holding and, in either case, such retention may be for the duration of the trust or trusts and the Trustees are expressly

relieved from any obligations to dispose of the same by reason of such happening. Upon reinvestment of any of the funds of the Trust Estate, the same may be reinvested by the Trustees in such securities or other assets as the Trustees may determine, whether or not the same be legal for investment of trust funds.

Sale and Disposal

11.4.3 To sell any part of the Trust Estate for cash or upon credit or part credit with or without security.

11.4.4 To abandon any property, real or personal, which the Trustees shall deem to be worthless or not of sufficient value to warrant keeping or protecting; to abstain from the payment of taxes, rents, assessment, repairs, maintenance and upkeep of any such property; to permit any such property to be lost by tax sale or other proceedings, or to convey any such property for a nominal consideration or without consideration.

Companies

11.4.5 To incorporate any company or companies under the laws of any jurisdiction in the world, including without limitation, any state, nation, country, province and principality at the expense of the Trust Estate for the purpose of investing the whole or any part of the Trust Estate wholly or partly in shares or other securities of such company or companies.

11.4.6 To retain in their existing form as investments of the Trust Estate for so long as the Trustees in their discretion shall see fit any shares, bonds, debentures, securities or other evidences of indebtedness in any company without being responsible for any loss occasioned thereby.

11.4.7 To vote in person or by proxy upon the securities held by them and to delegate their discretionary powers in respect thereof, to exercise options, conversions, privileges or rights to subscribe for additional securities attaching to any securities held by them and to make payment therefor and to consent to or participate in dissolutions, reorganizations, consolidations, mergers, pooling agreements, reconstructions, amalgamations, voting trusts, or sales affecting securities of companies held by them and in such connection to delegate their discretionary power and pay assessments, subscriptions and other charges; and to vote for the election of themselves or of any one or more of themselves to any executive office or to membership on any board of directors or executive or other committee of any such corporation or association, and to serve in any such office or on any such board or committee and accept and receive remuneration for such services without diminution of their compensation as fiduciaries hereunder and without being required to account therefor; to grant proxies, discretionary or otherwise, in connection with any shares of a corporation, to vote at meetings of shareholders or of directors; to transfer shares to the Trustees or any of them or to other individuals for the purpose of representation and for the purpose of the appointment of such persons as directors and/or officers.

11.4.8 To unite with other owners of property similar to any which may be held at any time in this Trust (or property which can be conveniently dealt with jointly) in carrying out any plan for

the consolidation, subdivision or merger, dissolution or liquidation, foreclosure, lease or sale of the property, incorporation or reincorporation, reorganization or readjustment of the capital or financial structure of any corporation, company or association the securities of which may form a portion of this Trust; to become and serve as a member of any stockholders' or bondholders' or creditors' protective committee; to present proposals; to oppose proposals presented; to approve or disapprove what is discussed, and to protect against any matter or thing which the Trustees might consider contrary to the best interest of this Trust; to deposit securities in accordance with any plan agreed upon; to pay any assessments, expenses and sums of money that may be required for the protection or furtherance of the interests of the Beneficiaries of this Trust with reference to any such plan; and to receive and retain as investments of this Trust any new securities issued as a result of the execution of such plan, whether or not they would be authorized investments but for this provision of this Indenture.

Realty and Personalty

11.4.9 To manage real property entrusted to them or from time to time held by them hereunder and to make such ordinary and extraordinary repairs and such alterations and improvements thereon as they shall deem advisable; to raze buildings and erect new buildings; to subdivide and plot real property; to lay out real property; to lay out and dedicate ways and public places; to grant or release easements; and to enter into any agreement of any kind with respect to real property including, without limitation, partition, party wall and boundary line agreements; and agreements of any other kind with respect to real property; to make any payment for repairs, alterations and improvements or in connection with management out of principal or out of income or partly out of principal and partly out of income, as they shall deem proper.

11.4.10 To lease or license at any time and from time to time real property or interests in real property entrusted to them or from time to time held by them hereunder for such term or terms of months or years, to begin presently or in the future, as to them may seem proper, even though such lease, leases, license or licenses shall be for a term or terms exceeding that especially authorized by law and be beyond the time of the termination of a Trust Estate herein created, such leases or licenses to be with such options to the lessees or licensees of renewal and/or purchase or for the purchase or disposal of buildings therein or to be placed thereon, and upon such covenants, terms, conditions, agreements, and provisions as to them shall seem proper; and in connection therewith to make, execute, acknowledge and deliver any and all instruments that may be necessary, proper or desirable, including, without limiting the generality of the foregoing, powers of attorney.

11.4.11 To renew and keep renewed any mortgage or mortgages upon any real or personal property.

11.4.12 To acquire, from time to time, and in any manner whatsoever, any whole or fractional or undivided interest or interests in any real, or personal, movable, or immovable property or properties, including, without limiting the generality of the foregoing, any whole or fractional or undivided interest or interests with other persons, both individual and corporate or trusts or estates, as tenants in common, as joint tenants or as partnership property or howsoever.

11.4.13 To partition and to appropriate any real or personal property forming part of the Trust Estate in its then actual condition or state of investment in or towards satisfaction or payment of any share in the Trust Estate and to charge any share therein with sums by way of equality of partition. And for these purposes, power to determine the value of the Trust Estate and any part or parts thereof in any manner the Trustees see fit. Any such valuation as aforesaid, notwithstanding any fluctuation in market value, shall be final and binding upon all Beneficiaries of the Trust, notwithstanding that one or more of such Trustees may be beneficially interested in the property appropriated or partitioned.

11.4.14 To release any property affected by charge or mortgage in whole or in part for such consideration or without consideration as the Trustees may consider proper and to give a discharge thereof.

11.4.15 To insure the Trust Estate against fire, casualty or other loss or liability and to bond agents and employees; and to purchase and pay the premiums on policies of insurance against fire, other casualty or public liability or other insurance of a similar character, but they shall not be liable for any omission to purchase any insurance or to purchase a particular amount of any type of insurance.

11.4.16 Out of rents, profits, interest or other income received, to set up reserves for taxes, assessments, insurance, repairs, depreciation, obsolescence, and general maintenance of buildings, and any other property forming part of the Trust, and for such other purposes as reserves might properly be established for the due carrying on of the purposes and intent of this Trust.

Business and Commercial Ventures

11.4.17 To enter into partnership or limited partnership for the purpose of carrying on any business or holding or investing any property, real or personal, movable or immovable, as a partner, as a general partner or as a limited partner and to enter into any arrangement for sharing profits, union of interest, co-operation, joint venture, reciprocal concession, syndication or otherwise with any person, firm, trust, estate or corporation, and for any such purposes, to appoint attorneys, managers and others with full power to carry out such purposes.

11.4.18 Without being liable for any loss occasioned thereby, to carry on any business either alone or in partnership with any person or persons, corporations, trusts, or estates who may be a partner or partners therein for the time being for such length of time as the Trustees in their discretion may consider to be in the best interests of the Trust; and to do all things necessary or advisable for the carrying on of any such business or businesses (and without limiting the generality of the foregoing) the Trustees shall have the following special powers:

- (a) power to employ in any such business or businesses or to withdraw therefrom all or any part of the capital of the Trust Estate from time to time with or without taking security; and to employ in the conduct of any such business, enterprise, investment or venture such portion of the capital or income of the Trust Estate as they deem necessary;

- (b) power from time to time upon the expiration of the term of any partnership to renew the same for any period determined or otherwise and at any time or times to vary all or any of the terms contained in any partnership articles;
- (c) power to arrange and agree for the introduction at any time or times of any person or persons as a partner or partners therein and as to the division of the profits thereof or the payment of any sum in lieu of profits to any partner and as to the hiring or employment of any person or persons therein (including any one or more of the Trustees) at such salary or remuneration as the Trustees in their discretion may think proper and as to the extension or curtailment of any such business or the adoption of any new line of business.

11.4.19 With respect to any business, enterprise or investment or venture which the Trust may own or be financially interested in the Trustees shall be empowered and authorized to delegate such duties, with the requisite powers, to any employee, manager, or partner, or otherwise as they may deem proper, without liability for such delegation; and to employ in the conduct of any such business, enterprise, investment or venture any such persons, firms or corporations as they deem necessary and to remunerate such employees; and to borrow money for any such purpose, either alone or along with other persons financially interested in the said business, enterprise, investment or venture and to secure such loan or loans by a pledge or mortgage not only of the property or interest in the business but also of any part of the Trust, as the Trustees may deem proper; and generally, to exercise with respect to the continuance, management, sale or liquidation of any business, or business interest, or enterprise, investment or venture all the powers which a natural person could have exercised, the intention of the Settlor being to grant to the Trustees every power which can be delegated.

11.4.20 The net annual profit of any such business, or the share of the Trust Estate in such net annual profit, shall be deemed to be income of the Trust Estate. The Trustees in computing such profits shall observe usual commercial accounting practice applicable to any such business and may set aside such reserves as the Trustees in their discretion consider appropriate and may take the allowances and adjustments proper in any type of business. Provided nevertheless that the Trustees' decision as to the amount of the net annual profit of any such business shall be final and binding upon all Beneficiaries of the Trust.

Insurance

11.4.21 To retain any life insurance policy entrusted to them or from time to time held by them hereunder; to purchase insurance on the life of any Beneficiary hereunder or on the life of anyone and to select such type of policy and mode of premium payments as they may deem advisable. To accept as assignee, for a consideration or as a donation, any policy of life insurance; to exercise all rights with regard to such retained or acquired insurance as the policy contracts grant to the owner thereof; to pay premiums on such policies either out of the capital or out of income or partly out of capital and partly out of income as they shall deem proper; to name as beneficiaries of said policies either the Trust, or the Beneficiaries hereof, in accordance with their respective interests in the Trust, either as irrevocable or ordinary beneficiaries, to purchase annuities for one or more Beneficiaries in accordance with their respective interests in

the Trust and to select such type of annuity and mode of payment therefor as they may deem advisable.

11.4.22 All terms of the life insurance policy or policies obtained by the Trustees and all provisions as to the time and manner of payment of any money for premiums that shall come due thereunder shall be decided solely in the discretion of the Trustees and the company or companies respectively issuing such policy and such company or companies shall be fully released and discharged by the payment to the Trustees of all monies that may be due or payable at any time under the said policies and shall be under no liability to the Settlor or to the Beneficiaries in connection therewith.

11.4.23 If at any time or times the Trustees in their absolute discretion consider that it is no longer advisable to continue to maintain in force or to hold any life insurance contract as part of the Trust Estate, to dispose of such life insurance contract in such manner, at such time, for such price and upon such terms as they in their absolute discretion consider advisable.

Borrowing and Lending

11.4.24 To lend the Trust Estate or any part thereof upon any security which they may deem sufficient or upon no security whatever.

11.4.25 To enter into guarantees or indemnifications for the benefit of the Beneficiaries and persons, firms or corporations other than the Beneficiaries and to give security therefor as the Trustees may in their discretion decide.

11.4.26 To borrow money from themselves individually or from others, either without security or upon the security of any of the property, real or personal, entrusted to them or from time to time held by them hereunder, for such purposes and upon such terms and conditions as they shall deem advisable and without limiting the generality of the foregoing, for the payment of taxes, debts, duties, legacies or expenses and to mortgage, pledge, hypothecate or otherwise encumber, any or all of such property to secure the repayment of money borrowed; and to extend or modify any such encumbrances.

Administration

11.4.27 Wherever the Trustees may be directed or authorized to pay or apply the annual net income of the Trust Estate to one or more Beneficiaries alive at the end of any year, the Trustees may pay such annual net income in annual or more frequent periodic payments during such year, and for such purposes the Trustees at any time or times during such year are hereby specifically authorized and empowered to make reasonable estimates of the annual net income for such year in order to ascertain the amount of the annual net income which has accrued to the date of such periodic payment. In the event that the annual net income shall in fact be less than the amount so paid to the Beneficiaries during such year, the Trustees shall not be responsible for any such deficiency. And further, the Trustees shall not be responsible for any payment of income to any Beneficiary during such year as aforesaid in the event that such Beneficiary should not be alive at the end of such year, and the Trustees shall not be obliged to take any steps

to recover any such payments. And further, the recipient of any such amounts shall not be liable to the Trust or any Beneficiary thereof.

11.4.28 Any Trustee who, or whose wife, husband or issue, may be interested pecuniarily or otherwise in the result of any exercise of a discretion vested in the Trustees may, if he or she so thinks fit (but shall not be obliged to), leave the real exercise of such discretion to his Co-Trustees, or Co-Trustee, for the time being, concurring therein merely as a formal party.

11.4.29 To compromise, settle, waive or pay any claim or claims at any time due to or due by the Trust for such consideration, and upon such terms and conditions as the Trustees may deem advisable, and to refer to arbitration all such claims if the Trustees deem same advisable.

11.4.30 To institute and defend proceedings at law and to proceed to the final determination thereof or compromise the same as the Trustees shall consider advisable.

11.4.31 To determine all questions and matters of doubt which may arise in the course of the management, administration, realization, liquidation, partition or winding up of the Trust.

11.4.32 To dispense with the making of any provisions for or on account of any monies paid as premiums on the purchase of securities or other property forming part of the Trust Estate.

11.4.33 To register any property in the names of their nominees or in their own names or to hold the same unregistered or in any such form that title shall pass by delivery, but without thereby increasing or decreasing their liability as Trustee.

11.4.34 To engage in transactions with the Settlor or with any of the Trustees, provided that such transactions are in the opinion of the disinterested Trustee or Trustees on the same basis as might reasonably be negotiated with any stranger.

11.4.35 To hold the Trust Estate or any part or parts thereof at any place or places and to move the same from place to place inside or outside Canada.

11.4.36 To the full extent otherwise permitted by law, to withhold from election and to allocate as between any one or more of the Beneficiaries of this Trust to the exclusion or otherwise of any of them, any or all income tax credits or allowances and other adjustments of a like nature, including without limiting the generality of the foregoing, capital cost allowance, depletion allowance, dividend tax credits and foreign tax credits, and in such manner and proportions as the Trustees in their sole discretion shall from time to time see fit.

11.4.37 In the event of the Trust Estate or any portion thereof becoming liable to or subject to succession duties, probate duties, probate fees, inheritance tax, estate taxes or death duties or any of them, by reason of the death of the Settlor or any other person, and in the event that such deceased person shall not have made alternative arrangements for payment thereof, to pay out of the capital of the Trust Estate the amount of such duties, fees and taxes, and for such purpose to sell such portion of the investments representing the Trust Estate as may be necessary and to charge any monies so paid in such manner as they consider proper.

11.4.38 To employ counsel, solicitors, accountants and agents and to employ persons in any business or trade, to transact any business or trade or professional duty or to do any act in relation to the Trusts hereof, including the execution of documents and the receipt and payment of money, and to determine the amount of their reasonable compensation and to pay the same and to reimburse themselves from and out of income or capital of the Trust Estate as they in their discretion consider proper and to further reimburse themselves from and out of income or capital of the Trust Estate as they consider proper for all other necessarily and properly incurred expenses in the administration of the Trust.

11.4.39 To pay and discharge from and out of the income or capital of the Trust Estate such proper and reasonable brokerage expenses and any other reasonable expenses as may be necessary in connection with the acquisition of suitable investments for the Trust Estate and the disposition of investments representing the Trust Estate or part thereof.

11.4.40 To act on the opinion or advice of or information obtained from any lawyer, financial adviser, valuer, surveyor, broker, auctioneer, or other experts and professional persons, but the Trustees shall not be responsible for any loss, depreciation or damage occasioned by acting or not acting in accordance therewith.

11.4.41 In the event that the income of the Trust Estate in the hands of the Trustees shall at any time or from time to time be insufficient for the payment of monies properly due and payable by or to the Trustees as in this Indenture provided, or as by law provided, then and in each such event, to sell such portion of the Trust Estate as may be necessary to pay and discharge the monies so payable and to utilize the proceeds of any such sale for such purpose.

11.4.42 Either to hold any accumulated income or any part thereof in cash or to invest the same in any investment of the nature and kind hereby authorized.

11.4.43 Notwithstanding anything herein to the contrary contained, to accumulate the annual net income derived from the Trust property and to add such accumulated income to capital to such extent as may be necessary for the purpose of making payment to creditors in respect of the debts and obligations of the Trust.

11.4.44 To create reserves and set up sinking funds out of income or capital or both to meet and retire accrued or accruing taxes, as well as other such things as are generally the subject of reserves, including insurance, repairs, improvements, obsolescence, depreciation, depletion, debts, interest charges, and any other necessary and proper expenditures.

11.4.45 In respect of any such taxes which may, from time to time, be payable, to charge against capital those taxes which appropriately are payable out of capital and against income those which appropriately are payable out of income. In case of doubt as to whether a given tax should be paid out of capital or income or apportioned between them, the Trustees shall be entitled to rely and act upon the opinion of any chartered accountant, and in so doing, such decision shall be conclusive and binding upon all interested parties.

Banking

11.4.46 To open and operate such account or accounts as may be expedient in the opinion of the Trustees and to deposit any cash balances in the hands of the Trustees at any time in any chartered bank or trust company, and, for the purposes of the Trust, to draw, make, endorse, deposit, or deal in, cheques, bills of exchange, promissory notes, drafts, or any other mercantile, commercial or security document of any nature or kind, and to enter into contracts or agreements of any nature or kind, with such bank or trust company and for that purpose the signatures of all Trustees, as Trustees, and not in their personal capacity, shall be valid and binding upon the Trust, and all such forms as may be required to open accounts, operate same and related matters, shall be completed in the required manner and on the forms required by such bank or trust company, and to designate the signing authority for any such account or accounts opened by the Trust and to delegate to the Trustees with such signing authority such powers as the Trustees may determine to be expedient.

12. GENERAL

12.1 Third Parties Dealing with the Trust

Any person dealing with this Indenture may rely upon a copy of these presents and of the notices endorsed thereon or attached thereto certified by the Trustees or the Trustees' solicitor before a Notary Public to the same extent as he might rely upon the original.

12.2 Trustees Relieved of Bonds

The Trustees, wherever resident or domiciled, shall be relieved from giving any bond or security for the administration of this Trust in any part of Canada or any province thereof or in any commonwealth or foreign country or place.

12.3 Trustees in their Professional Capacity

Any Trustee hereunder being a chartered accountant or solicitor or engaged in any other profession or business may make and be paid all usual professional and other charges for work done by him or his firm or any member thereof in relation to the administration of this Trust in the same manner in all respects as if he were not a Trustee hereof, and also his reasonable charges in addition to disbursements for all work and business done and all time spent by him and his firm or any member thereof in connection with matters arising in the premises, including matters which might or should have been attended to in person by a Trustee not being a chartered accountant or a solicitor or other professional person but which such Trustee might reasonably require to be done by a chartered accountant or solicitor or other professional person.

13. INFANTS

13.1 If any person shall become entitled indefeasibly to a share in the Trust Estate before attaining the age of majority, the share of such person and any income derived therefrom shall be held and kept invested by the Trustees, and the income and capital, or so much thereof as the Trustees in their absolute discretion may deem advisable, may be used for the benefit of such person until he or she attains the age of majority.

13.2 Any payment made to any child during the infancy of such child may be made to either parent, guardian, or the acting guardian, whose receipt therefor shall be a sufficient discharge to the Trustees.

13.3 The Trustees shall have, and are declared to have, the power and authority to make any payment which might become payable hereunder to or for any infant, in the exercise of the Trustees' sole discretion, in any one or combination of the following ways:

- (a) directly to such minor;
- (b) directly in payment of the expense of support, maintenance (including, without limiting the generality of anything herein contained, the daily, weekly or monthly costs of shelter, food, or clothing), advancement, betterment, and schooling, development, and medical, surgical, hospital, or other institutional care of such minor (notwithstanding that such infant's parent or parents may also be liable for the support and maintenance of such infant);
- (c) to the natural guardian or legal guardian of such infant;
- (d) to any other person, whether or not appointed guardian of the minor, who shall have the care and custody of the person of such infant.

The Trustees shall not be under duty to see to the application of funds so paid, and the receipt of the recipient of such payment shall be a full and sufficient discharge to the Trustees provided further that such payment, whether it constitutes income of the Trust or capital of the Trust may be made in cash, kind or specie, in the sole and absolute discretion of the Trustees; and provided further that the recipient of such payment shall be at liberty to redeliver such payment to the Trustees, as Trustees for such infant, and in that event, and so often as same shall occur, the Trustees shall hold same, invest same and otherwise deal with it under the same terms and conditions and powers conferred upon them with respect to the original capital of the Trust and any income arising therefrom shall be accumulated by the Trustees, or in their sole and unfettered discretion, paid to or for the benefit of such infant, in the manner hereinbefore referred to in this subparagraph, until such infant shall achieve the age of majority, and as soon thereafter as is reasonably possible, the Trustees shall pay to the said infant all of the said redelivered payments together with any accumulated income as yet unpaid to the said minor earned thereon. Without limiting the generality of the foregoing, such redelivery of such minor's payments may take the form of a loan to the Trust, or to any corporation or firm in which the Trust is interested, or by the purchase of shares, whether common, preferred or of any other class, or other securities

of any corporation in which the Trust is interested, or in which any of the Trustees may be personally interested, or in which any of the parents or guardians of such infant may be interested, and such final payment to such minor upon his attaining the age of majority may also be in cash, specie or kind, or in the form in which the investment may be at the time of ultimate distribution to the infant.

Neither the Trustees nor the person receiving and redelivering to the Trustees any payment for any minor shall be liable to such minor for any loss, neglect, default, damage or reduction in value suffered by such minor or his interest by their having so acted.

14. EXCLUSION OF ILLEGITIMATE RELATIONS

14.1 Unless otherwise specifically provided, any reference in this Trust or in any amendment hereto to a person in terms of a relationship to another person determined by blood or marriage shall not include a person born outside marriage, nor a person who comes within the description traced through another person who was born outside marriage, provided that any person who was born outside marriage but whose parents subsequently married one another or whose parents would be considered spouses within the meaning provided in section 29 of the *Family Law Act (Ontario)* shall not be regarded as a person born outside marriage, but shall be regarded as having been born in lawful wedlock to his or her parents, and provided further, that any person who has been legally adopted shall be regarded as having been born in lawful wedlock to the adopting parent or parents.

15. PERPETUITIES

15.1 Should the rule of law commonly known as The Rule Against Perpetuities apply to this Trust or any part thereof, and but for this paragraph this Trust or any part would be void as a result thereof, then each such trust or part thereof created hereunder shall in any event terminate twenty-one (21) years after the death of the last survivor of such of the Beneficiaries (both of capital and of income) of such trust as shall be living at the time of the execution of this Indenture, and thereupon, the property held in such trust shall be distributed, discharged of trust, to the persons then entitled to the capital in the proportions to which they are or would be entitled under the provisions of this Indenture.

16. COMMUNITY OF PROPERTY

16.1 Any benefit, whether as to income or capital, to which any person is or shall become entitled in accordance with the provisions of this Indenture shall not fall into any community of property which may exist between any such person and his or her consort, but shall only be paid by the Trustees hereunder to such person on condition that the same shall remain the separate property of such person, free from the control of his or her consort. The separate receipt of such person shall be a discharge to the Trustees hereunder in respect of such payment.

16.2 Any interest or income arising from such interest, including any capital gains, passing to a Beneficiary (either an Income Beneficiary or a Capital Beneficiary herein or both) under this trust shall remain the exclusive property of such Beneficiary and shall be excluded from such Beneficiary's net family property as determined pursuant to the *Family Law Act (Ontario)* and any successor or related or similar legislation, or the value of the Beneficiary's assets for purposes of division of property on the Beneficiary's separation, divorce or death.

17. TRUST IRREVOCABLE

17.1 Unless otherwise specified in this Indenture, it is declared that this Trust is irrevocable and that the Settlor, in his or her capacity as a Settlor, is divested of any power whatsoever to revoke this Trust or to modify its terms or to amend this Indenture in any respect whatsoever.

It is further understood and agreed that the Settlor is to receive no benefits whatsoever under and by virtue of this Indenture, nor is the Settlor to have any liabilities or obligations hereunder other than the obligation and covenant to make the settlement and gift to the Trustees as provided in this Trust Indenture, nor is the Settlor to be entitled to request or obtain any accounting or other reports from the Trustees at any time during or after the term of this Trust.

17.2 In the event of the failure of any trust hereunder for any reason, the Trust Estate or the portion thereof which fails to vest shall be paid or transferred to the persons who would have been entitled to the estate of John Evan Davies and if John Evan Davies had died at the time of such failure, intestate, but unmarried, without debts and domiciled in the Province of Ontario and his estate had consisted of the Trust Estate.

17.3 The Settlor, or any other person with the approval of the Trustees, may at any time and from time to time add to the Trust Estate.

18. COMPENSATION OF TRUSTEES

18.1 Any Trustee or Trustees from time to time appointed shall be entitled to receive reasonable fees for their services, as Trustees in connection with the administration of this Trust.

19. ACCEPTANCE OF TRUST

19.1 The Trustees by joining in execution of this Indenture, signify their acceptance of the Trusts herein, upon the terms and conditions herein contained.

20. COUNTERPARTS

20.1 This Indenture may be executed in any number of counterparts, each of which shall constitute an original and all of which shall together constitute one and the same document.

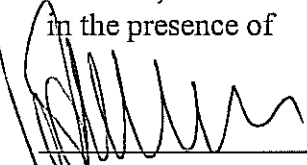
21. HEADINGS

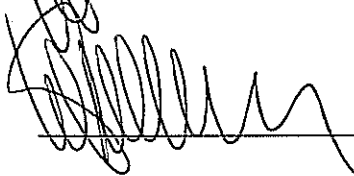
21.1 The headings in this Indenture are for convenience only and shall not be construed as affecting the interpretations of this Indenture.

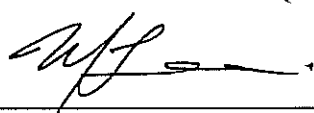
IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the date hereinbefore mentioned.

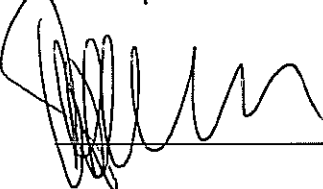
SIGNED, SEALED AND DELIVERED

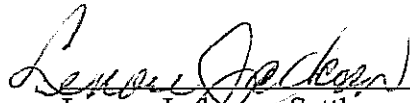
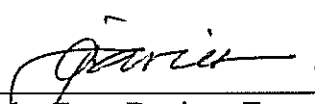
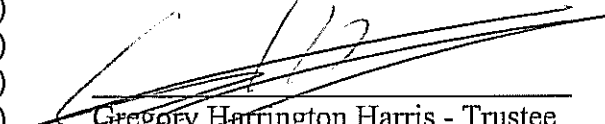
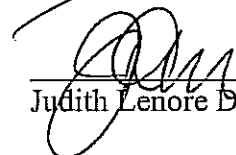
in the presence of









)
)
)
)
) 
) Lenore Jackson - Settlor
)
) 
) John Evan Davies - Trustee
)
) 
) Gregory Harrington Harris - Trustee
)
) 
) Judith Lenore Davies - Trustee

SCHEDULE I

1/4 oz gold coin

Appendix “J”


Certification of Trust for the Davies Arizona Trust

Under A. R. S. §14-11013, this Certification of Trust is signed by all the currently acting Trustees of the Davies Arizona Trust dated December 19, 2013, who declare as follows:

1. The Trustmakers of the trust are Andrew John Davies, Sarah Ramona Davies, Jessica Deborah Davies, and Walter Robert Davies. The trust is irrevocable and unamendable by the Trustmakers.
2. The Trustee of the trust is John Evan Davies.
3. There is no tax identification number of the trust because all tax events and consequences will be distributed or attributed under I. R. C. §871 to the Trustmakers all of whom are non-resident aliens living in the United States less than 183 days a year.
4. Title to assets held in the trust shall be titled as:

John Evan Davies, Trustee of the Davies Arizona Trust,
dated December 19, 2013.
5. Any alternative description shall be effective to title assets in the name of the trust or to designate the trust as a beneficiary if the description includes the name of at least one initial or successor trustee, any reference indicating that property is being held in a fiduciary capacity, and the date of the trust.
6. Excerpts from the trust agreement that establish the trust, designate the Trustee and set forth the powers of the Trustee will be provided upon request. The powers of the Trustee include the power to acquire, sell, assign, convey, pledge, encumber, lease, borrow, manage and deal with real and personal property interests.
7. The terms of the trust provide that a third party may rely upon this Certification of Trust as evidence of the existence of the trust and is specifically relieved of any obligation to inquire into the terms of this trust or the authority of my Trustee, or to see to the application that my Trustee makes of funds or other property received by my Trustee.
8. The trust has not been amended or judicially reformed in any way that would cause the representations in this Certification of Trust to be incorrect.

December __, 2013



John Evan Davies, Trustee

PROVINCE OF ONTARIO

)

) ss.

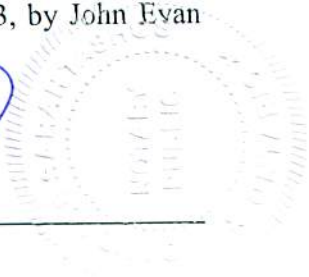
CITY OF TORONTO

)

This instrument was acknowledged before me on December 20th, 2013, by John Evan
Davies, as Trustee.

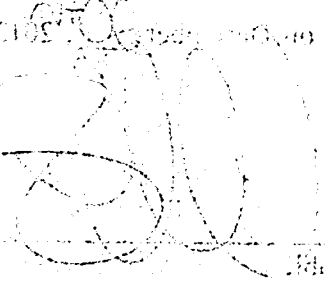
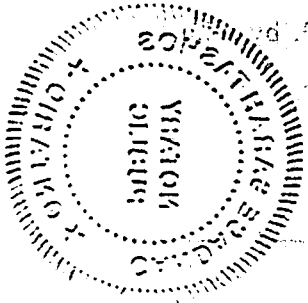


Notary Public



ESTABLISHED 1847

THE UNIVERSITY OF TORONTO



Faculty of Arts

... ..

...

THE DAVIES ARIZONA TRUST

December 19, 2013

LAW OFFICE OF MARK BREGMAN

ESTATES & TRUSTS: PLANNING, ADMINISTRATION, AND LITIGATION

3411 N. 5TH AVENUE, SUITE 309

PHOENIX, ARIZONA 85013-3811

(480) 945-9131

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The Davies Arizona Trust

Table of Contents

Article One	Establishing the Trust.....1-1
Section 1.01	Identifying Our trust 1-1
Section 1.02	Reliance by Third Parties..... 1-1
Section 1.03	An Irrevocable Trust..... 1-2
Section 1.04	Taxpayer Identification Number 1-2
Section 1.05	Transfers to the Trust..... 1-2
Article Two	Trustee Succession Provisions2-1
Section 2.01	Resignation of a Trustee 2-1
Section 2.02	Trustee Succession..... 2-1
Section 2.03	Notice of Removal and Appointment 2-2
Section 2.04	Appointment of a CoTrustee..... 2-2
Section 2.05	Corporate Fiduciaries 2-2
Section 2.06	Incapacity of a Trustee..... 2-2
Section 2.07	Appointment of Independent Special Trustee..... 2-3
Section 2.08	Rights and Obligations of Successor Trustees..... 2-3
Article Three	Administration of Trust Property3-1
Section 3.01	Identification of Trust Beneficiaries 3-1
Section 3.02	Distribution of Income and Principal..... 3-1
Section 3.03	Termination of the Davies Arizona Trust 3-1
Article Four	Remote Contingent Distribution4-1
Article Five	Distributions to Underage and Incapacitated Beneficiaries5-1
Section 5.01	Methods of Distribution..... 5-1
Section 5.02	Retention in Trust 5-1
Section 5.03	Application of Article 5-2
Article Six	Trust Administration6-1
Section 6.01	Distributions to Beneficiaries 6-1
Section 6.02	Trust Decanting; Power to Appoint in Further Trust..... 6-1
Section 6.03	Beneficiary’s Status 6-1
Section 6.04	No Court Proceedings 6-2
Section 6.05	No Bond 6-2
Section 6.06	Exoneration of Our Trustee 6-2
Section 6.07	Trustee Compensation 6-2
Section 6.08	Employment of Professionals 6-3

Section 6.09	Exercise of Testamentary Power of Appointment	6-3
Section 6.10	Determination of Principal and Income	6-3
Section 6.11	Trust Accounting	6-3
Section 6.12	Information to Beneficiaries	6-4
Section 6.13	Action of Trustees and Delegation of Trustee Authority.....	6-4
Section 6.14	Trustee May Disclaim or Release Any Power.....	6-5
Section 6.15	Trustee May Execute a Power of Attorney.....	6-5
Section 6.16	Additions to Separate Trusts.....	6-5
Section 6.17	Authority to Merge or Sever Trusts	6-5
Section 6.18	Authority to Terminate Trusts	6-6
Section 6.19	Merger of Corporate Fiduciary	6-6
Article Seven	Our Trustee's Powers	7-1
Section 7.01	Introduction to Trustee's Powers	7-1
Section 7.02	Execution of Documents by Our Trustee.....	7-1
Section 7.03	Investment Powers in General	7-1
Section 7.04	Banking Powers	7-2
Section 7.05	Business Powers.....	7-2
Section 7.06	Contract Powers	7-2
Section 7.07	Common Investments	7-3
Section 7.08	Environmental Powers	7-3
Section 7.09	Farm, Ranch, and Other Agricultural Powers.....	7-4
Section 7.10	Insurance Powers	7-4
Section 7.11	Loans and Borrowing Powers.....	7-5
Section 7.12	Nominee Powers	7-5
Section 7.13	Oil, Gas and Mineral Interests	7-5
Section 7.14	Payment of Property Taxes and Expenses	7-5
Section 7.15	Real Estate Powers.....	7-6
Section 7.16	Residences and Tangible Personal Property.....	7-6
Section 7.17	Retention and Abandonment of Trust Property.....	7-6
Section 7.18	Securities, Brokerage and Margin Powers.....	7-7
Section 7.19	Settlement Powers.....	7-7
Section 7.20	Limitation on Our Trustee's Powers.....	7-8
Article Eight	General Provisions.....	8-1
Section 8.01	Maximum Term for Trusts.....	8-1
Section 8.02	Spendthrift Provision	8-1
Section 8.03	Changing the Governing Law and Situs of Administration	8-1
Section 8.04	Definitions.....	8-1
Section 8.05	General Provisions and Rules of Construction	8-5

(Remainder of page intentionally left blank.)

The Davies Arizona Trust

Article One Establishing the Trust

The date of this Irrevocable Trust Agreement is December 19, 2013. The parties to the agreement are Andrew John Davies, Sarah Ramona Davies, Jessica Deborah Davies, and Walter Robert Davies (the “Trustmakers”) and John Evan Davies (our “Trustee”).

We intend that this agreement create a valid trust under the laws of Arizona and under the laws of any state in which any trust created under this agreement is administered. The terms of this trust agreement prevail over any provision of Arizona law, except those provisions that are mandatory and may not be waived.

Section 1.01 Identifying Our trust

Our trust may be referred to as “John Evan Davies, Trustee of the Davies Arizona Trust dated December 19, 2013.”

For the purpose of transferring property to our trust, or identifying our trust in any beneficiary or pay-on-death designation, any description referring to our trust will be effective if it reasonably identifies our trust. Any description that contains the date of our trust, the name of at least one initial or successor Trustee and an indication that our Trustee is holding the trust property in a fiduciary capacity will be sufficient to reasonably identify our trust.

Section 1.02 Reliance by Third Parties

From time to time, third parties may require documentation to verify the existence of this agreement, or particular provisions of it, such as the name or names of our Trustee or the powers held by our Trustee. To protect the confidentiality of this agreement, our Trustee may use an affidavit or a certification of trust that identifies our Trustee and sets forth the authority of our Trustee to transact business on behalf of our trust in lieu of providing a copy of this agreement. The affidavit or certification may include pertinent pages from this agreement, such as title or signature pages.

A third party may rely upon an affidavit or certification of trust that is signed by our Trustee with respect to the representations contained in the affidavit or certification of trust. A third party relying upon an affidavit or certification of trust shall be exonerated from any liability for actions the third party takes or fails to take in reliance upon the representations contained in the affidavit or certification of trust.

A third party dealing with our Trustee shall not be required to inquire into the terms of this agreement or the authority of our Trustee, or to see to the application of funds or other property received by our Trustee. The receipt from our Trustee for any money or property paid, transferred or delivered to our Trustee will be a sufficient discharge to the person or persons paying, transferring or delivering the money or property from all liability in connection with its application. A written statement by our Trustee is conclusive evidence of our Trustee’s

authority. Third parties are not liable for any loss resulting from their reliance on a written statement by our Trustee asserting our Trustee's authority or seeking to effectuate a transfer of property to or from the trust.

Section 1.03 An Irrevocable Trust

This Trust is irrevocable, and we cannot alter, amend, revoke, or terminate it in any way.

Section 1.04 Taxpayer Identification Number

This trust has no taxpayer identification number because each Trustmaker and each Beneficiary is a non-resident alien living in the United States for less than 183 days per calendar year and items of income are not subject to United States taxation under Internal Revenue Code Section 871.

Section 1.05 Transfers to the Trust

We will transfer to our Trustee property from time to time to be held on the terms and conditions set forth in this instrument. We retain only those rights, title or interest in the income or principal of this trust and any other incident of ownership in any trust property described in this instrument and reserved to us as beneficiaries.

By execution of this agreement, our Trustee accepts and agrees to hold the trust property acceptable to our Trustee. Our Trustee may refuse to accept any property. Our Trustee shall hold, administer and dispose of all trust property accepted by our Trustee for the benefit of my beneficiaries in accordance with the terms of this agreement.

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Article Two

Trustee Succession Provisions

Section 2.01 Resignation of a Trustee

A Trustee may resign by giving written notice to us or the current Income Beneficiaries of the trust and to any other then-serving Trustee.

Upon the resignation of a Trustee, the resigning Trustee may, concurrent with the written notice described above, appoint the resigning Trustee's successor as Trustee in the manner set forth in Section 2.03. If the resigning Trustee fails to make the appointment, the other provisions of this Article regarding Trustee succession upon incapacity or death (as the case may be) shall govern, and the next named successor or successors to the resigning Trustee will serve in the order listed. Likewise, if no named successors to the resigning Trustees are available to serve and the resigning Trustee fails to designate a successor, the other provisions of this Article regarding the filling of a vacant Trustee office shall govern.

Section 2.02 Trustee Succession

This Section governs the removal and replacement of the Trustees.

(a) Appointment of Successor Trustees

If John Evan Davies ceases to serve, the following persons, in the order named, shall serve as successor Trustee:

Judith Lenore Davies; and then
Jessica Deborah Davies.

(b) Removal by Beneficiaries

A Trustee may be removed only for cause, which removal must be approved by a court of competent jurisdiction upon the petition of any beneficiary.

In no event is the court petitioned to approve the removal of a Trustee to acquire any jurisdiction over the trust except to the extent necessary to approve or disapprove removal of a Trustee.

If a beneficiary is a minor or is incapacitated, the parent or Legal Representative of the beneficiary, other than me, may act on behalf of the beneficiary.

(c) Default of Designation

If the office of Trustee of a trust created under this agreement is vacant and no designated Trustee is able and willing to act, the Primary Beneficiary may appoint an individual or corporate fiduciary to serve as successor Trustee. In the case of a minor or incapacitated beneficiary, the beneficiary's parent or Legal Representative, other than me, may act on behalf of the beneficiary.

Any beneficiary or the beneficiary's Legal Representative may petition a court of competent jurisdiction to appoint a successor Trustee to fill any vacancy remaining unfilled after a period of 30 days. By making the appointment, the

court does not thereby acquire any jurisdiction over the trust, except to the extent necessary for making the appointment.

In the event of a Trustee vacancy due to resignation, however, the foregoing provisions apply only if the resigning Trustee fails to appoint a successor Trustee in the manner more fully set forth in Section 2.01.

Section 2.03 Notice of Removal and Appointment

Notice of removal must be in writing and delivered to the Trustee being removed, along with any other then-serving Trustees. The notice of removal will be effective in accordance with its provisions.

Notice of appointment must also be in writing and delivered to the successor Trustee and any other then-serving Trustees. The appointment will become effective at the time of acceptance by the successor Trustee. A copy of the notice should be attached to this agreement.

Section 2.04 Appointment of a CoTrustee

Any individual Trustee may appoint an individual or a corporate fiduciary as a CoTrustee. That CoTrustee will serve only as long as the Trustee who appointed the CoTrustee (or, if the CoTrustee was named by more than one Trustee acting together, by the last to serve of those Trustees) serves, and the CoTrustee will not become a successor Trustee upon the death, resignation, or incapacity of the Trustee who appointed the CoTrustee, unless so appointed under the terms of this agreement. Although the CoTrustee may exercise all the powers of the appointing Trustee, the combined powers of the CoTrustee and the appointing Trustee cannot exceed the powers of the appointing Trustee alone. The Trustee appointing a CoTrustee may revoke the appointment at any time with or without cause.

Section 2.05 Corporate Fiduciaries

Any corporate fiduciary serving under this agreement as a Trustee must be a bank, trust company, or public charity that is qualified to act as a fiduciary under applicable federal and state law and that is not related or subordinate to any beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

Any corporate fiduciary must:

Have a combined capital and surplus of at least Five Million Dollars; or

Maintain in force a policy of insurance with policy limits of not less than Five Million Dollars covering the errors and omissions of the Trustee with a solvent insurance carrier licensed to do business in the state in which the Trustee has its corporate headquarters.

Section 2.06 Incapacity of a Trustee

If any individual Trustee becomes incapacitated, it will not be necessary for the incapacitated Trustee to resign as Trustee. A written declaration of incapacity by the CoTrustee, if any, or, if none, by the party designated to succeed the incapacitated Trustee will terminate the Trusteeship. If the Trustee designated in the written declaration objects, in writing, to termination of the Trusteeship within 10 days of receiving the declaration of incapacity, a written opinion of

incapacity signed by a physician who has examined the incapacitated Trustee must be obtained before the Trusteeship will be terminated. The Trustee objecting to termination of Trusteeship must sign the necessary medical releases needed to obtain the physician's written opinion of incapacity or the Trusteeship will be terminated without the physician's written opinion.

The provisions of Section 8.04(e) of this agreement govern the determination of a Trustee's incapacity by a physician and the Trustee's obligations to submit to examination and provide necessary releases.

Section 2.07 Appointment of Independent Special Trustee

If for any reason the Trustee of any trust created under this instrument is unwilling or unable to act with respect to any trust property or any provision of this instrument, our Trustee shall appoint, in writing, a corporate fiduciary or an individual to serve as an Independent Special Trustee with respect to this property or provision. The appointed Independent Special Trustee must not be related or subordinate to any trust beneficiary within the meaning of Internal Revenue Code Section 672(c).

An Independent Special Trustee shall exercise all fiduciary powers granted by this trust unless expressly limited elsewhere in this instrument or by the Trustee in the instrument appointing the Independent Special Trustee. An Independent Special Trustee may resign at any time by delivering written notice to the Trustee. Notice of resignation will be effective in accordance with the terms of the notice.

Section 2.08 Rights and Obligations of Successor Trustees

Each successor Trustee serving under this agreement, whether corporate or individual, will have all of the title, rights, powers and privileges granted to the initial Trustee named under this agreement. In addition, each successor Trustee is subject to all of the restrictions imposed upon, as well as all obligations and duties, both discretionary and ministerial, given to the initial Trustee named under this agreement.

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Article Three

Administration of Trust Property

Section 3.01 Identification of Trust Beneficiaries

Our Trustee shall hold and administer all assets of the Davies Arizona Trust for the benefit of the Trustmakers, their ancestors, and their descendants who are non-resident aliens living in the United States for less than 183 days per calendar year for purposes of taxation under the Internal Revenue Code.

Section 3.02 Distribution of Income and Principal

A Trustee may distribute to any one or more of the class of persons described above as much of the net income and principal of the Davies Arizona Trust as the Trustee may determine advisable for any purpose.

Any undistributed net income is to be accumulated and added to principal.

Section 3.03 Termination of the Davies Arizona Trust

The Davies Arizona Trust will terminate at the time provided in Section 8.01. Upon termination, our Trustee shall distribute the remaining trust property to the then living descendants of our parents, *per stirpes*.

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Article Four

Remote Contingent Distribution

If at any time no person or entity is qualified to receive final distribution of any part of our trust estate, this portion of our trust estate must be distributed to those persons who would inherit it had our parents had died intestate owning the property, as determined and in the proportions provided by the laws of Arizona then in effect. Any heir not found after a diligent search by our Trustee shall be presumed to have predeceased them with no issue surviving.

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Article Five

Distributions to Underage and Incapacitated Beneficiaries

If our Trustee is authorized or directed under any provision of this trust to distribute net income or principal to a person who has not yet reached the age of 18 years or who is incapacitated as defined in Section 8.04(e), our Trustee may make the distribution by any one or more of the methods described in Section 5.01. Alternatively, our Trustee may retain the trust property in a separate trust to be administered by our Trustee under Section 5.02.

Section 5.01 Methods of Distribution

Our Trustee may distribute trust property for any beneficiary's benefit, subject to the provisions of this Article in any one or more of the following methods:

Our Trustee may distribute trust property directly to the beneficiary.

Our Trustee may distribute trust property to the beneficiary's guardian, conservator, parent, other family member, or any person who has assumed the responsibility of caring for the beneficiary.

Our Trustee may distribute trust property to any person or entity, including our Trustee, as custodian for the beneficiary under the Uniform Transfers to Minors Act or similar statute.

Our Trustee may distribute trust property to other persons and entities for the beneficiary's use and benefit.

Our Trustee may distribute trust property to an agent or attorney in fact authorized to act for the beneficiary under a valid durable power of attorney executed by the beneficiary before becoming incapacitated.

Section 5.02 Retention in Trust

Our Trustee may retain and administer trust property in a separate trust for any beneficiary's benefit, subject to the provisions of this Article as follows.

(a) Distribution of Net Income and Principal

Our Trustee may distribute to the beneficiary as much of the net income and principal of any trust created under this Section as our Trustee may determine advisable for any purpose. Any undistributed net income will be accumulated and added to principal.

(b) Distribution upon the Death of the Beneficiary

Subject to the terms of the next paragraph, the beneficiary whose trust is created under this Section may appoint all or any portion of the principal and undistributed net income remaining in the beneficiary's trust at the beneficiary's death among one or more persons or entities, and the creditors of the beneficiary's estate. The beneficiary has the exclusive right to exercise this general power of appointment.

If any part of the beneficiary's trust is not effectively appointed, our Trustee shall distribute the remaining unappointed balance *per stirpes* to the beneficiary's descendants. If the beneficiary has no then-living descendants, our Trustee shall distribute the unappointed balance *per stirpes* to the then-living descendants of the beneficiary's nearest lineal ancestor who was a descendant of our parents.

If there are no such descendants, our Trustee shall distribute the balance of the trust property as provided in Article Four.

Section 5.03 Application of Article

Any decision made by our Trustee under this Article is final, controlling, and binding upon all beneficiaries subject to the provisions of this Article.

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Article Six

Trust Administration

Section 6.01 Distributions to Beneficiaries

Whenever this trust authorizes or directs our Trustee to make a net income or principal distribution to a beneficiary, our Trustee may apply any property that otherwise could be distributed directly to the beneficiary for his or her benefit. Our Trustee is not required to inquire into the beneficiary's ultimate disposition of the distributed property unless specifically directed otherwise by this trust.

Our Trustee may make cash distributions, in-kind distributions, or distributions partly in each, in proportions and at values determined by our Trustee. Our Trustee may allocate undivided interests in specific assets to a beneficiary or trust in any proportion or manner that our Trustee determines, even though the property allocated to one beneficiary may be different from that allocated to another beneficiary.

Our Trustee may make these determinations without regard to the income tax attributes of the property and without the consent of any beneficiary.

Section 6.02 Trust Decanting; Power to Appoint in Further Trust

Whenever an Independent Trustee may distribute assets to or for the benefit of a beneficiary, our Trustee may appoint the property subject to our Trustee's power of distribution in trust for the benefit of one or more beneficiaries of any trust created under this instrument under the terms established by the Independent Trustee. Any trust established by the Independent Trustee and funded by the exercise of the power granted under this Section must meet these requirements:

- the trust must not reduce any fixed income, annuity, or unitrust right provided by this trust instrument to any beneficiary;
- the trust must provide for one or more of the beneficiaries of a trust created under this instrument; and
- the interests of remainder beneficiaries of the trust created under this instrument must not be accelerated under the terms of the new trust.

Section 6.03 Beneficiary's Status

Until our Trustee receives notice of the incapacity, birth, marriage, death, or other event upon which a beneficiary's right to receive payments may depend, our Trustee will not be held liable for acting or not acting with respect to the event, or for disbursements made in good faith to persons whose interest may have been affected by the event. Unless otherwise provided in this trust, a parent or Legal Representative may act on behalf of a minor or incapacitated beneficiary.

Our Trustee may rely on any information provided by a beneficiary with respect to the beneficiary's assets and income. Our Trustee will have no independent duty to investigate the status of any beneficiary and will not incur any liability for not doing so.

Section 6.04 No Court Proceedings

Our Trustee shall administer this trust with efficiency, with attention to the provisions of this trust, and with freedom from judicial intervention. If our Trustee or another interested party institutes a legal proceeding, the court will acquire jurisdiction only to the extent necessary for that proceeding. Any proceeding to seek instructions or a court determination may only be initiated in the court with original jurisdiction over matters relating to the construction and administration of trusts. Seeking instructions or a court determination is not to be construed as subjecting this trust to the court's continuing jurisdiction.

Any questions or disputes that arise during the administration of this trust be resolved by mediation and, if necessary, arbitration in accordance with the Uniform Arbitration Act. Each interested party involved in the dispute, including any Trustee involved, may select an arbiter and, if necessary to establish a majority decision, these arbiters may select an additional arbiter. The decision of a majority of the arbiters selected will control with respect to the matter.

Section 6.05 No Bond

Our Trustee is not required to furnish any bond for the faithful performance of the Trustee's duties unless required by a court of competent jurisdiction, and only if the court finds that a bond is needed to protect the beneficiaries' interests. No surety will be required on any bond required by any law or court rule, unless the court specifies its necessity.

Section 6.06 Exoneration of Our Trustee

No successor Trustee is obligated to examine the accounts, records, or actions of any previous Trustee. No successor Trustee may be held responsible for any act, omission, or forbearance by any previous Trustee.

Any Trustee may obtain written agreements from the beneficiaries or their Legal Representatives releasing and indemnifying the Trustee from any liability that may have arisen from the Trustee's acts, omissions, or forbearances. If acquired from all the trust's living beneficiaries or their Legal Representatives, any agreement is conclusive and binding on all parties, born or unborn, who may have or who may later acquire an interest in the trust.

Our Trustee may require a refunding agreement before making any distribution or allocation of trust income or principal, and may withhold distribution or allocation pending determination or release of a tax or other lien.

Section 6.07 Trustee Compensation

An individual serving as Trustee is entitled to fair and reasonable compensation for the services provided as a fiduciary. A corporate fiduciary serving as Trustee will be compensated by agreement between an individual serving as Trustee and the corporate fiduciary. In the absence of an individual Trustee or an agreement, a corporate fiduciary will be compensated in accordance with the corporate fiduciary's current published fee schedule.

A Trustee may charge additional fees for services provided that are beyond the ordinary scope of duties, such as fees for legal services, tax return preparation, and corporate finance or investment banking services.

In addition to receiving compensation, a Trustee may be reimbursed for reasonable costs and expenses incurred in carrying out the Trustee's duties under this trust.

Section 6.08 Employment of Professionals

Our Trustee may appoint, employ, and remove investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, advisors, agents, and employees to advise or assist in the performance of our Trustee's duties. Our Trustee may act on the recommendations of the persons or entities employed, with or without independent investigation.

Our Trustee may reasonably compensate an individual or entity employed to assist or advise our Trustee, regardless of any other relationship existing between the individual or entity and our Trustee.

Our Trustee may compensate providers of contracted services at the usual rate out of the trust's income or principal, as our Trustee deems advisable. Our Trustee may compensate an individual or entity employed to assist or advise our Trustee without diminishing the compensation the Trustee is entitled to under this trust. A Trustee who is a partner, stockholder, officer, director, or corporate affiliate in any entity employed to assist or advise our Trustee may still receive the Trustee's share of the compensation paid to the entity.

Section 6.09 Exercise of Testamentary Power of Appointment

A testamentary power of appointment granted under this trust may be exercised by a will, living trust or other written instrument specifically referring to the power of appointment. The holder of a testamentary power of appointment may exercise the power to appoint property among the permissible appointees in equal or unequal proportions, and may designate the terms and conditions, whether outright or in trust. The holder of a testamentary power of appointment may grant further powers of appointment to any person to whom principal may be appointed, including a presently exercisable limited or general power of appointment.

Our Trustee may conclusively presume that any power of appointment granted to any beneficiary of a trust created under this trust has not been exercised by the beneficiary if our Trustee has no knowledge of the existence of a will, living trust or other written instrument exercising the power within three months after the beneficiary's death.

Section 6.10 Determination of Principal and Income

Our Trustee shall determine how all Trustee fees, disbursements, receipts, and wasting assets will be credited, charged, and apportioned between principal and income in a fair, equitable, and practical manner.

Our Trustee may set aside from trust income reasonable reserves for taxes, assessments, insurance premiums, repairs, depreciation, obsolescence, depletion, and the equalization of payments to or for the beneficiaries. Our Trustee may select appropriate accounting periods for the trust property.

Section 6.11 Trust Accounting

Except to the extent required by law, our Trustee is not required to file accountings in any jurisdiction. The annual accounting must include the receipts, expenditures, and distributions of

income and principal and the assets on hand for the accounting period. A copy of the federal fiduciary tax return filed for a trust during the accounting will satisfy this reporting requirement.

In the absence of fraud or obvious error, assent by all Qualified Beneficiaries to a Trustee's accounting will make the matters disclosed in the accounting binding and conclusive upon all persons, including those living on this date and those born in the future who have or will have a vested or contingent interest in the trust property. In the case of a Qualified Beneficiary who is a minor or incapacitated, the beneficiary's natural guardian or Legal Representative may give the assent required under this Section.

In all events, a beneficiary's Legal Representative may receive any notices and take any action on behalf of the beneficiary as to an accounting. If any beneficiary's Legal Representative fails to object to any accounting in writing within 60 days after our Trustee provides the accounting, the beneficiary's Legal Representative will be considered to assent to the accounting.

Section 6.12 Information to Beneficiaries

Privacy is an important issue to me. This Section defines our Trustee's duties to inform, account, and report to beneficiaries of various trusts created under this trust, and to other individuals during my lifetime and after my death. Except to the extent required by law, our Trustee is not required to comply with a request to furnish a copy of this trust to a Qualified Beneficiary at any time, and our Trustee is not required to send annual reports or reports upon termination of the trust to any Permissible Distributee or Qualified Beneficiary who requests the report. If our Trustee decides, in our Trustee's sole discretion, to provide any information to a Permissible Distributee or Qualified Beneficiary, our Trustee may exclude any information that our Trustee determines is not directly applicable to the beneficiary receiving the information. Any decision by our Trustee to make information available to any beneficiary does not constitute an obligation to provide any information to any beneficiary in the future.

We waive all duties of our Trustee to give notice, information, and reports to any Qualified Beneficiaries. Our Trustee is not required to keep Qualified Beneficiaries of any trust created under this trust other than us informed of our trust administration in any manner. Further, our Trustee is not required to respond to any request for information related to the trust administration from anyone who is not a Qualified Beneficiary.

Section 6.13 Action of Trustees and Delegation of Trustee Authority

If two Trustees are eligible to act with respect to a given matter, they must agree unanimously for action to be taken unless the express terms of the Trustees' appointment provide otherwise. If more than two Trustees are eligible to act with respect to a given matter, the Trustees must agree by majority for action to be taken.

If our Trustees are unable to agree on a matter for which they have joint powers, the matter may be settled by mediation and then by arbitration, if necessary, in accordance with the Uniform Arbitration Act. Each of our Trustees may select an arbiter and these arbiters may select an additional arbiter, if necessary to establish a majority decision. The decision of a majority of the arbiters will control with respect to the matter.

A nonconcurring Trustee may dissent or abstain from a decision of the majority. A Trustee will be absolved from personal liability by registering the dissent or abstention in the trust records.

After doing so, the dissenting Trustee must then act with my other Trustees in any way necessary or appropriate to effect the majority decision.

Subject to the limitations set forth in Section 7.20, any Trustee may, by written instrument, delegate to any other Trustee the right to exercise any power, including a discretionary power, granted to our Trustee in this trust. During the time a delegation under this Section is in effect, the Trustee to whom the delegation is made may exercise the power to the same extent as if the delegating Trustee has personally joined in the exercise of the power. The delegating Trustee may revoke the delegation at any time by giving written notice to the Trustee to whom the power was delegated.

Section 6.14 Trustee May Disclaim or Release Any Power

Notwithstanding any provision of this trust to the contrary, any Trustee may relinquish any Trustee power in whole or in part, irrevocably or for any specified period of time, by a written instrument. The Trustee may relinquish a power personally or may relinquish the power for all subsequent Trustees.

Section 6.15 Trustee May Execute a Power of Attorney

Our Trustee may appoint any individual or entity to serve as our Trustee's agent under a power of attorney to transact any business on behalf of our trust or any other trust created under this trust.

Section 6.16 Additions to Separate Trusts

If upon the termination of any trust created under this trust, a final distribution is to be made to a person who is the Primary Beneficiary of another trust established under this trust, and there is no specific indication whether the distribution is to be made in trust or outright, our Trustee shall make the distribution to the second trust instead of distributing the property to the beneficiary outright. For purposes of administration, the distribution will be treated as though it had been an original part of the second trust.

Section 6.17 Authority to Merge or Sever Trusts

Our Trustee may merge a trust created under this trust with any other trust, if the two trusts contain substantially the same terms for the same beneficiaries and have at least one Trustee in common. Our Trustee may administer the merged trust under the provisions of the instrument governing the other trust, and this trust will no longer exist if it merges into another trust. Accordingly, in the event another trust is merged into this trust or a trust created under the provisions of this trust document, our Trustee may shorten the period during which this trust subsists to comply with Section 8.01, if necessary, to effect the merger. But if a merger does not appear feasible, our Trustee may consolidate the trusts' assets for purposes of investment and trust administration while retaining separate records and accounts for each respective trust.

Our Trustee may sever any trust on a fractional basis into two or more separate and identical trusts, or may segregate a specific amount or asset from the trust property by allocating it to a separate account or trust. The separate trusts may be funded on a *non pro rata* basis, but the funding must be based on the assets' total fair market value on the funding date. After the segregation, income earned on a segregated amount or specific asset passes with the amount or

asset segregated. Our Trustee shall hold and administer each severed trust upon terms and conditions identical to those of the original trust.

Subject to the trust's terms, our Trustee may consider differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections and in making distributions. A separate trust created by severance must be treated as a separate trust for all purposes from the effective severance date; however, the effective severance date may be retroactive to a date before our Trustee exercises the power.

Section 6.18 Authority to Terminate Trusts

Our Trustee may terminate any trust created under this trust at any time, if the Trustee, in its sole discretion, determines that administering a trust created under this trust is no longer necessary or economical. Once distributed, our Trustee will have no further responsibility with respect to that trust property. Our Trustee will distribute the trust property from a terminated trust to the descendants of our parents, *per stirpes*.

Section 6.19 Merger of Corporate Fiduciary

If any corporate fiduciary acting as the Trustee under this trust is merged with or transfers substantially all of its trust assets to another corporation, or if a corporate fiduciary changes its name, the successor will automatically succeed to the Trusteeship as if that successor had been originally named a Trustee. No document of acceptance of Trusteeship will be required.

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Article Seven Our Trustee's Powers

Section 7.01 Introduction to Trustee's Powers

Except as otherwise specifically provided in this trust, our Trustee may exercise the powers granted by this trust without prior approval from any court, including those powers set forth under the laws of the State of Arizona or any other jurisdiction whose law applies to this trust. The powers set forth in A. R. S. §§ 14-10815 and 14-10816 are specifically incorporated into this trust.

Our Trustee shall exercise the Trustee powers in the manner our Trustee determines to be in the beneficiaries' best interests. Our Trustee must not exercise any power inconsistent with the beneficiaries' right to the enjoyment of the trust property in accordance with the general principles of trust law. We expressly waive any duty of impartiality for our Trustee as to the beneficiaries.

Our Trustee may have duties and responsibilities in addition to those described in this trust. Any individual or corporate fiduciary serving as Trustee may obtain appropriate legal advice if our Trustee has any questions concerning the duties and responsibilities as Trustee.

Section 7.02 Execution of Documents by Our Trustee

Our Trustee may execute and deliver any written instruments that our Trustee considers necessary to carry out any powers granted in this trust.

Section 7.03 Investment Powers in General

Our Trustee may invest in any type of investment whether inside or outside the geographic borders of the United States of America and its possessions or territories.

Our Trustee may acquire and retain investments not regarded as traditional or suitable assets for trusts, including investments that would be forbidden or regarded as imprudent, improper, or unlawful by the *prudent person* rule, *prudent investor* rule, or any other rule or law that restricts a fiduciary's investment flexibility. Our Trustee may invest in any type of property, wherever located, including any type of security or option, improved or unimproved real property, and tangible or intangible personal property. The investment may be in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, limited liability companies, corporations, mutual funds, business trusts, or any other form of participation or ownership. In making investments, our Trustee may disregard:

- whether a particular investment or the collective trust investments will produce a reasonable rate of return or result in the preservation of principal;

- whether the acquisition or retention of a particular investment or the collective trust investments are consistent with any duty of impartiality as to the different beneficiaries;

- whether the trust is diversified; and

whether any trust investment would traditionally be classified as too risky or speculative for trusts.

We expressly waive any duty to diversify trust assets. We intend to grant sole and absolute discretion to our Trustee in determining acceptable risk and proper investment strategy.

We intend to modify the *prudent person* rule, *prudent investor* rule, or any other rule or law which restricts a fiduciary's ability to invest, to the extent the rule or law would prohibit an investment because of at least one of the factors listed above or any other factor relating to the nature of the investment itself. We believe that it is in the beneficiaries' best interests to give our Trustee the broadest possible discretion in managing trust assets.

Our Trustee may delegate his or her discretion to manage trust investments to any registered investment advisor or corporate fiduciary.

Section 7.04 Banking Powers

Our Trustee may establish any type of bank account in any banking institutions that our Trustee chooses. If our Trustee makes frequent disbursements from an account, the account does not need to be interest bearing. Our Trustee may authorize withdrawals from an account in any manner.

Our Trustee may open accounts in the name of our Trustee, with or without disclosing fiduciary capacity, and may open accounts in the name of the trust. When an account is in the name of the trust, checks on that account and authorized signatures need not disclose the account's fiduciary nature or refer to any trust or Trustee.

Section 7.05 Business Powers

If the trust owns or acquires an interest in a business entity, whether as a shareholder, partner, general partner, sole proprietor, member, participant in a joint venture, or otherwise, our Trustee may exercise the powers and authority provided for in this Section. The powers granted in this Section are in addition to all other powers granted to our Trustee in this trust.

Our Trustee may act personally and independently with any business entity in which the trust has an interest, separate from any duties owed to the trust as our Trustee. This includes serving and receiving compensation for services as an officer, director, general partner, manager, or any other capacity for the business entity. The compensation our Trustee receives from this entity will not affect the compensation our Trustee may be entitled to for serving as our Trustee. Our Trustee may exercise any voting power for any matter, whether the voting power is held as our Trustee or independently as a stockholder, officer, director, general partner, member, manager, or other capacity of the business entity. Our Trustee may independently own, purchase, and sell an interest in a business entity owned by the trust. Any sale of a nonpublicly traded business interest between our Trustee and the trust must be approved and effected by an Independent Special Trustee.

Section 7.06 Contract Powers

Our Trustee may sell at public or private sale, transfer, exchange for other property, and otherwise dispose of trust property for consideration and upon terms and conditions that our

Trustee deems advisable. Our Trustee may grant options of any duration for any sales, exchanges, or transfers of trust property.

Our Trustee may enter into contracts, and may deliver deeds or other instruments, that our Trustee considers appropriate.

Section 7.07 Common Investments

For purposes of convenience with regard to the trust property's administration and investment, our Trustee may invest part or all of the trust property jointly with property of other trusts for which our Trustee is also serving as a Trustee. A corporate fiduciary acting as our Trustee may use common funds for investment. When trust property is managed and invested in this manner, our Trustee will maintain records that sufficiently identify this trust's portion of the jointly invested assets.

Section 7.08 Environmental Powers

Our Trustee may inspect trust property to determine compliance with or to respond to any environmental law affecting the property. For purposes of this trust *environmental law* means any federal, state, or local law, rule, regulation, or ordinance protecting the environment or human health.

Our Trustee may refuse to accept property if our Trustee determines that the property is or may be contaminated by any hazardous substance or is or was used for any purpose involving hazardous substances that could create liability to the trust or to any Trustee.

Our Trustee may use trust property to:

- conduct environmental assessments, audits, or site monitoring;

- take remedial action to contain, clean up, or remove any hazardous substance including a spill, discharge, or contamination;

- institute, contest, or settle legal proceedings brought by a private litigant or any local, state, or federal agency concerned with environmental compliance;

- comply with any order issued by any court or by any local, state, or federal agency directing an assessment, abatement, or cleanup of any hazardous substance; and

- employ agents, consultants, and legal counsel to assist our Trustee in these actions.

Our Trustee is not liable for any loss or reduction in value sustained by the trust as a result of our Trustee's decision to retain property on which hazardous materials or substances requiring remedial action are discovered, unless our Trustee contributed to that loss through willful misconduct or gross negligence.

Our Trustee is not liable to any beneficiary or to any other party for any decrease in the value of property as a result of our Trustee's actions to comply with any environmental law, including any reporting requirement.

Our Trustee may release, relinquish, or disclaim any power held by our Trustee that our Trustee determines may cause our Trustee to incur individual liability under any environmental law.

Section 7.09 Farm, Ranch, and Other Agricultural Powers

Our Trustee may retain, acquire, and sell any farm or ranching operation, whether as a sole proprietorship, partnership, or corporation.

Our Trustee may engage in the production, harvesting, and marketing of farm and ranch products, either by operating directly or indirectly with management agencies, hired labor, tenants, or sharecroppers.

Our Trustee may engage and participate in any government farm program, whether state or federally sponsored.

Our Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

Our Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; and acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

Our Trustee may do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries.

Section 7.10 Insurance Powers

Our Trustee may purchase, accept, hold, and deal with as owner, insurance policies on my life, any beneficiary's life, or any person's life in whom any beneficiary has an insurable interest.

Our Trustee may purchase disability, medical, liability, longterm health care and other insurance on behalf of and for the benefit of any beneficiary. Our Trustee may purchase annuities and similar investments for any beneficiary.

Our Trustee may execute or cancel any automatic premium loan agreement with respect to any policy, and may elect or cancel any automatic premium loan provision in a life insurance policy. Our Trustee may borrow money to pay premiums due on any policy, either by borrowing from the company issuing the policy or from another source. Our Trustee may assign the policy as security for the loan.

Our Trustee may exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy to reduce the amount of a policy, to convert or exchange the policy, or to surrender a policy at any time for its cash value.

Our Trustee may elect any paid-up insurance or extended-term insurance nonforfeiture option contained in a policy.

Our Trustee may sell any policy at its fair market value to anyone having an insurable interest in the policy, including the insured.

Our Trustee may exercise any other right, option, or benefit contained in a policy or permitted by the issuing insurance company.

Upon termination of the trust, our Trustee may transfer and assign the policies held by the trust as a distribution of trust property.

Section 7.11 Loans and Borrowing Powers

Our Trustee may make loans to any person including a beneficiary, as well as an entity, trust, or estate, for any term or payable on demand, with or without interest, and secured or unsecured.

Our Trustee may encumber any trust property by mortgages, pledges, or otherwise, and may negotiate, refinance, or enter into any mortgage or other secured or unsecured financial arrangement, whether as a mortgagee or mortgagor. The term may extend beyond the trust's termination and beyond the period required for an interest created under this trust to vest in order to be valid under the rule against perpetuities.

Our Trustee may enter into, negotiate, or modify the terms of any mortgage or any other secured or unsecured agreement granted in connection with any loan entered into by me individually or by any Trustee, and may release or foreclose on any mortgage or security interest payable to me or to the trust.

Our Trustee may borrow money at interest rates and on other terms that our Trustee deems advisable from any person, institution, or other source including, in the case of a corporate fiduciary, its own banking or commercial lending department.

Our Trustee may purchase, sell at public or private sale, trade, renew, modify, and extend mortgages. Our Trustee may accept deeds instead of foreclosing.

Section 7.12 Nominee Powers

Our Trustee may hold real estate, securities, and any other property in the name of a nominee or in any other form, without disclosing the existence of any trust or fiduciary capacity.

Section 7.13 Oil, Gas and Mineral Interests

Our Trustee may acquire, maintain, develop, and exploit, either alone or jointly with others, any oil, gas, coal, mineral, or other natural resource rights or interests.

Our Trustee may drill, test, explore, mine, develop, extract, remove, convert, manage, retain, store, sell, and exchange any of those rights and interests on terms and for a price that our Trustee deems advisable.

Our Trustee may execute leases, pooling, unitization, and other types of agreements in connection with oil, gas, coal, mineral, and other natural resource rights and interests, even though the terms of those arrangements may extend beyond the trust's termination.

Our Trustee may execute division orders, transfer orders, releases, assignments, farm outs, and any other instruments that it considers proper.

Our Trustee may employ the services of consultants and outside specialists in connection with the evaluation, management, acquisition, disposition, and development of any mineral interest, and may pay the cost of the services from the trust's principal and income.

Section 7.14 Payment of Property Taxes and Expenses

Except as otherwise provided in this trust, our Trustee may pay any property taxes, assessments, fees, charges, and other expenses incurred in the administration or protection of the trust. All payments will be a charge against the trust property and will be paid by our Trustee out of

income. If the income is insufficient, then our Trustee may make any payments of property taxes or expenses out of the trust property's principal. Our Trustee's determination with respect to this payment will be conclusive on the beneficiaries.

Section 7.15 Real Estate Powers

Our Trustee may sell at public or private sale, convey, purchase, exchange, lease for any period, mortgage, manage, alter, improve, and in general deal in and with real property in the manner and on the terms and conditions as our Trustee deems appropriate.

Our Trustee may grant or release easements in or over, subdivide, partition, develop, raze improvements to, and abandon any real property.

Our Trustee may manage real estate in any manner considered best, and may exercise all other real estate powers necessary to effect this purpose.

Our Trustee may enter into contracts to sell real estate. Our Trustee may enter into leases and grant options to lease trust property, even though the term of the agreement extends beyond the termination of any trusts established under this trust and beyond the period that is required for an interest created under this trust to vest in order to be valid under the rule against perpetuities. Our Trustee may enter into any contracts, covenants, and warranty agreements that our Trustee deems appropriate.

Section 7.16 Residences and Tangible Personal Property

Our Trustee may acquire, maintain, and invest in any residence for the beneficiaries' use and benefit, whether or not the residence is income producing and without regard to the proportion that the residence's value may bear to the trust property's total value, even if retaining the residence involves financial risks that Trustees would not ordinarily incur. Our Trustee may pay or make arrangements for others to pay all carrying costs of any residence for the beneficiaries' use and benefit, including taxes, assessments, insurance, maintenance, and other related expenses.

Our Trustee may acquire, maintain, and invest in articles of tangible personal property, whether or not the property produces income. Our Trustee may pay for the repair and maintenance of the property.

Our Trustee is not required to convert the property referred to in this Section to income-producing property, except as required by other provisions of this trust.

Our Trustee may permit any Income Beneficiary of the trust to occupy any real property or use any personal property owned by the trust on terms or arrangements that our Trustee determines, including rent free or in consideration for the payment of taxes, insurance, maintenance, repairs, or other charges.

Our Trustee is not liable for any depreciation or loss resulting from any decision to retain or acquire any property as authorized by this Section.

Section 7.17 Retention and Abandonment of Trust Property

Our Trustee may retain any property constituting the trust at the time of its creation, at the time of my death, or as the result of the exercise of a stock option, without liability for depreciation or

loss resulting from retention. Our Trustee may retain property, notwithstanding the fact that the property may not be of the character prescribed by law for the investment of assets held by a fiduciary, and notwithstanding the fact that retention may result in inadequate diversification under any applicable Prudent Investor Act or other applicable law.

Our Trustee may hold property that is not income producing or is otherwise nonproductive if holding the property is in the best interests of the beneficiaries in the sole and absolute discretion of our Trustee. On the other hand, our Trustee will invest contributions of cash and cash equivalents as soon as reasonably practicable after the assets have been acquired by the trust.

Our Trustee may retain a reasonable amount in cash or money market accounts to pay anticipated expenses and other costs, and to provide for anticipated distributions to or for the benefit of a beneficiary.

Our Trustee may abandon any property that our Trustee considers of insignificant value.

Section 7.18 Securities, Brokerage and Margin Powers

Our Trustee may buy, sell, trade, and otherwise deal in stocks, bonds, investment companies, mutual funds, common trust funds, commodities, options, and other securities of any kind and in any amount, including short sales. Our Trustee may write and purchase call or put options, and other derivative securities. Our Trustee may maintain margin accounts with brokerage firms, and may pledge securities to secure loans and advances made to our Trustee or to or for a beneficiary's benefit.

Our Trustee may place all or any part of the securities held by the trust in the custody of a bank or trust company. Our Trustee may have all securities registered in the name of the bank or trust company or in the name of the bank's nominee or trust company's nominee. Our Trustee may appoint the bank or trust company as the agent or attorney in fact to collect, receive, receipt for, and disburse any income, and generally to perform the duties and services incident to a custodian of accounts.

Our Trustee may employ a broker-dealer as a custodian for securities held by the trust, and may register the securities in the name of the broker-dealer or in the name of a nominee; words indicating that the securities are held in a fiduciary capacity are optional. Our Trustee may hold securities in bearer or uncertificated form, and may use a central depository, clearing agency, or book-entry system, such as The Depository Trust Company, Euroclear, or the Federal Reserve Bank of New York.

Our Trustee may participate in any reorganization, recapitalization, merger, or similar transaction. Our Trustee may exercise or sell conversion or subscription rights for securities of all kinds and descriptions. Our Trustee may give proxies or powers of attorney that may be discretionary and with or without powers of substitution, and may vote or refrain from voting on any matter.

Section 7.19 Settlement Powers

Our Trustee may settle any claims and demands in favor of or against the trust by compromise, adjustment, arbitration, or other means. Our Trustee may release or abandon any claim in favor of the trust.

Section 7.20 Limitation on Our Trustee's Powers

Our Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of our Trustee, including the obligation of support.

If a beneficiary or any other person has the power to remove a Trustee, that Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of the person having the power to remove the Trustee, including that person's obligation of support.

(Remainder of page intentionally left blank.)

Article Eight General Provisions

Section 8.01 Maximum Term for Trusts

Notwithstanding any other provision of this agreement, unless sooner terminated under other provisions hereof, any trust share created under this agreement terminates upon the expiration of the longest period that a nonvested property interest may validly exist under ARS §14-2901 or a successor provision describing the Arizona Rule Against Perpetuities.

At that time, the remaining trust property vests in and shall be distributed to the persons entitled to receive mandatory distributions of net income of the trust and in the same proportions. If none of the beneficiaries is entitled to mandatory distributions of net income, the remaining trust property vests in and shall be distributed to the beneficiaries entitled to receive discretionary distributions of net income of the trust, in equal shares *per capita at each generation*.

Section 8.02 Spendthrift Provision

No beneficiary may assign, anticipate, encumber, alienate, or otherwise voluntarily transfer the income or principal of any trust created under this trust. In addition, neither the income nor the principal of any trust created under this trust is subject to attachment, bankruptcy proceedings or any other legal process, the interference or control of creditors or others, or any involuntary transfer.

This Section does not restrict a beneficiary's right to disclaim any interest or exercise of any power of appointment granted in this trust. In addition, this Section does not limit the ability of a Trustee to appoint property in further trust for any beneficiary as provided in Section 6.02.

Section 8.03 Changing the Governing Law and Situs of Administration

At any time, our Trustee may change the governing law of the trust; change the situs of the administration of the trust; and remove all or any part of the property from one jurisdiction to another. Our Trustee may elect, by filing an instrument with the trust records, that the trust will then be construed, regulated, and governed by the new jurisdiction's laws. Our Trustee may take action under this Section for any purpose our Trustee considers appropriate, including the minimization of any taxes in respect of the trust or any trust beneficiary.

If considered necessary or advisable by our Trustee, our Trustee may appoint an Independent Trustee to serve as Trustee in the new situs.

If necessary and if our Trustee does not appoint an Independent Trustee within 30 days of our Trustee's action to change the governing law or situs of the trust, the beneficiaries entitled to receive distributions of the trust's net income may appoint a corporate fiduciary in the new situs by majority consent. If a beneficiary is a minor or is incapacitated, the beneficiary's parent or Legal Representative may act on the beneficiary's behalf.

Section 8.04 Definitions

For purposes of this trust, the following terms have these meanings:

(a) Adopted and Afterborn Persons

A person in any generation who is legally adopted before reaching 18 years of age and his or her descendants, including adopted descendants, have the same rights and will be treated in the same manner under this trust as natural children of the adopting parent. A person is considered legally adopted if the adoption was legal at the time when and in the jurisdiction in which it occurred.

A fetus *in utero* later born alive will be considered a person in being during the period of gestation.

(b) Descendants

The term *descendants* means persons who directly descend from a person, such as children, grandchildren, or great-grandchildren. The term *descendants* does not include collateral descendants, such as nieces and nephews.

(c) Education

The term *education* is intended to be an ascertainable standard under Internal Revenue Code Sections 2041 and 2514 and includes:

enrollment at private elementary, junior, and senior high school, including boarding school;

undergraduate and graduate study in any field at a college or university;

specialized, vocational, or professional training or instruction at any institution, as well as private instruction; and

any other curriculum or activity that our Trustee considers useful for developing a beneficiary's abilities and interests including athletic training, musical instruction, theatrical training, the arts, and travel.

The term *education* also includes expenses such as tuition, room and board, fees, books, supplies, computers and other equipment, tutoring, transportation, and a reasonable allowance for living expenses.

(d) Good Faith

For the purposes of this trust, a Trustee has acted in good faith if:

an action or inaction is not a result of intentional wrongdoing;

the Trustee did not make the decision to act or not act with reckless indifference to the beneficiaries' interests; and

an action or inaction does not result in an improper personal benefit to the Trustee.

(e) Incapacity

Except as otherwise provided in this trust, a person is considered incapacitated in any of the following circumstances.

(1) The Opinion of Two Licensed Physicians

An individual is considered to be incapacitated whenever two licensed physicians give the opinion that the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age; illness; use of prescription medications, drugs, or other substances; or any other cause. If an individual whose capacity is in question refuses to provide necessary documentation or otherwise submit to examination by licensed physicians, that individual will be considered incapacitated.

An individual is considered restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

(2) Court Determination

An individual is considered incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent, or legally incapacitated.

(3) Detention, Disappearance, or Absence

An individual is considered to be incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance, absence, or detention under duress may be established by an affidavit of our Trustee, or by the affidavit of any beneficiary if no Trustee is then serving. The affidavit must describe the circumstances of the individual's disappearance, absence, or detention, and may be relied upon by any third party dealing in good faith with our Trustee.

(f) Income Beneficiary

The term *Income Beneficiary* means any beneficiary who is then entitled to receive distributions of the trust's net income, whether mandatory or discretionary.

Unless otherwise provided in this trust, the phrase *majority of the Income Beneficiaries* means any combination of Income Beneficiaries who would receive more than 50% of the accrued net income if that income were distributed on the day of a vote. For purposes of this calculation, beneficiaries who are eligible to receive discretionary distributions of net income receive the imputed income in equal shares.

References to a *majority* refer to a majority of the entire trust collectively until our Trustee allocates property to separate trusts or trust shares. After our Trustee

allocates property to separate trusts or trust shares, references to a *majority* refer to a majority of each separate trust or trust share.

(g) Instrument

The term *this instrument* means this trust, and includes all trusts created under the terms of this trust.

(h) Internal Revenue Code and Treasury Regulations

References to the *Internal Revenue Code* or to its provisions are to the Internal Revenue Code of 1986, as amended, and any corresponding Treasury Regulations. References to the *Treasury Regulations*, are to the Treasury Regulations under the Internal Revenue Code in effect. If a particular provision of the Internal Revenue Code is renumbered or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference is considered to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in this trust. The same rule applies to references to the Treasury Regulations.

(i) Legal Representative or Personal Representative

As used in this trust document, the term *Legal Representative* or *Personal Representative* means a person's guardian, conservator, executor, administrator, Trustee, or any other person or entity representing a person or the person's estate. In the case of a minor beneficiary, the beneficiary's parent or another adult with custody of the beneficiary, except for any transferor to a trust created under this instrument, will be considered the beneficiary's Legal Representative for purposes of this trust.

(j) Per Stirpes

Whenever a distribution is to be made to a person's descendants *per stirpes*, the distribution will be divided into as many equal shares as there are then-living children and deceased children who left then-living descendants. Each then-living child will receive one share, and the share of each deceased child will be divided among the deceased child's then-living descendants in the same manner.

(k) Permissible Distributee

"Permissible Distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.

(l) Primary Beneficiary

The *Primary Beneficiary* of a trust created under this trust is that trust's oldest Income Beneficiary, unless some other individual is specifically designated as the Primary Beneficiary of that separate trust.

(m) Qualified Beneficiary

“Qualified Beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined:

- (1) is a distributee or Permissible Distributee of trust income or principal;
- (2) would be a distributee or Permissible Distributee of trust income or principal if the interests of the distributees described in subparagraph (1) terminated on that date; or
- (3) would be a distributee or Permissible Distributee of trust income or principal if the trust terminated on that date.

(n) Shall and May

Unless otherwise specifically provided in this trust or by the context in which used, the word *shall* in this trust imposes a duty, command, direct, or require, and the word *may* to allow or permit, but not require. In the context of our Trustee, the word *shall* imposes a fiduciary duty on our Trustee. The word *may* empowers our Trustee to act with the Trustee’s sole and absolute discretion unless otherwise stated in this trust. The words *may not* in reference to our Trustee, specifically means our Trustee *is not permitted to*.

(o) Trust

The terms *this trust*, *this document*, *instrument*, and *this trust document* refer to this trust and all trusts created under the terms of this trust.

(p) Trustee

The terms *our Trustee* and Trustee refer to the Initial Trustee named in Article One and to any successor, substitute, replacement, or additional person, corporation, or other entity that ever acts as the Trustee of any trust created under the terms of this trust. The term Trustee refers to singular or plural as the context may require.

(q) Trustmaker

Trustmaker has the same legal meaning as *Grantor*, *Settlor*, *Trustor* or any other term referring to the maker of a trust.

(r) Trust Property

The term *trust property* means all property acquired from any source and held by a Trustee under this trust.

Section 8.05 General Provisions and Rules of Construction

The following general provisions and rules of construction apply to this trust.

(a) Multiple Originals; Validity of Paper or Electronic Copies

This trust may be executed in any number of counterparts, each of which will be considered an original.

Any person may rely on a paper or electronic copy of this trust that the Trustee certifies to be a true copy as if it were an original.

(b) Singular and Plural; Gender

Unless the context requires otherwise, singular words may be construed as plural, and plural words may be construed as singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word *or*, when used in a list of more than two items, may function as both a conjunction and a disjunction as the context requires.

(c) Headings of Articles, Sections, and Subsections

The headings of Articles, Sections, and Subsections used within this trust are included solely for the convenience of the reader. They have no significance in the interpretation or construction of this trust.

(d) Governing State Law

This trust is governed, construed, and administered according to the laws of Arizona, as amended except as to trust property required by law to be governed by the laws of another jurisdiction and unless the situs of administration is changed under Section 8.03.

(e) Notices

Unless otherwise stated, any notice required under this trust will be in writing. The notice may be personally delivered with proof of delivery to the party requiring notice and will be effective on the date personally delivered. Notice may also be mailed, postage prepaid, by certified mail with return receipt requested to the last known address of the party requiring notice. Mailed notice is effective on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice will be effective on the date it would normally have been received via certified mail. If the party requiring notice is a minor or incapacitated individual, notice will be given to the parent or Legal Representative.


(f) Severability

The invalidity or unenforceability of any provision of this trust does not affect the validity or enforceability of any other provision of this trust. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this trust are to be interpreted as if the invalid provision had never been included.

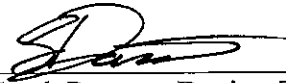
Schedule A

Ten Dollars Cash


We have executed this trust on the date written below our respective name. This irrevocable trust agreement is effective when signed by all Trustmakers, whether or not now signed by a Trustee.



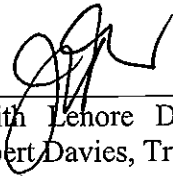
Andrew John Davies, Trustmaker
Dated: _____



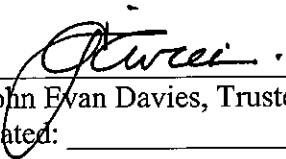
Sarah Ramona Davies, Trustmaker
Dated: _____



Jessica Deborah Davies, Trustmaker
Dated: _____



Judith Lenore Davies as parent of Walter
Robert Davies, Trustmaker
Dated: _____



John Evan Davies, Trustee
Dated: _____

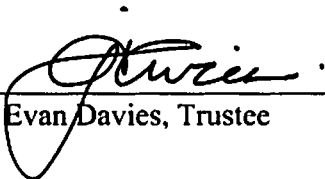
Certification of Trust for the Davies Arizona Trust

Under A. R. S. §14-11013, this Certification of Trust is signed by all the currently acting Trustees of the Davies Arizona Trust dated December 19, 2013, who declare as follows:

1. The Trustmakers of the trust are Andrew John Davies, Sarah Ramona Davies, Jessica Deborah Davies, and Walter Robert Davies. The trust is irrevocable and unamendable by the Trustmakers.
2. The Trustee of the trust is John Evan Davies.
3. There is no tax identification number of the trust because all tax events and consequences will be distributed or attributed under I. R. C. §871 to the Trustmakers all of whom are non-resident aliens living in the United States less than 183 days a year.
4. Title to assets held in the trust shall be titled as:

John Evan Davies, Trustee of the Davies Arizona Trust,
dated December 19, 2013.
5. Any alternative description shall be effective to title assets in the name of the trust or to designate the trust as a beneficiary if the description includes the name of at least one initial or successor trustee, any reference indicating that property is being held in a fiduciary capacity, and the date of the trust.
6. Excerpts from the trust agreement that establish the trust, designate the Trustee and set forth the powers of the Trustee will be provided upon request. The powers of the Trustee include the power to acquire, sell, assign, convey, pledge, encumber, lease, borrow, manage and deal with real and personal property interests.
7. The terms of the trust provide that a third party may rely upon this Certification of Trust as evidence of the existence of the trust and is specifically relieved of any obligation to inquire into the terms of this trust or the authority of my Trustee, or to see to the application that my Trustee makes of funds or other property received by my Trustee.
8. The trust has not been amended or judicially reformed in any way that would cause the representations in this Certification of Trust to be incorrect.

December __, 2013



John Evan Davies, Trustee

PROVINCE OF ONTARIO

)

) ss.

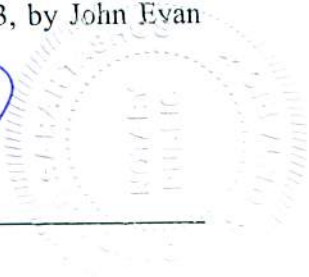
CITY OF TORONTO

)

This instrument was acknowledged before me on December 20th, 2013, by John Evan
Davies, as Trustee.



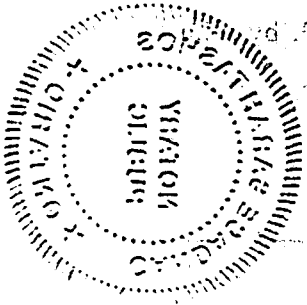
Notary Public



ESTABLISHED 1847

THE UNIVERSITY OF TORONTO

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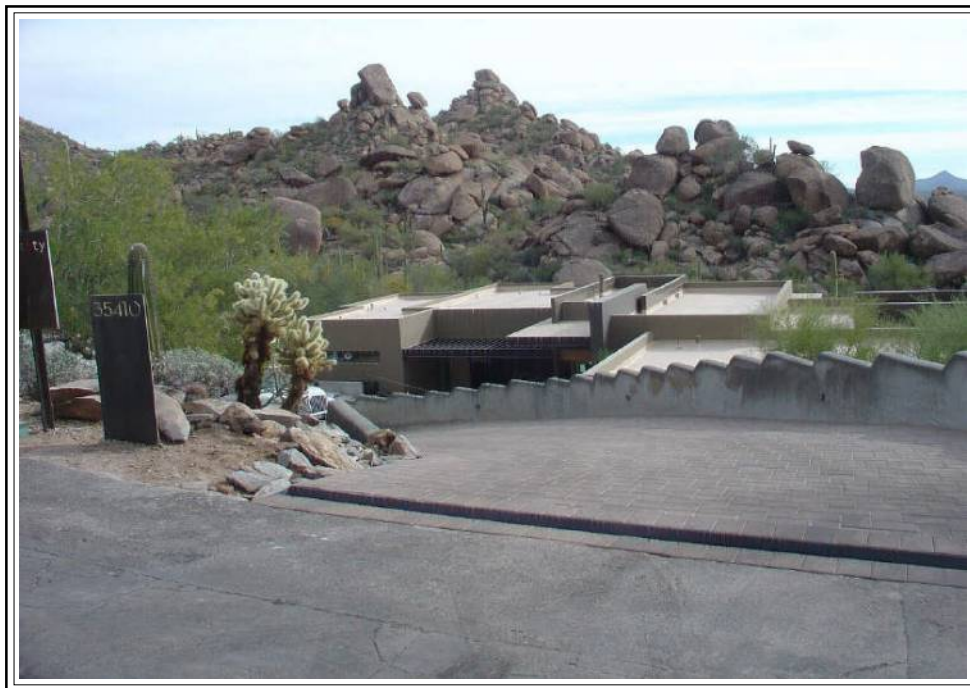
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Appendix “K”

APPRAISAL OF



LOCATED AT:

35410 N. Ridgeway Dr.
Carefree, AZ 85377

FOR:

B of I Federal Bank
4350 La Jolla Village Drive, Suite 140
San Diego, CA 92122

BORROWER:

John Davies

AS OF:

December 9, 2015

BY:

Mark Kaegi
Certified Residential Appraiser

ON-THE-MARK APPRAISAL

3369143
File No. **OTM-390**

**Axis Appraisal Management Solutions, Inc.
B of I Federal Bank
4350 La Jolla Village Drive, Suite 140
San Diego, CA 92122**

File Number: **OTM-390**

In accordance with your request, I have appraised the real property at:


**35410 N. Ridgeway Dr.
Carefree, AZ 85377**

The purpose of this appraisal is to develop an opinion of the market value of the subject property, as improved. The property rights appraised are the fee simple interest in the site and improvements.

In my opinion, the market value of the property as of **December 9, 2015** is:

**\$1,740,000
One Million Seven Hundred Forty Thousand Dollars**

The attached report contains the description, analysis and supportive data for the conclusions, final opinion of value, descriptive photographs, limiting conditions and appropriate certifications.


**Mark Kaegi
Certified Residential Appraiser**

Uniform Residential Appraisal Report

3369143
File No. OTM-390

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address **35410 N. Ridgeway Dr.** City **Carefree** State **AZ** Zip Code **85377**
 Borrower **John Davies** Owner of Public Record **John Davies/Davies Family Trust** County **Maricopa**
 Legal Description **Lot #17, Carefree Grand View Estates Unit 1 MCR 224-26**
 Assessor's Parcel # **216-32-102** Tax Year **2015** R.E. Taxes \$ **5,180**
 Neighborhood Name **Carefree Grandview Estates** Map Reference **66 KU/172** Census Tract **0304.01**
 Occupant Owner Tenant Vacant Special Assessments \$ **0** PUD HOA \$ **750** per year per month
 Property Rights Appraised Fee Simple Leasehold Other (describe)
 Assignment Type Purchase Transaction Refinance Transaction Other (describe)
 Lender/Client **B of I Federal Bank** Address **4350 La Jolla Village Drive, Suite 140, San Diego, CA 92122**
 Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? Yes No
 Report data source(s) used, offering price(s), and date(s). **Armls**

I did did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed.
 Contract Price \$ _____ Date of Contract _____ Is the property seller the owner of public record? Yes No Data Source(s) _____
 Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? Yes No
 If Yes, report the total dollar amount and describe the items to be paid. _____

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics		One-Unit Housing Trends		One-Unit Housing		Present Land Use %	
Location <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural	Property Values <input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Declining	PRICE	AGE	One-Unit	75 %		
Built-Up <input checked="" type="checkbox"/> Over 75% <input type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Demand/Supply <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply	\$(000)	(yrs)	2-4 Unit	%		
Growth <input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow	Marketing Time <input type="checkbox"/> Under 3 mths <input checked="" type="checkbox"/> 3-6 mths <input type="checkbox"/> Over 6 mths	750 Low	8	Multi-Family	%		
Neighborhood Boundaries North;Black Mountain, East;Tom Darlington Drive, South;Carefree Highway, West;Black Mountain.		2,274 High	51	Commercial	%		
Neighborhood Description Carefree Grandview Estates is conveniently located on the south rim of Black Mountain. Located within the town of Carefree, the area is known for native sonoran desert landscape and mountain views. Subject located close to main commercial area of Carefree and with specialty shops and dining. There is convenient access to freeway, recreation, schools, support facilities and amenities.		1,300 Pred.	15	Other Mtn Psv	25 %		
Market Conditions (including support for the above conclusions) See attached addendum for market conditions							

Dimensions **206 X 155 X 233 X 181 X 310** Area **1.68 ac** Shape **Rectangular/Slight Irreg.** View **B;Mtn;Elev;Hilside**
 Specific Zoning Classification **R-70** Zoning Description **70,000 SF Per Single-Family Dwelling**
 Zoning Compliance Legal Legal Nonconforming (Grandfathered Use) No Zoning Illegal (describe)
 Is the highest and best use of the subject property as improved (or as proposed per plans and specifications) the present use? Yes No If No, describe. **Highest and best use "as-is" single family residential.**
 Utilities Public Other (describe) Public Other (describe) Off-site Improvements—Type Public Private
 Electricity Water Street **Asphalt**
 Gas Sanitary Sewer **Septic System** Alley **None**
 FEMA Special Flood Hazard Area Yes No FEMA Flood Zone **X** FEMA Map # **04013C0890L** FEMA Map Date **10/16/2013**
 Are the utilities and off-site improvements typical for the market area? Yes No If No, describe.
 Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? Yes No If Yes, describe. **No visible adverse easements or encroachments observed. No readily apparent adverse site or external factors known to the subject site. However, many site related issues are beyond the scope of this assignment. Subject site is a hillside lot, elevated from Ridgeview St. but sits below street level on it's 66th place property entrance.Level building envelope with rear downslope.**

GENERAL DESCRIPTION		FOUNDATION		EXTERIOR DESCRIPTION materials/condition		INTERIOR materials/condition	
Units <input checked="" type="checkbox"/> One <input type="checkbox"/> One with Accessory Unit	<input checked="" type="checkbox"/> Concrete Slab <input type="checkbox"/> Crawl Space	Foundation Walls	Concrete/gd	Floors	Stag.Trav.Tile/Gd		
# of Stories 1	<input type="checkbox"/> Full Basement <input type="checkbox"/> Partial Basement	Exterior Walls	WdFramd/Stucco/Glass/Gd	Walls	D.Wall/Paint/Gd		
Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/> S-Det./End Unit	Basement Area 0 sq. ft.	Roof Surface	Blt-up Foam/Gd	Trim/Finish	Paint/Good		
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Under Const.	Basement Finish 0 %	Gutters & Downspouts	Overhang/Scuppers/Avg	Bath Floor	Stag.Trav.Tile/Gd		
Design (Style) Santa Fe/Contemporary	<input type="checkbox"/> Outside Entry/Exit <input type="checkbox"/> Sump Pump	Window Type	Anod/Thermo/Gd	Bath Wainscot	Dec.Tile/Gd		
Year Built 2014	Evidence of <input type="checkbox"/> Infestation	Storm Sash/Insulated	None/Typical/Avg	Car Storage	<input type="checkbox"/> None		
Effective Age (Yrs) 1	<input type="checkbox"/> Dampness <input type="checkbox"/> Settlement	Screens	No Screens	<input checked="" type="checkbox"/> Driveway # of Cars 2			
Attic <input checked="" type="checkbox"/> None	Heating <input checked="" type="checkbox"/> FWA <input type="checkbox"/> HWBB <input type="checkbox"/> Radiant	Amenities <input type="checkbox"/> WoodStove(s) #0		Driveway Surface Pavers			
<input type="checkbox"/> Drop Stair <input type="checkbox"/> Stairs	<input type="checkbox"/> Other Fuel Gas/Electric	<input checked="" type="checkbox"/> Fireplace(s) # 1	<input checked="" type="checkbox"/> Fence W.Iron	<input checked="" type="checkbox"/> Garage # of Cars 2			
<input type="checkbox"/> Floor <input type="checkbox"/> Scuttle	Cooling <input checked="" type="checkbox"/> Central Air Conditioning	<input checked="" type="checkbox"/> Patio/Deck Multiple	<input checked="" type="checkbox"/> Porch Cv.Entry	<input type="checkbox"/> Carport # of Cars 0			
<input type="checkbox"/> Finished <input type="checkbox"/> Heated	<input type="checkbox"/> Individual <input type="checkbox"/> Other	<input checked="" type="checkbox"/> Pool Neg.Edge	<input checked="" type="checkbox"/> Other Spa/F.Pit/Ftn	<input checked="" type="checkbox"/> Att. <input type="checkbox"/> Det. <input type="checkbox"/> Built-in			
Appliances <input checked="" type="checkbox"/> Refrigerator <input checked="" type="checkbox"/> Range/Oven <input checked="" type="checkbox"/> Dishwasher <input checked="" type="checkbox"/> Disposal <input checked="" type="checkbox"/> Microwave <input type="checkbox"/> Washer/Dryer <input type="checkbox"/> Other (describe)							
Finished area above grade contains: 8 Rooms 4 Bedrooms 3.0 Bath(s) 4,495 Square Feet of Gross Living Area Above Grade							
Additional features (special energy efficient items, etc.) Staggered travertine tile flooring, granite slab and marble counter tops, custom Antegrade African Hardwood cabinetry,custom ceiling fans, 8ft Metal/French doors, seamless wall of glass windows, custom wood ceiling details, custom vanities,jacuzzi tub, surround sound.							
Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.) C1;Kitchen-remodeled-less than one year ago;Bathrooms-remodeled-less than one year ago;Kitchen has African hardwood cabinetry, granite slab/marble counter tops, custom Wolf/Asko stainless appliances with 2 subzeros, icemaker and built-in espresso machine. Bathrooms custom marble counter tops, Ronbow sinks, custom tile shower surrounds, similar custom cabinetry. Subject has been completely torn down and rebuilt from exterior and all new high end finishes and upgrades have been added to the interior.							
Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, describe. While no physical deficiencies or adverse conditions that affect livability, soundness or structural integrity were noted, such items are generally beyond the expertise of the appraiser. These issues are often related to areas that are hidden from the appraiser's view. See limiting condition #5 and comments on page three related to appraiser's definition of "complete visual inspection."							
Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe. Subject's architecture style is in conformity with the area norms. Functional utility is acceptable with adequately sized rooms and an efficient layout.							

Uniform Residential Appraisal Report

3369143
File No. OTM-390

There are **20** comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ **685,000** to \$ **4,750,000**

There are **11** comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ **750,000** to \$ **2,274,000**

FEATURE	SUBJECT	COMPARABLE SALE NO. 1		COMPARABLE SALE NO. 2		COMPARABLE SALE NO. 3	
Address	35410 N. Ridgeway Dr. Carefree, AZ 85377	35646 N. Meander Way Carefree, AZ 85377		36601 N. Sidewinder Rd. Carefree, AZ 85377		6644 E. El Sendero Carefree, AZ 85377	
Proximity to Subject		0.58 miles NE		1.27 miles NE		0.13 miles SE	
Sale Price	\$	\$ 1,725,000		\$ 1,725,000		\$ 1,486,000	
Sale Price/Gross Liv. Area	\$ 0.00 sq. ft.	\$ 365.08 sq. ft.		\$ 459.51 sq. ft.		\$ 333.48 sq. ft.	
Data Source(s)		Armls #5238473;DOM 262		Armls #5185971;DOM 185		Armls #5243625;DOM 19	
Verification Source(s)		Monsoon Tax/Doc#20150794889		Monsoon Tax/Doc#20150377413		Monsoon Tax/Doc#20150230267	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION	+(-) \$ Adjustment
Sale or Financing Concessions		ArmLth Cash;0		ArmLth Conv;0		ArmLth Cash;0	
Date of Sale/Time		s11/15;c09/15		s05/15;c04/15		s04/15;c03/15	
Location	N;Res;Gtd	N;Res;	40,000	N;Res;Fedr.St;Cor;Cds	40,000	N;Res;Gtd	
Leasehold/Fee Simple	Fee simple	Fee simple		Fee simple		Fee simple	
Site	1.68 ac	2.40 ac	0	1.65 ac	0	1.78 ac	0
View	B;Mtn;Elev;Hilside	B;Mtn;Elev;Hilside		B;Mtn;Dsrt Prsv	0	B;Mtn;Elev;Hilside	
Design (Style)	DT1;Santa Fe/Contemp	DT1;Contemporary	0	DT1;Santa Fe	0	DT1;Spanish	0
Quality of Construction	Q2	Q2		Q2		Q2	
Actual Age	1	26	100,000	13	0	33	160,000
Condition	C1	C2	0	C2	0	C2	0
Above Grade	Total Bdrms Baths	Total Bdrms Baths		Total Bdrms Baths		Total Bdrms Baths	
Room Count	8 4 3.0	7 3 3.1	-15,000	8 4 4.0	-30,000	8 4 4.0	-15,000
Gross Living Area	125 4,495 sq. ft.	4,725 sq. ft.	-28,800	3,754 sq. ft.	92,600	4,456 sq. ft.	0
Basement & Finished Rooms Below Grade	0sf	0sf		0sf		0sf	
Functional Utility	Good	Good		Good		Good	
Heating/Cooling	Fau/Cac	Fau/Cac		Fau/Cac		Fau/Cac	
Energy Efficient Items	Uppg C.Fans	Uppg C.Fans		Uppg C.Fans		Uppg C.Fans	
Garage/Carport	2ga2dw	5ga5dw	-50,000	4ga4dw	-40,000	3ga3dw	-20,000
Porch/Patio/Deck	Mul.Cv.Patio's/Cv.Porch/Balc	Cv.Patio's/Ct.Yard	10,000	Mul.Patio's/Deck/Ct.Yard	0	Mul.Patio's/Cv.Porch/Deck	0
Fireplace	1 Fireplace	3 Fireplaces	-16,000	3 Fireplaces	-16,000	2 Fireplaces	-8,000
Pool/Amenities	NegPool/Spa/Bbq/F.Pit/W.Iron	Pool/Bbq/F.Pit/W.Iron	10,000	Pool/Spa/Bbq/Fp/W.Iron	0	Pool/Spa/P.Blk	15,000
Features	Upgrades	Sim Uppg/Det Gst Casita	-30,000	Sim Uppg/Det Gst Casita	-30,000	Inf Upgrades	125,000
Net Adjustment (Total)		<input checked="" type="checkbox"/> + <input type="checkbox"/> -	\$ 20,200	<input checked="" type="checkbox"/> + <input type="checkbox"/> -	\$ 16,600	<input checked="" type="checkbox"/> + <input type="checkbox"/> -	\$ 257,000
Adjusted Sale Price of Comparables		Net Adj. 1.2% Gross Adj. 17.4%	\$ 1,745,200	Net Adj. 1.0% Gross Adj. 14.4%	\$ 1,741,600	Net Adj. 17.3% Gross Adj. 23.1%	\$ 1,743,000

SALES COMPARISON APPROACH

I did did not research the sale or transfer history of the subject property and comparable sales. If not, explain _____

My research did did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data source(s) **Armls/Monsoon tax**

My research did did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data source(s) **Armls/Monsoon tax**

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE NO. 1	COMPARABLE SALE NO. 2	COMPARABLE SALE NO. 3
Date of Prior Sale/Transfer	12/30/2013	01/29/2001	11/20/2003	01/02/2013
Price of Prior Sale/Transfer	\$1,250,000	\$875,000	\$1,350,000	\$1,830,587
Data Source(s)	Monsoon Tax	Monsoon Tax	Monsoon Tax	Monsoon Tax
Effective Date of Data Source(s)	12/09/2015	12/09/2015	12/09/2015	12/09/2015

Analysis of prior sale or transfer history of the subject property and comparable sales **Recent prior sale of the subject property represents a normal arm's length transaction/purchase by the current owner. The prior sales price on 12/30/2013 is not reflective of the current exterior tear down/rebuild of both exterior and interior. No prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sales.**

Summary of Sales Comparison Approach. **Comparables chosen mostly from the same Carefree/Black Mountain comparative market area. #1 is approximately similar in size with bonus room instead of fourth bedroom and adjusted for having detached guest casita amenity. Location adjustment for non security gated area. Age adjustment as subject has been rebuilt and is currently going to be occupied with no physical depreciation. #2 has smaller gross living area with amenity adjustment for having a detached guest casita. Location adjustment offset as although #2 is a corner/cul-de-sac lot it does front toward a minor feeder street. #2 does share similar high end interior upgrades. #3 has similar gross living area. Age adjustment applied as subject has been rebuilt and is currently going to be occupied with no physical depreciation. Interior upgrade adjustment for subject's high end contemporary upgrades and exterior accenting.**

Indicated Value by Sales Comparison Approach \$ **1,740,000**

Indicated Value by: Sales Comparison Approach \$ **1,740,000** Cost Approach (if developed) \$ **1,846,700** Income Approach (if developed) \$ **0**

Heaviest consideration given to the sales comparison approach. Cost approach subject to obsolescence factors. Income approach was not deemed reliable within this primarily owner occupied area. All comparables were considered in the final estimate of value with a heavier weighting on comparables 1-3 as they are most similar in terms of gross living area.

This appraisal is made "as is," subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair: _____

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ **1,740,000** as of **12/09/2015**, which is the date of inspection and the effective date of this appraisal.

RECONCILIATION

Uniform Residential Appraisal Report

3369143
File No. OTM-390

ADDITIONAL COMMENTS

INTENDED USE, INTENDED USERS AND PURPOSE:

As indicated in the USPAP Compliance Addendum pages, the lender/client intends this appraisal report for use by B of I Federal Bank and by Axis Appraisal Management Solutions, acting as an agent of the lender in ordering the appraisal. The purpose of this report is a mortgage finance transaction only. The intended users of this appraisal report include the stated lender/client, any agent acting for the lender, and any other institution(s) involved in the underwriting, approval, and funding of the mortgage loan. The use of this appraisal report by anyone other than the stated intended users, such as an unknown assign, or for any other use than the stated intended use, is prohibited. No one else, including the borrower, shall rely on the estimate of value or any other conclusions contained in this appraisal report. The appraisal report should not be considered as complete without all addendum pages and exhibits.

INSPECTION OR INSPECT:

The scope of this assignment is based on a visual inspection of the subject property and if requested, a measurement of the property exterior. This appraisal report is not a home inspection report and should not be relied upon to disclose condition of the subject property. Inspect and inspection terms are not meant to imply that the appraiser is a home inspector or that the appraisal process involves analyzing the subject property to this level of detail. The appraiser is not a home inspector and does not possess this expertise. A more appropriate term that will be used for the purposes of this assignment is "view" or "viewing".

COMPLETE VISUAL INSPECTION:

For the purposes of this assignment, the term "complete visual inspection" is defined as a cursory observation of the subject property by the appraiser used to describe in general terms the relevant physical characteristics such as features, size and condition of the subject property. The appraiser has noted the items considered to be relevant, including items that may or may not affect the value of the subject property. The appraiser has viewed the subject property from the interior and exterior as part of the scope of work for this assignment. The appraiser did not view the unfinished attic areas, or crawl space areas unless indicated within this report. This viewing is not intended to discover or note every minute detail (including unapparent physical deficiencies) regarding the subject property including, but not limited to adverse condition, needed repairs, deterioration, unapparent physical deficiencies. Any areas that were not viewed or viewable due to obstacles have been noted in the report. The appraiser will not move any personal items in order to view an area due to liability concerns. The user of this report is encouraged to retain experts in their respective fields for inspection(s) concerning potential physical deficiencies, subsoil conditions, environmental issues and other concerns about the subject property, as the appraiser is only an expert in the valuation of real estate.

"The Scope of Work for this assignment is in accordance with the pre-printed scope contained within the body of the FNMA form #1004 certification. Any specific client requests that differ from the pre-printed scope are described below and may supersede the pre-printed text, but are in the appraiser's opinion, compliant with current USPAP requirements."

Additional Scope of Work: The fee to be paid for the appraisal report is \$560.00

MARKETING TIME AND EXPOSURE TIME FOR THE SUBJECT PROPERTY:

A reasonable marketing time for the subject is 180 day(s) utilizing market condition pertinent to the appraisal assignment. Exposure Time = The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal. A reasonable exposure time for the subject property is 90-270 day(s).

USPAP-DISCLOSURE OF PRIOR SERVICES:

Appraiser has not provided any service regarding the subject property within the past 36 months. I have not performed any services, as an appraiser or in any other capacity, on the subject property within the three year period immediately preceding acceptance of this assignment.

COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) **Within the assessor book and map are(216-32) encompassing the subject subdivision there is only one closed 4.84 acre land sale on 12/2014 with 7 active listings that vary widely from 1.79 to 13.66 acres. 7020 E. Stagecoach Pass Dr. 1, 4.84 acres closed 12/24/14 @\$450,000. Active listing 6816 E. Stagecoach Pass #659, 1.79 acre, \$279,000. The estimated site value is supported more by appraiser knowledge of the area**

ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input checked="" type="checkbox"/> REPLACEMENT COST NEW	OPINION OF SITE VALUE = \$ 275,000		
Source of cost data Building-Cost.Net	Dwelling	4,495 Sq. Ft. @ \$ 325.00	= \$ 1,460,875
Quality rating from cost service Good Effective date of cost data 12/2015		Sq. Ft. @ \$	= \$
Comments on Cost Approach (gross living area calculations, depreciation, etc.)	Patio's,Pool,Bbq,F.Pit,Features 75,000		
The cost estimates are based on appraiser experience of the area and supported by on-line cost data and reflective of the current market. The subject does not reflect design or layout obsolescence. No external obsolescence noted or observed.	Garage/Carport	764 Sq. Ft. @ \$ 26.00	= \$ 19,864
Functional obsolescence assigned for cost of swimming pool versus market return. Please note attached floor plan.	Total Estimate of Cost-New = \$ 1,555,739		
	Less 85 Physical	Functional	External
	Depreciation \$14,084	\$20,000	\$0 = \$ (34,084)
	Depreciated Cost of Improvements = \$ 1,521,655		
	"As-is" Value of Site Improvements = \$ 50,000		
Estimated Remaining Economic Life (HUD and VA only) 84 Years	INDICATED VALUE BY COST APPROACH = \$ 1,846,700		

INCOME APPROACH TO VALUE (not required by Fannie Mae)

Estimated Monthly Market Rent \$ **0** X Gross Rent Multiplier **0** = \$ **0** Indicated Value by Income Approach

Summary of Income Approach (including support for market rent and GRM) **The income approach was not deemed a reliable market indicator within this primarily owner occupied area.**

PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)? Yes No Unit type(s) Detached Attached

Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.

Legal name of project

Total number of phases Total number of units Total number of units sold

Total number of units rented Total number of units for sale Data source(s)

Was the project created by the conversion of an existing building(s) into a PUD? Yes No If Yes, date of conversion.

Does the project contain any multi-dwelling units? Yes No Data source(s)

Are the units, common elements, and recreation facilities complete? Yes No If No, describe the status of completion.

Are the common elements leased to or by the Homeowners' Association? Yes No If Yes, describe the rental terms and options.

Describe common elements and recreational facilities.

Uniform Residential Appraisal Report

3369143

File No. OTM-390

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

Uniform Residential Appraisal Report

3369143

File No. OTM-390

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.
21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

Uniform Residential Appraisal Report

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

- 1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature Mark Kaegi
Name Mark Kaegi
Company Name ON-THE-MARK APPRAISAL
Company Address PO Box 3311
CAREFREE AZ, AZ 85377
Telephone Number 480-595-6350
Email Address ginakaegi@cox.net
Date of Signature and Report 12/15/2015
Effective Date of Appraisal 12/09/2015
State Certification # 21613
or State License #
or Other (describe) State #
State AZ
Expiration Date of Certification or License 09/30/2017

ADDRESS OF PROPERTY APPRAISED
35410 N. Ridgeway Dr.
Carefree, AZ 85377

APPRAISED VALUE OF SUBJECT PROPERTY \$ 1,740,000

LENDER/CLIENT
Name Axis Appraisal Management Solutions, Inc.
Company Name B of I Federal Bank
Company Address 4350 La Jolla Village Drive, Suite 140
San Diego, CA 92122
Email Address

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature
Name
Company Name
Company Address
Telephone Number
Email Address
Date of Signature
State Certification #
or State License #
State
Expiration Date of Certification or License

SUBJECT PROPERTY
Did not inspect subject property
Did inspect exterior of subject property from street
Date of Inspection
Did inspect interior and exterior of subject property
Date of Inspection

COMPARABLE SALES
Did not inspect exterior of comparable sales from street
Did inspect exterior of comparable sales from street
Date of Inspection

Uniform Residential Appraisal Report

FEATURE	SUBJECT	COMPARABLE SALE NO. 4		COMPARABLE SALE NO. 5		COMPARABLE SALE NO. 6	
35410 N. Ridgeway Dr. Address Carefree, AZ 85377	35802 N. Meander Way Carefree, AZ 85377	35802 N. Meander Way Carefree, AZ 85377		6427 E. El Sendero Rd. Carefree, AZ 85377		6623 E. El Sendero Rd. Carefree, AZ 85377	
Proximity to Subject		0.63 miles NE		0.27 miles SW		0.17 miles SE	
Sale Price	\$	\$ 1,800,000		\$ 2,200,000		\$ 2,499,000	
Sale Price/Gross Liv. Area	\$ 0.00 sq. ft.	\$ 296.83 sq. ft.		\$ 438.68 sq. ft.		\$ 415.60 sq. ft.	
Data Source(s)		Armls #5072861;DOM 388		Armls #5026291;DOM 188		Armls #5258002;DOM 261	
Verification Source(s)		Monsoon Tax/Doc#20150345259		Monsoon Tax/Doc#2014346286		Monsoon Tax	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION	+(-) \$ Adjustment
Sale or Financing Concessions		ArmLth Cash;0		ArmLth Cash;0		Listing ;0	-75,000
Date of Sale/Time		s05/15;c04/15		s05/14;c05/14		Active	
Location	N;Res;Gtd	N;Res;Cor	40,000	N;Res;Cds;Gtd	0	N;Res;Gtd	
Leasehold/Fee Simple	Fee simple	Fee simple		Fee simple		Fee simple	
Site	1.68 ac	69750 ac	0	3.54 ac	-175,000	1.69 ac	0
View	B;Mtn;Elev;Hilside	B;Mtn;Elev;Hilside		B;Mtn;Elev;Hilside		B;Mtn;Elev;Hilside	
Design (Style)	DT1;Santa Fe/Contemp	DT2;Span/Tuscan	0	DT2;Santa Fe/Contemp	0	DT1;Santa Fe/Contemp	
Quality of Construction	Q2	Q2		Q2		Q2	
Actual Age	1	13	0	18	85,000	2	0
Condition	C1	C2	0	C2	0	C1	
Above Grade Room Count	Total Bdrms Baths 8 4 3.0	Total Bdrms Baths 9 3 3.0	0	Total Bdrms Baths 8 4 3.1	-15,000	Total Bdrms Baths 10 5 5.1	-75,000
Gross Living Area	125 4,495 sq. ft.	6,064 sq. ft.	-196,100	5,015 sq. ft.	-65,000	6,013 sq. ft.	-189,800
Basement & Finished Rooms Below Grade	0sf	0sf		0sf		0sf	
Functional Utility	Good	Good		Good		Good	
Heating/Cooling	Fau/Cac	Fau/Cac		Fau/Cac		Fau/Cac	
Energy Efficient Items	Upg C.Fans	Upg C.Fans		Upg C.Fans		Upg C.Fans	
Garage/Carport	2ga2dw	5ga5dw	-50,000	3ga3dw	-20,000	3ga3dw	-20,000
Porch/Patio/Deck	Mul.Cv.Patio's/Cv.Porch/Balc	Mul.Patio/Mul.Decks	-4,000	Mul.Cv.Balconies/Cv.Porch	0	Mul.Cv.Patio's/Cv.Porch	-20,000
Fireplace	1 Fireplace	2 Fireplaces	-8,000	2Way Fireplace	0	1 Fireplace	
Pool/Amenities	NegPool/Spa/Bbq/F.Pit/W.Iron	LapPool/Spa/Bbq/F.Pit/P.Blk	0	LapPool/F.Pit/Bbq/W.Iron	10,000	LapPool/Spa/Bbq-Kitch/Blk	-10,000
Features	Upgrades	Sim Upg/Det Gst. Casita	-30,000	Sim Upg/Att. Gst Casita	0	Sim Upg/Att.Gst Casita	0
Net Adjustment (Total)		<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ 248,100	<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ 180,000	<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ 389,800
Adjusted Sale Price of Comparables		Net Adj. -13.8%		Net Adj. -8.2%		Net Adj. -15.6%	
		Gross Adj. 18.2%	\$ 1,551,900	Gross Adj. 16.8%	\$ 2,020,000	Gross Adj. 15.6%	\$ 2,109,200
ITEM	SUBJECT	COMPARABLE SALE NO. 4		COMPARABLE SALE NO. 5		COMPARABLE SALE NO. 6	
Date of Prior Sale/Transfer	12/30/2013	01/02/2013		07/16/2008		04/01/2013	
Price of Prior Sale/Transfer	\$1,250,000	\$1,830,587		\$1,850,000		\$1,000,000	
Data Source(s)	Monsoon Tax	Monsoon Tax		Monsoon Tax		Monsoon Tax	
Effective Date of Data Source(s)	12/09/2015	12/09/2015		12/09/2015		12/09/2015	
Summary of Sales Comparison Approach Comparable #4 has larger gross living area with den and media room option instead of fourth bedroom and adjusted for having detached guest casita amenity. Location adjustment for non security gated area.							
Comparable #5 is an old sale but utilized as it is one of the only sales from the same Carefree Grand View Estates. #5 is similar to the subject with full interior remodel and floor to ceiling glass walls. #5 is larger with an attached guest casita that is included within the gross living area as it can be accessed from the main dwelling. Age adjustment as subject has been rebuilt and is currently going to be occupied with no physical depreciation. Comparable #6 is a current active listing within the immediate Carefree Grand View Estates subdivision. Listing adjustment applied for typical negotiations and sales to list price ratio. #6 has much larger gross living area with an attached guest casita that is included within the gross living area as it can be accessed from the main dwelling.							

SALES COMPARISON APPROACH

Condition Ratings and Definitions

C1 The improvements have been very recently constructed and have not previously been occupied. The entire structure and all components are new and the dwelling features no physical depreciation.*

**Note: Newly constructed improvements that feature recycled materials and/or components can be considered new dwellings provided that the dwelling is placed on a 100% new foundation and the recycled materials and the recycled components have been rehabilitated/re-manufactured into like-new condition. Recently constructed improvements that have not been previously occupied are not considered "new" if they have any significant physical depreciation (i.e., newly constructed dwellings that have been vacant for an extended period of time without adequate maintenance or upkeep).*

C2 The improvements feature no deferred maintenance, little or no physical depreciation, and require no repairs. Virtually all building components are new or have been recently repaired, refinished, or rehabilitated. All outdated components and finishes have been updated and/or replaced with components that meet current standards. Dwellings in this category either are almost new or have been recently completely renovated and are similar in condition to new construction.

**Note: The improvements represent a relatively new property that is well maintained with no deferred maintenance and little or no physical depreciation, or an older property that has been recently completely renovated.*

C3 The improvements are well maintained and feature limited physical depreciation due to normal wear and tear. Some components, but not every major building component, may be updated or recently rehabilitated. The structure has been well maintained.

**Note: The improvement is in its first-cycle of replacing short-lived building components (appliances, floor coverings, HVAC, etc.) and is being well maintained. Its estimated effective age is less than its actual age. It also may reflect a property in which the majority of short-lived building components have been replaced but not to the level of a complete renovation.*

C4 The improvements feature some minor deferred maintenance and physical deterioration due to normal wear and tear. The dwelling has been adequately maintained and requires only minimal repairs to building components/mechanical systems and cosmetic repairs. All major building components have been adequately maintained and are functionally adequate.

**Note: The estimated effective age may be close to or equal to its actual age. It reflects a property in which some of the short-lived building components have been replaced, and some short-lived building components are at or near the end of their physical life expectancy; however, they still function adequately. Most minor repairs have been addressed on an ongoing basis resulting in an adequately maintained property.*

C5 The improvements feature obvious deferred maintenance and are in need of some significant repairs. Some building components need repairs, rehabilitation, or updating. The functional utility and overall livability is somewhat diminished due to condition, but the dwelling remains useable and functional as a residence.

**Note: Some significant repairs are needed to the improvements due to the lack of adequate maintenance. It reflects a property in which many of its short-lived building components are at the end of or have exceeded their physical life expectancy but remain functional.*

C6 The improvements have substantial damage or deferred maintenance with deficiencies or defects that are severe enough to affect the safety, soundness, or structural integrity of the improvements. The improvements are in need of substantial repairs and rehabilitation, including many or most major components.

**Note: Substantial repairs are needed to the improvements due to the lack of adequate maintenance or property damage. It reflects a property with conditions severe enough to affect the safety, soundness, or structural integrity of the improvements.*

Quality Ratings and Definitions

Q1 Dwellings with this quality rating are usually unique structures that are individually designed by an architect for a specified user. Such residences typically are constructed from detailed architectural plans and specifications and feature an exceptionally high level of workmanship and exceptionally high-grade materials throughout the interior and exterior of the structure. The design features exceptionally high-quality exterior refinements and ornamentation, and exceptionally high-quality interior refinements. The workmanship, materials, and finishes throughout the dwelling are of exceptionally high quality.

Q2 Dwellings with this quality rating are often custom designed for construction on an individual property owner's site. However, dwellings in this quality grade are also found in high-quality tract developments featuring residences constructed from individual plans or from highly modified or upgraded plans. The design features detailed, high-quality exterior ornamentation, high-quality interior refinements, and detail. The workmanship, materials, and finishes throughout the dwelling are generally of high or very high quality.

Q3 Dwellings with this quality rating are residences of higher quality built from individual or readily available designer plans in above-standard residential tract developments or on an individual property owner's site. The design includes significant exterior ornamentation and interiors that are well finished. The workmanship exceeds acceptable standards and many materials and finishes throughout the dwelling have been upgraded from "stock" standards.

Q4 Dwellings with this quality rating meet or exceed the requirements of applicable building codes. Standard or modified standard building plans are utilized and the design includes adequate fenestration and some exterior ornamentation and interior refinements. Materials, workmanship, finish, and equipment are of stock or builder grade and may feature some upgrades.

Q5 Dwellings with this quality rating feature economy of construction and basic functionality as main considerations. Such dwellings feature a plain design using readily available or basic floor plans featuring minimal fenestration and basic finishes with minimal exterior ornamentation and limited interior detail. These dwellings meet minimum building codes and are constructed with inexpensive, stock materials with limited refinements and upgrades.

Q6 Dwellings with this quality rating are of basic quality and lower cost; some may not be suitable for year-round occupancy. Such dwellings are often built with simple plans or without plans, often utilizing the lowest quality building materials. Such dwellings are often built or expanded by persons who are professionally unskilled or possess only minimal construction skills. Electrical, plumbing, and other mechanical systems and equipment may be minimal or non-existent. Older dwellings may feature one or more substandard or non-conforming additions to the original structure.

Definitions of Not Updated, Updated, and Remodeled**Not Updated**

Little or no updating or modernization. This description includes, but is not limited to, new homes.

Residential properties of fifteen years of age or less often reflect an original condition with no updating, if no major components have been replaced or updated. Those over fifteen years of age are also considered not updated if the appliances, fixtures, and finishes are predominantly dated. An area that is 'Not Updated' may still be well maintained and fully functional, and this rating does not necessarily imply deferred maintenance or physical /functional deterioration.

Updated

The area of the home has been modified to meet current market expectations. These modifications are limited in terms of both scope and cost.

An updated area of the home should have an improved look and feel, or functional utility. Changes that constitute updates include refurbishment and/or replacing components to meet existing market expectations. Updates do not include significant alterations to the existing structure.

Remodeled

Significant finish and/or structural changes have been made that increase utility and appeal through complete replacement and/or expansion.

A remodeled area reflects fundamental changes that include multiple alterations. These alterations may include some or all of the following: replacement of a major component (cabinet(s), bathtub, or bathroom tile), relocation of plumbing/gas fixtures/appliances, significant structural alterations (relocating walls, and/or the addition of square footage). This would include a complete gutting and rebuild.

Explanation of Bathroom Count

The number of full and half baths is reported by separating the two values by a period. The full bath is represented to the left of the period. The half bath count is represented to the right of the period. Three-quarter baths are to be counted as a full bath in all cases. Quarter baths (baths that feature only toilet) are not to be included in the bathroom count.

ADDENDUM

Borrower: John Davies

File No.: OTM-390

Property Address: 35410 N. Ridgeway Dr.

Case No.: 3369143

City: Carefree

State: AZ

Zip: 85377

Lender: B of I Federal Bank

Septic sewer:

Subject has a private septic sewer system which is common/typical for the area and does not create an adverse marketing condition. Based on my limited inspection of the septic area there were no obvious signs of failure. The residential area's of Carefree are all located on individual private septic.

Utilities/Mechanical:

Although property was vacant at time of inspection all utilities/mechanicals and water were on and in working order at time of inspection.

Subject property square footage/gross living area:

The subject according to the Maricopa County Assessor is listed at 4,270 square feet in GLA. The appraiser measured the property per ANSI guidelines at 4,495 square feet in GLA. The original above grade structure was demolished down to the concrete slab on grade and rebuilt. The original garage area was extra deep with the rear 600 sf used for a full workshop. This area was used in creating the 4th bedroom/bathroom area with the cantilevered balcony.

The appraiser has used the American National Standard Institute square footage method for calculating Gross Living Area (GLA) based on ANSI Z765-2003. All GLA measurements are taken by using a laser type measuring devise. In addition, the appraiser has used a computer aided software drawing program to generate the sketch and assist in calculating the reported GLA within this report. The GLA measurements in the sketch are considered accurate; however minor differences may exist between County records or other measurements taken by other individuals. These minor differences do not negatively impact the value. For the purposes of this report the measurements recorded in the sketch are deemed accurate as of the time and date of the report.

Subject teardown and rebuild reflects property age/new year built:

Within the Maricopa County/Monsoon Tax system the age/year built of the property has changed to 2014. The following commentary is from the homeowner. Identity Construction demolished the entire above grade structure down to the concrete slab on grade. The garage was extra deep because the former owner used it for a full workshop. We used the rear 600sf of the garage for the 4th bedroom. Added plumbing, the cantilevered balcony and rearranged access and the staircase.

Subject's immediate Carefree Grand View Estates Subdivision and comparable selection:

Carefree Grand View Estates has a total of 15 improved lots with 12 being single story and 3 being multi-story. The average square footage is around 5,295 square feet and age/year built ranging from 1979-2014. Over the past 12 months there were only 2 closed sales and 3 current active listing. With a lack of recent comparable sales it was necessary to expand our comparable search throughout the comparative Carefree market area. Properties that had similar elevated/mountain preserve type lots were utilized along with homes that were as similar as possible in terms of gross living area. Comparable #3 although older was utilized as it is a sale from the same Carefree Grand View Estates.

Age adjustment for comparable properties that have larger age differences:

As mentioned above with the subject property being re-built with all new materials and amenities the actual age of the property has changed to year built being 2014. With comparables selected that had a significant age difference a market based adjustment of \$5,000 per year for physical depreciation was utilized.

Minimum property items to complete on the property:

At the time of the appraisal inspection there were some minor interior/exterior items that were not completed yet but looked as if they were in the process of being completed. The interior items include; bathroom vanity mirrors to be installed, a couple of kitchen cabinet doors to be installed, master bathroom shower was in process of being tiled along with installation of outlet face plates. The major exterior items include the pool and spa surfacing and custom front entry grate installation.

View adjustments - Black Mountain area:

Within the assessor book and map are(216-32) encompassing the subject subdivision there is only one closed 4.84 acre land sale on 12/2014 with 7 active listings that vary widely from 1.79 to 13.66 acres. View adjustments were derived by paired sales analysis. Properties having relatively similar features, upgrades and amenities were chosen/analyzed with the major difference being a lot that backs a private desert wash/preserve area with no other residential properties directly behind versus a lot with a desert wash buffer and normal views of other residential properties. The differences in price is what the market perceives as an adjusted value. In analyzing properties that have golf course views versus properties with desert preserve views (like the subject property) with no one directly behind there was no market differential as both views provide the privacy of having no other residential properties directly behind them.

Superior/Inferior upgrade adjustments and their value:

The upgrade adjustments are derived by the main factor of how the market gives value for certain upgrades over others and not the total cost spent to incorporate the upgraded features. In figuring out market value the concept of paired sales analysis was utilized where homes that were fully upgraded with specific features (new flooring, cabinets, countertops, bathroom vanities and shower surrounds) were compared with maybe homes that had only a kitchen counter upgrade or some flooring. With all other features being similar the difference in closed sales prices is how the market perceives the

ADDENDUM

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dollar amount of adjustment.

Subject Features:

The subject is a custom built Santa Fe Contemporary style home of wood framed/stucco construction with built up foam roof but having metal trellis patio and roof accents, wall of glass windows along with extensive paver entry, driveway and travertine tile exterior decking.

Interior Upgrades: Upgrades and amenities are listed on page 1 of the report in the additional features section. Other additional features not mentioned on page 1 include, seamless glass window, 8 foot french doors and sliding doors, Cantilevered balcony, recessed lighting throughout.

Subject amenities/upgrades and their market value contribution:

Upgrade items and features in the appraisal are given value based on what the market perceives as the value for these items and not a dollar for dollar return on what the item cost to build. Arriving at these value usually utilizes the paired sales analysis approach. Paired sales analysis looks at numerous comparable properties that have the relatively same features as the subject except maybe one or two features(like a swimming pool or property fencing). By isolating these features and looking at the difference in sales prices between the properties will give you the market contributory value of those specific upgrades.

Comparable selection includes bracketing features:

The appraisal process includes bracketing the subject features like gross living area, lot size and features. This is why you have some comparable properties that have smaller gross living area compared to the subject or overall larger gross living area to the subject. While ideally it would be nice to have recent closed comparable sales that have the same exact lot size bracketing the lot size as well is a customary practice with market value adjustments given to the comparables for lot size differences. Lot adjustments are figured out by comparing the most recent land sales for one acre, two acres and 5 acres.

CO Detectors:

There are no CO detectors in the subject property.

Predominant sales price: .

the "predominant sales price" is the closest approximate sale price which occurs most often or frequently within an identified neighborhood. It is not necessarily a reflection of the subject's estimated value, but is used to identify the most common sales price within that specific neighborhood. Although the predominant price is lower than the subject's market value, the subject property site has the largest model floor plan and is more of a premium lot as it is located on a private, offshoot cul-de-sac street and also backs to a desert wash/preserve area.

1) Predominant value below final appraised value: The subject is not over improved and does not have a marketability issue. The predominant value is lower due to a larger percentage of the recent homes sold having a smaller square footage floor plan(1,619sf to 2,800sf).

Neighborhood market conditions:

Foreclosure activity(REO and Short Sales) are not a part of the market area. There are very few sales which skews the data but with the limited data median comparable sales prices have overall been showing market stability. Median comparable list prices are steady with gradual increases indicating an improved market.

financing concessions such as interest rate buydowns, seller carry-back financing, loan discounts, etc., are not prevalent at this time. Typical financing consists of conventional, new fha, new va, cash and some assumptions of existing loans.

Current active listings - 1004mc and page 2 urar difference:

The 1004mc in the last 3 months can include expired, canceled and withdrawn listing as well as those active listings that came on market in that 3 month period plus those that are still on market that have come on market in the 4 to 6 months ago period or the 7 to 12 month ago period. The difference between the two areas of the report is this; the mc form also looks at withdrawals, cancelled, etc...As stated right on the 1004mc form, thus, its numbers are going to be at least 1 greater than what is currently available. If foreclosures are prevalent, the numbers may be greatly different as typically, foreclosure sales were previously listed and withdrawn/cancelled as regular listings and short sales.

Comparable Sales 3,4 line item adjustment greater than 10%: The line item adjustment are due to the larger size and older age adjustments but do not create any adverse market conditions as these properties are still comparable with the subject.

Additional Client Commentary/Information request:

Comparable search expanded, only 1 truly comparable sale closed within the last 6 months: Even with the expansion of the comparable search and keeping within the comparative market area there was only 1 closed sale within the last six months. The other sales that fall within the last six months are 2,886 square feet and 2,889 square feet respectively and the other sale built in 1962. The comparables chosen do represent the best comparables and with the stable market over the past 12 months do not require any time adjustments.

Market Conditions Addendum to the Appraisal Report

The purpose of this addendum is to provide the lender/client with a clear and accurate understanding of the market trends and conditions prevalent in the subject neighborhood. This is a required addendum for all appraisal reports with an effective date on or after April 1, 2009.

Property Address 35410 N. Ridgeway Dr. City Carefree State AZ Zip Code 85377

Borrower John Davies

Instructions: The appraiser must use the information required on this form as the basis for his/her conclusions, and must provide support for those conclusions, regarding housing trends and overall market conditions as reported in the Neighborhood section of the appraisal report form. The appraiser must fill in all the information to the extent it is available and reliable and must provide analysis as indicated below. If any required data is unavailable or is considered unreliable, the appraiser must provide an explanation. It is recognized that not all data sources will be able to provide data for the shaded areas below; if it is available, however, the appraiser must include the data in the analysis. If data sources provide the required information as an average instead of the median, the appraiser should report the available figure and identify it as an average. Sales and listings must be properties that compete with the subject property, determined by applying the criteria that would be used by a prospective buyer of the subject property. The appraiser must explain any anomalies in the data, such as seasonal markets, new construction, foreclosures, etc.

Table with columns: Inventory Analysis, Prior 7-12 Months, Prior 4-6 Months, Current - 3 Months, Overall Trend. Rows include Total # of Comparable Sales, Absorption Rate, Total # of Comparable Active Listings, Months of Housing Supply, Median Sale & List Price, etc.

Seller-(developer, builder, etc.)paid financial assistance prevalent? Yes No

Explain in detail the seller concessions trends for the past 12 months (e.g., seller contributions increased from 3% to 5%, increasing use of buydowns, closing costs, condo fees, options, etc.). Armls indicates there were 11 closed sales within the subject's market area for the past 12 months. None of those sales contained any increase above the 3% to 3.5% standard for the market area. Search criteria for 1004MC includes all sales within the defined Carefree Grandview Estates and extended Black Mountain area with GLA ranging from 2,705sf up to maximum of 6,645sf.

Are foreclosure sales (REO sales) a factor in the market? Yes No. Armls indicates there were 15 closed sales within the subjects market area in the past 12 months. 2 of those sales were either REO/Lender owned or short sales which is 13% of the total transactions in this market area. In regards to current listings, 0 of the 5 active listings are either foreclosures or short sales. In regards to active/pending sales there were no foreclosures or short sales.

Cite data sources for above information. The arizona regional multiple listing service(armls) was the data source used to complete the market conditions addendum.

Summarize the above information as support for your conclusions in the Neighborhood section of the appraisal report form. If you used any additional information, such as an analysis of pending sales and/or expired and withdrawn listings, to formulate your conclusions, provide both an explanation and support for your conclusions. The analysis used to derive the above market trends data included listings, pending sales, closed sales, cancelled, expired and temporarily off market listings for the past 6-12 months, in the identified market neighborhood. The neighborhood is defined as the 1.0 square mile grid north and west of Stagecoach pass road. Foreclosure activity(REO and Short Sales) are not a part of the market area. There are very few sales which skews the data but with the limited data median comparable sales prices have overall been showing market stability. Median comparable list prices are steady with gradual increases indicating an improved market. Data contained in this form is based on the data source identified above, which the appraiser generally believes to be a reliable source of market data. However, the appraiser cannot verify all of the information in that data source and cannot guarantee the accuracy of such data or conclusions based thereon. The appraiser cannot guarantee future market conditions affecting the subject property.

If the subject is a unit in a condominium or cooperative project, complete the following: Project Name:

Table with columns: Subject Project Data, Prior 7-12 Months, Prior 4-6 Months, Current - 3 Months, Overall Trend. Rows include Total # of Comparable Sales, Absorption Rate, Total # of Active Comparable Listings, Months of Unit Supply.

Are foreclosure sales (REO sales) a factor in the project? Yes No. If yes, indicate the number of REO listings and explain the trends in listings and sales of foreclosed properties.

Summarize the above trends and address the impact on the subject unit and project.

MARKET RESEARCH & ANALYSIS

CONDO/CO-OP PROJECTS

APPRAISER

APPRAISER

Signature Mark Kaegi
Name Mark Kaegi
Company Name ON-THE-MARK APPRAISAL
Company Address PO Box 3311
CAREFREE AZ, AZ 85377
State License/Certification # 21613 State AZ
Email Address ginakaegi@cox.net

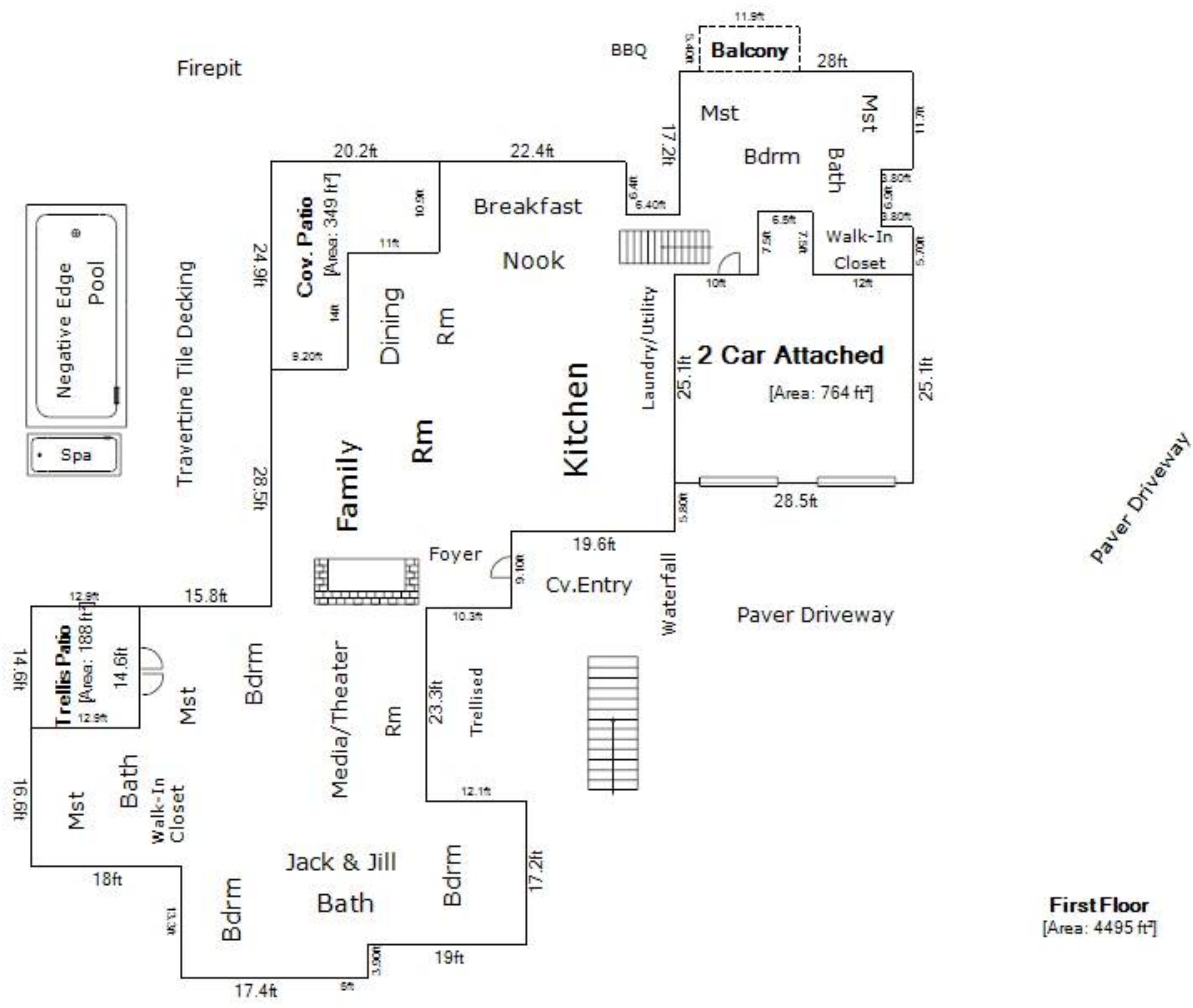
SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature
Name
Company Name
Company Address
State License/Certification #
State
Email Address

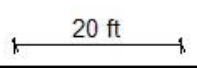
FLOORPLAN SKETCH

Borrower: **John Davies** File No.: **OTM-390**
 Property Address: **35410 N. Ridgeway Dr.** Case No.: **3369143**
 City: **Carefree** State: **AZ** Zip: **85377**
 Lender: **B of I Federal Bank**

Sketch



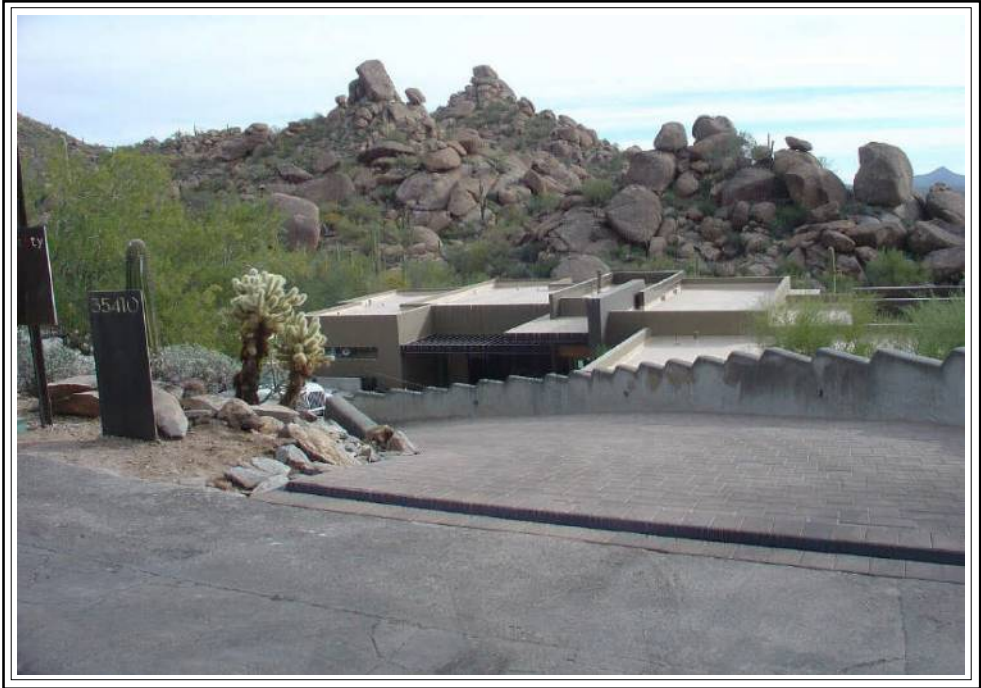
First Floor
[Area: 4495 ft²]



Living Area		Nonliving Area	
First Floor	4495.09 ft²	2 Car Attached	764.1 ft²
		Balcony	64.26 ft²
		Trellis Patio	188.34 ft²
		Cov. Patio	348.98 ft²
Total Living Area (rounded):	4495 ft²	Total Non-Living Area (rounded):	1366 ft²

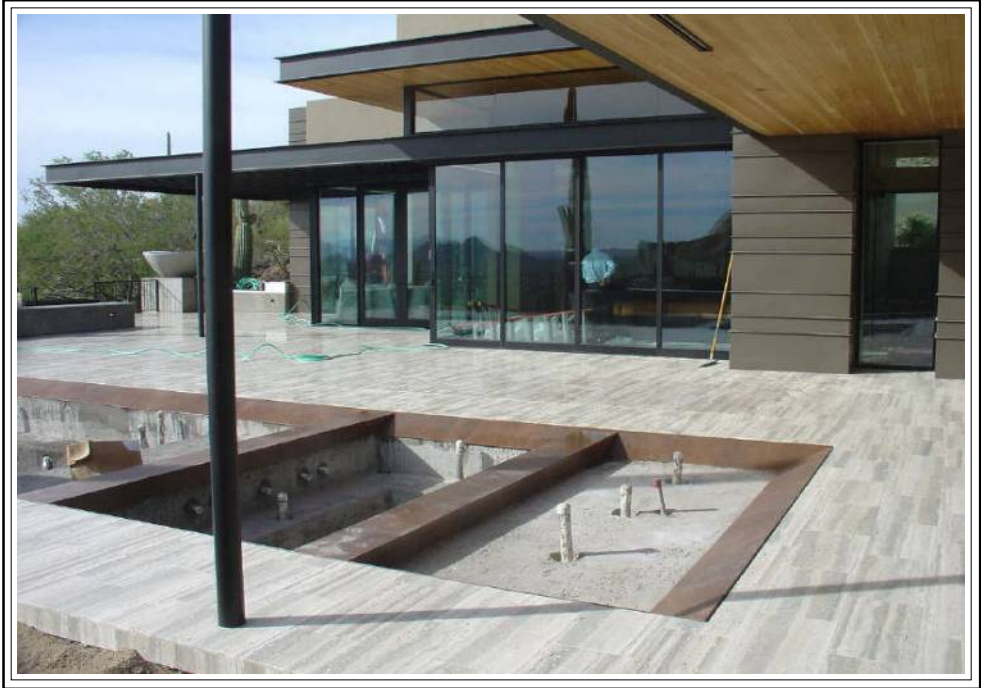
SUBJECT PROPERTY PHOTO ADDENDUM

Borrower: John Davies	File No.: OTM-390
Property Address: 35410 N. Ridgeway Dr.	Case No.: 3369143
City: Carefree	State: AZ Zip: 85377
Lender: B of I Federal Bank	



**FRONT VIEW OF
SUBJECT PROPERTY**

Appraised Date: **December 9, 2015**
Appraised Value: **\$ 1,740,000**



**REAR VIEW OF
SUBJECT PROPERTY**



STREET SCENE

ON-THE-MARK APPRAISAL

Borrower: John Davies	File No.: OTM-390
Property Address: 35410 N. Ridgeway Dr.	Case No.: 3369143
City: Carefree	State: AZ Zip: 85377
Lender: B of I Federal Bank	



Subject north side view



Subject south side view



Subject side view

ON-THE-MARK APPRAISAL

Borrower: John Davies	File No.: OTM-390
Property Address: 35410 N. Ridgeway Dr.	Case No.: 3369143
City: Carefree	State: AZ Zip: 85377
Lender: B of I Federal Bank	



Kitchen



Secondary kitchen view



Family room



Dining room



Bedroom



Bathroom

ON-THE-MARK APPRAISAL

Borrower: John Davies	File No.: OTM-390
Property Address: 35410 N. Ridgeway Dr.	Case No.: 3369143
City: Carefree	State: AZ Zip: 85377
Lender: B of I Federal Bank	



Bathroom tile shower detail



Laundry/Utility room



Media/Theater room



Large custom glass/metal front door



Bedroom



Bathroom

ON-THE-MARK APPRAISAL

Borrower: John Davies	File No.: OTM-390
Property Address: 35410 N. Ridgeway Dr.	Case No.: 3369143
City: Carefree	State: AZ Zip: 85377
Lender: B of I Federal Bank	



Master bedroom



Master bathroom vanity



Secondary master bathroom view with jacuzzi tub



Bedroom



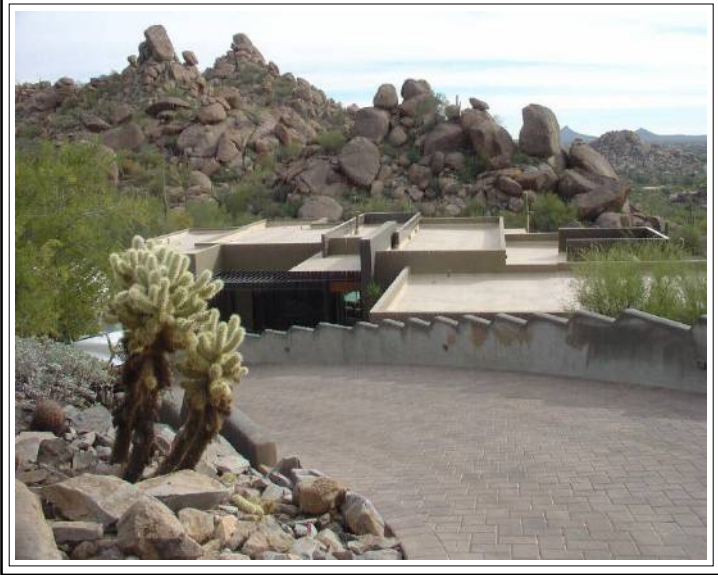
Swimming pool and spa



Backyard/patio area

Borrower: **John Davies**
Property Address: **35410 N. Ridgeway Dr.**
City: **Carefree**
Lender: **B of I Federal Bank**

File No.: **OTM-390**
Case No.: **3369143**
State: **AZ** Zip: **85377**



Secondary subject view from street level with paver driveway



Front subject entry and garage



Front entry with water feature



Large paver driveway



Pool filter equipment and pool heating system



Hot water heater with recirculation pump

ON-THE-MARK APPRAISAL

Borrower: John Davies	File No.: OTM-390
Property Address: 35410 N. Ridgeway Dr.	Case No.: 3369143
City: Carefree	State: AZ Zip: 85377
Lender: B of I Federal Bank	



Updated ceiling fans



Ceiling detail



Subject city views



Secondary street view



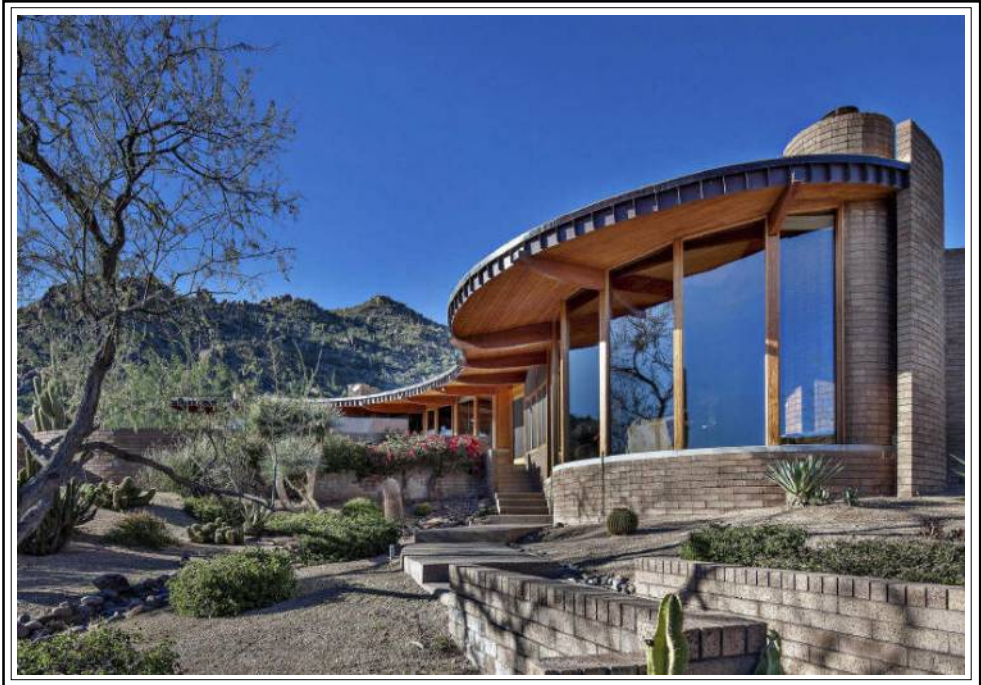
Subject views from rear northeast corner



Subject views from back patio/pool area

COMPARABLE PROPERTY PHOTO ADDENDUM

Borrower: John Davies	File No.: OTM-390
Property Address: 35410 N. Ridgeway Dr.	Case No.: 3369143
City: Carefree	State: AZ Zip: 85377
Lender: B of I Federal Bank	



COMPARABLE SALE #1

35646 N. Meander Way
Carefree, AZ 85377
Sale Date: **s11/15;c09/15**
Sale Price: \$ **1,725,000**



COMPARABLE SALE #2

36601 N. Sidewinder Rd.
Carefree, AZ 85377
Sale Date: **s05/15;c04/15**
Sale Price: \$ **1,725,000**



COMPARABLE SALE #3

6644 E. El Sendero
Carefree, AZ 85377
Sale Date: **s04/15;c03/15**
Sale Price: \$ **1,486,000**

COMPARABLE PROPERTY PHOTO ADDENDUM

Borrower: John Davies	File No.: OTM-390
Property Address: 35410 N. Ridgeway Dr.	Case No.: 3369143
City: Carefree	State: AZ Zip: 85377
Lender: B of I Federal Bank	



COMPARABLE SALE #4

**35802 N. Meander Way
Carefree, AZ 85377
Sale Date: s05/15;c04/15
Sale Price: \$ 1,800,000**



COMPARABLE SALE #5

**6427 E. El Sendero Rd.
Carefree, AZ 85377
Sale Date: s05/14;c05/14
Sale Price: \$ 2,200,000**



COMPARABLE SALE #6

**6623 E. El Sendero Rd.
Carefree, AZ 85377
Sale Date: Active
Sale Price: \$ 2,499,000**

PLAT MAP

Borrower: **John Davies**

File No.: **OTM-390**

Property Address: **35410 N. Ridgeway Dr.**

Case No.: **3369143**

City: **Carefree**

State: **AZ**

Zip: **85377**

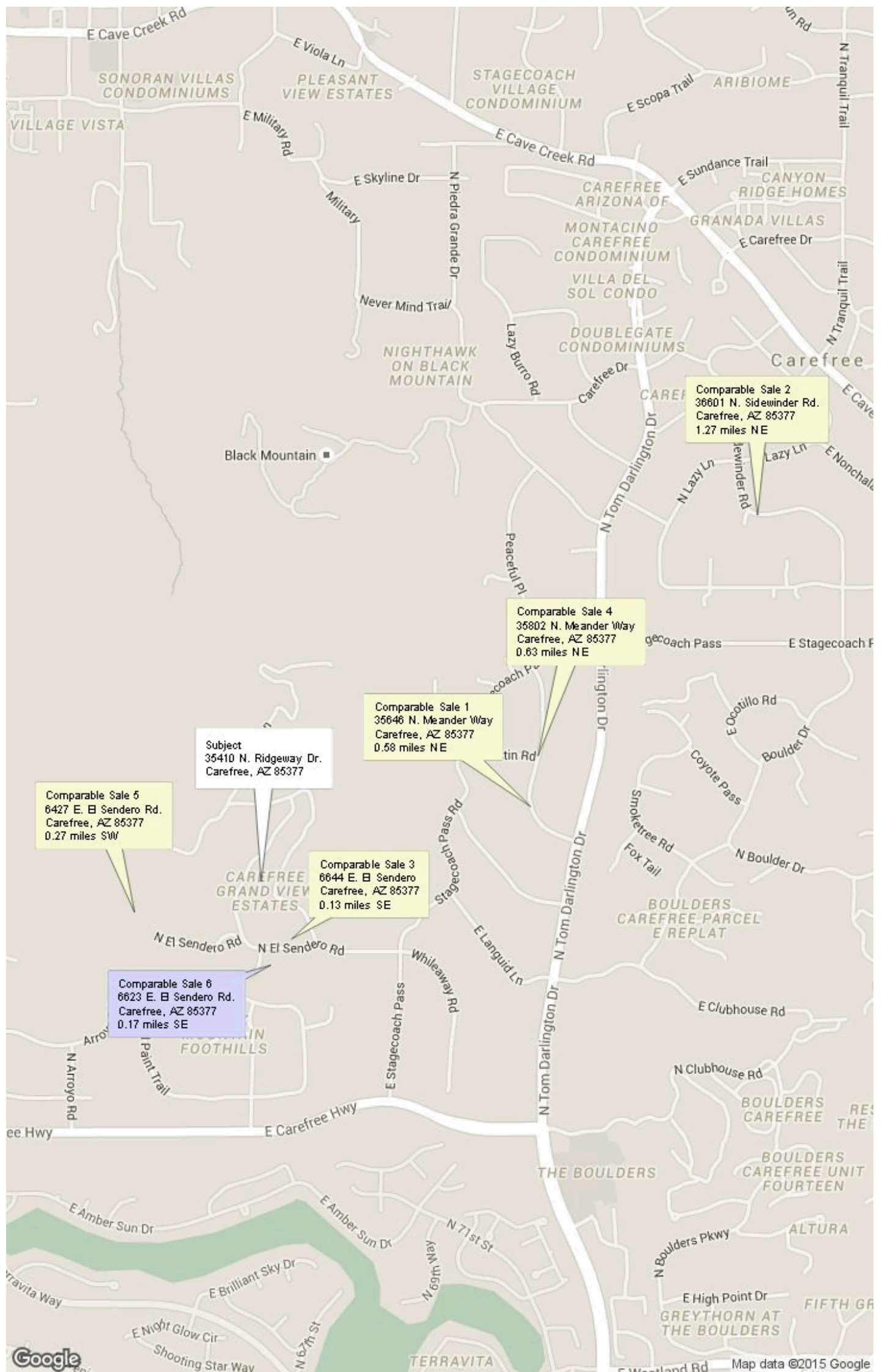
Lender: **B of I Federal Bank**



LOCATION MAP

Borrower: **John Davies**
Property Address: **35410 N. Ridgeway Dr.**
City: **Carefree**
Lender: **B of I Federal Bank**

File No.: **OTM-390**
Case No.: **3369143**
State: **AZ**
Zip: **85377**



Comparable Sale 2
36601 N. Sidewinder Rd.
Carefree, AZ 85377
1.27 miles NE

Comparable Sale 4
35802 N. Meander Way
Carefree, AZ 85377
0.63 miles NE

Comparable Sale 1
35646 N. Meander Way
Carefree, AZ 85377
0.58 miles NE

Subject
35410 N. Ridgeway Dr.
Carefree, AZ 85377

Comparable Sale 5
6427 E. El Sendero Rd.
Carefree, AZ 85377
0.27 miles SW

Comparable Sale 3
6644 E. El Sendero
Carefree, AZ 85377
0.13 miles SE

Comparable Sale 6
6623 E. El Sendero Rd.
Carefree, AZ 85377
0.17 miles SE

FLOOD MAP

Borrower: **John Davies**

File No.: **OTM-390**

Property Address: **35410 N. Ridgeway Dr.**

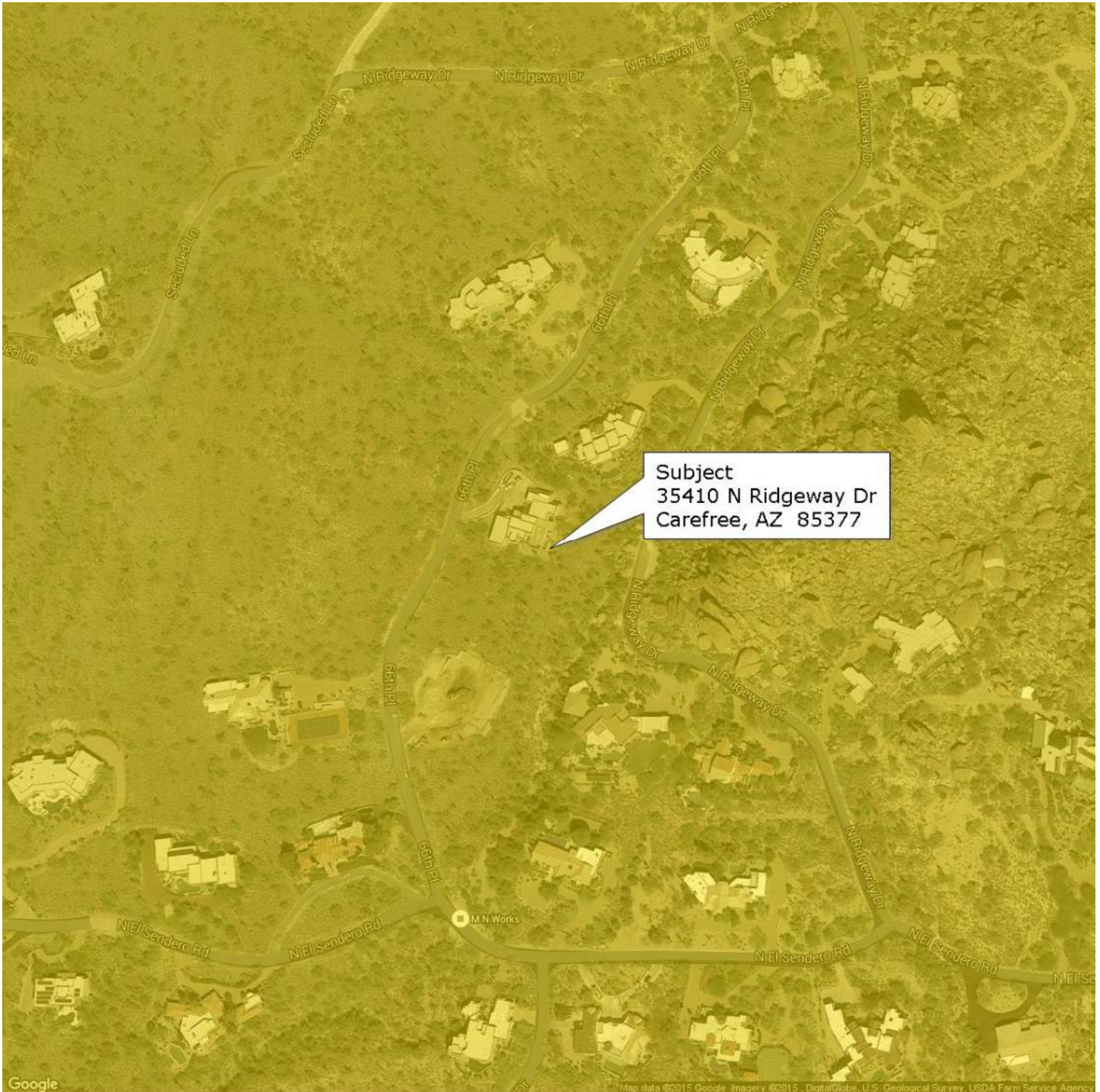
Case No.: **3369143**

City: **Carefree**

State: **AZ**

Zip: **85377**

Lender: **B of I Federal Bank**



FLOOD INFORMATION

Community: TOWN OF CAREFREE

Property is **NOT** in a FEMA Special Flood Hazard Area

Map Number: 04013C0890L

Panel: 0890L

Zone: X


Map Date: 10-16-2013

FIPS: 04013

Source: FEMA DFIRM

LEGEND

 = FEMA Special Flood Hazard Area – High Risk

 = Moderate and Minimal Risk Areas

Road View:

 = Forest

 = Water

Sky Flood™

No representations or warranties to any party concerning the content, accuracy or completeness of this flood report, including any warranty of merchantability or fitness for a particular purpose is implied or provided. Visual scaling factors differ between map layers and are separate from flood zone information at marker location. No liability is accepted to any third party for any use or misuse of this flood map or its data.

Borrower: **John Davies**
Property Address: **35410 N. Ridgeway Dr.**
City: **Carefree**
Lender: **B of I Federal Bank**

File No.: **OTM-390**
Case No.: **3369143**
State: **AZ** Zip: **85377**

STATE OF ARIZONA

Department of Financial Institutions

Real Estate Appraisal

BE IT KNOWN THAT

MARK J. KAEGI

HAS MET ALL THE REQUIREMENTS AS A

Certified Residential Real Estate Appraiser

This certificate shall remain evidence thereof unless or until the same is suspended, revoked or expires in accordance with provisions of law.

CERTIFICATE NUMBER

21613

EXPIRATION DATE

September 30, 2017

Signed in the Superintendent's office at 2910 North 44th Street, Suite 310, in the City of Phoenix, State of Arizona, this 28th day of October, 2015.



Lauren W. Kingry
Superintendent
Department of Financial Institutions

AERIAL MAP

Borrower: **John Davies**

File No.: **OTM-390**

Property Address: **35410 N. Ridgeway Dr.**

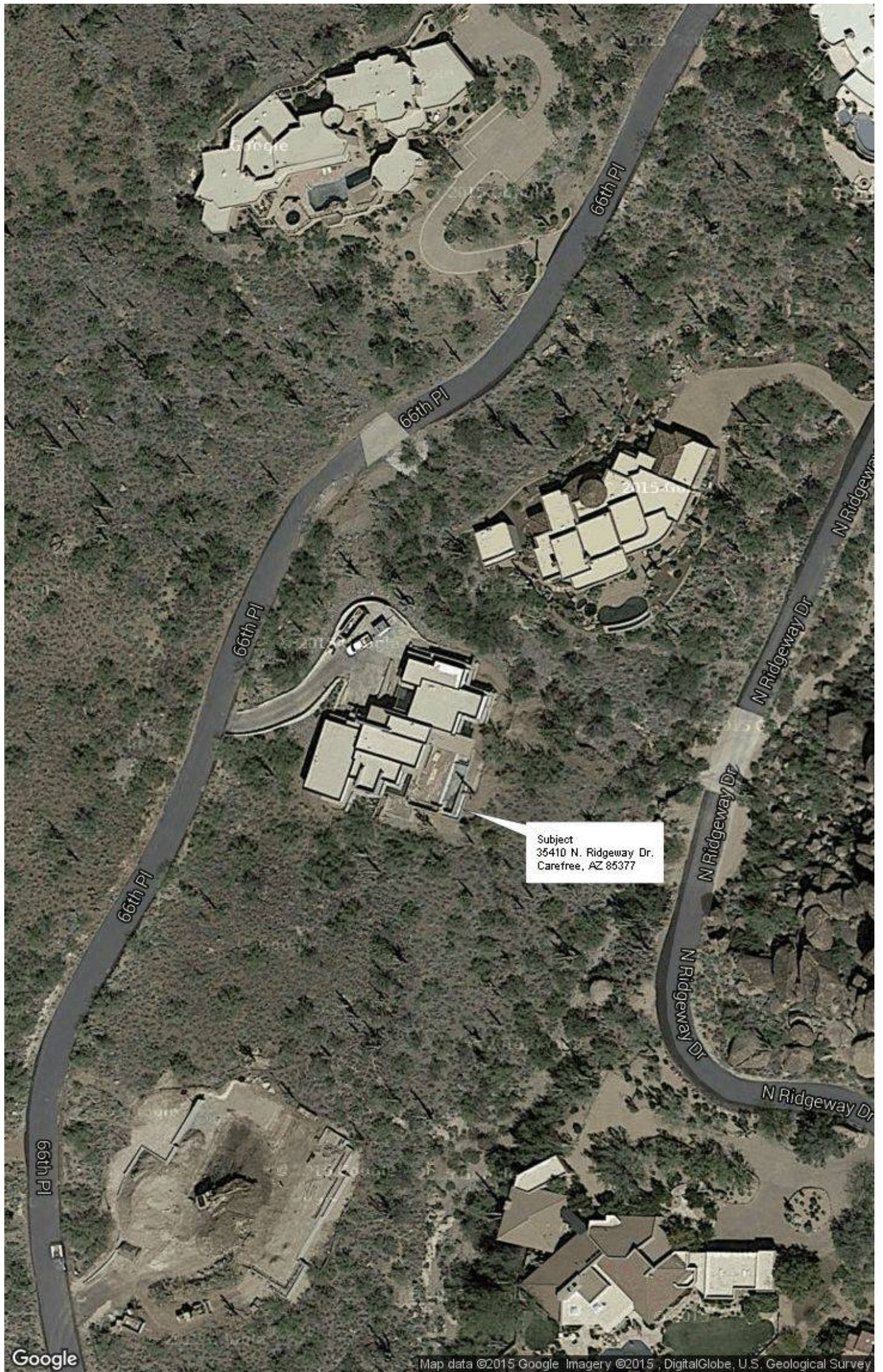
Case No.: **3369143**

City: **Carefree**

State: **AZ**

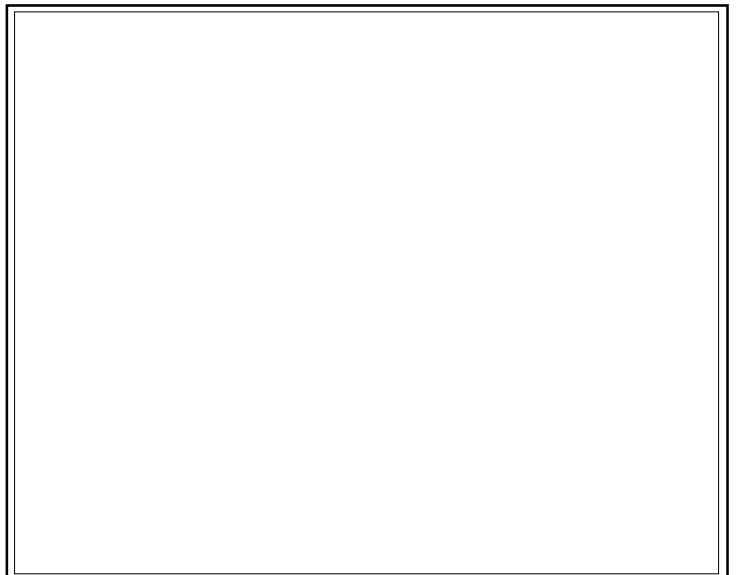
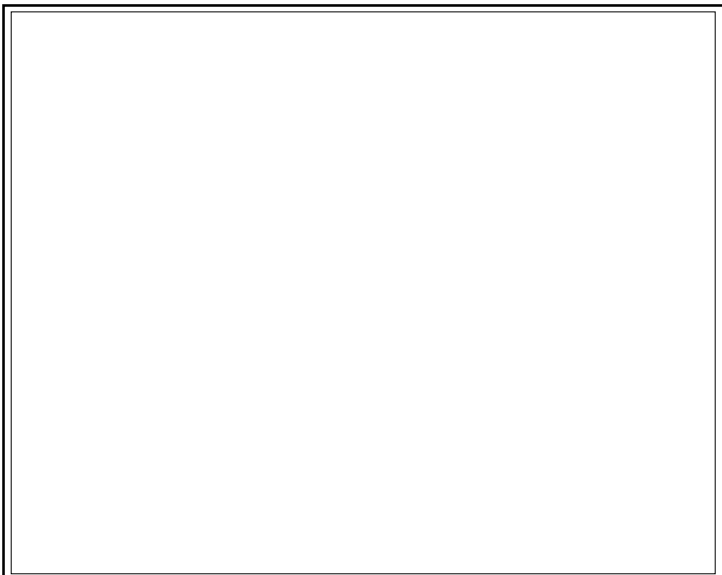
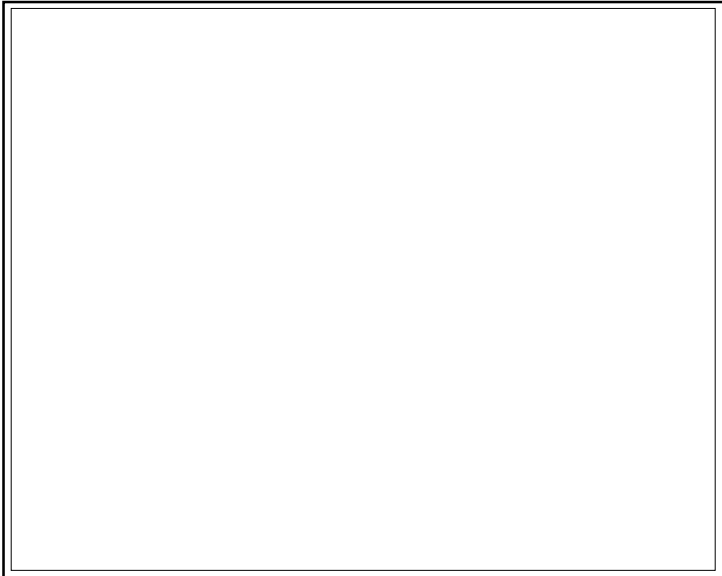
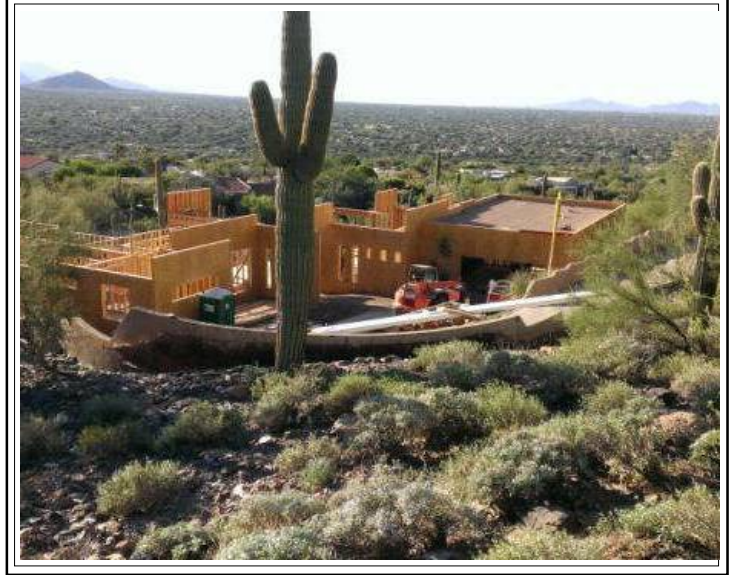
Zip: **85377**

Lender: **B of I Federal Bank**



Rebuild photo's from home owner

Borrower: John Davies	File No.: OTM-390
Property Address: 35410 N. Ridgeway Dr.	Case No.: 3369143
City: Carefree	State: AZ Zip: 85377
Lender: B of I Federal Bank	



Appendix “L”

Sean H. Zweig
Partner
Direct Line: 416.777.6254
e-mail: zweigs@bennettjones.com

June 21, 2017

Via E-Mail

Mr. Michael Beeforth
Dentons LLP
Suite 400, 77 King St W
Toronto ON M5K 0A1

Dear Mr. Beeforth:

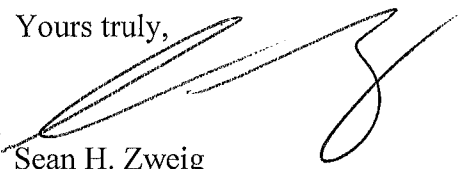
Re: KSV Kofman Inc. v. John Davies and Aeolian Investments Ltd. (CV-17-1182-00CL)

As discussed in the examination of Mr. Davies on June 16, 2017, The Davies Arizona Trust (the "Trust") owns a property in Maricopa, Arizona (the "Property"). We understand that Mr. Davies is both the Trustee of the Trust, and also a discretionary beneficiary of it. As such, the Property (and any other property of the Trust wherever situated) is caught by the terms of the Mareva Order granted in the above captioned proceeding such that Mr. Davies is precluded from, among other things, selling the Property. In the event that you have a different perspective, please advise us forthwith, failing which we assume that no steps will be taken to sell or encumber the Property.

In addition, Aeolian Investments Ltd.'s bank records show that it deposited a cheque dated January 16, 2014 from Gowling Lafleur Henderson LLP in the amount of \$235,938.00. Please advise what that cheque related to and provide all details with respect to any transaction(s) related to that cheque.

We are available to discuss if you have any questions.

Yours truly,


Sean H. Zweig

cc: David McCutcheon (Dentons Canada LLP)
Jon Bell (Bennett Jones LLP)
Bobby Kofman (KSV Kofman Inc.)
Noah Goldstein (KSV Kofman Inc.)

Appendix “M”

June 26, 2017

File No.: 569424-2

SENT VIA E-MAILSean Zweig
Bennett Jones
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Dear Mr. Zweig:

RE: KSV v. Davies et al.

We have your letter of June 21, 2017. We disagree with your position that the property located in Arizona is subject to the terms of the Mareva Order granted in this proceeding. However, we confirm that Mr. Davies will take no steps to sell or encumber the property.

With respect to the January 16, 2014 cheque from Gowlings, this amount was paid to reimburse out-of-pocket expenses incurred by Mr. Davies and Aeolian in relation to the McMurray project. The funds were paid out of the proceeds of the mortgage financing provided by Pillar Financial. Back-up documents relating to the expenses that were incurred and reimbursed are enclosed.

Yours truly,
Dentons Canada LLP

Michael Beeforth

DMB/ah

Enclosures

cc. Jonathan Bell
David McCutcheon
client

McMurray Street Residences
Accounts Payable - October 31, 2013

DATE		PAYEE	Regular AP to Vendors	JD AP	Total Accounts Payable
08/26/13	441/442/43	Muskoka Glass	2,694.07		2,694.07
Aug 23/13		The Old Station Restaurant		64.16	64.16
July 16/13		Ontario Cutting & Coring		850.00	850.00
Aug 31/13		SMS Rentals	1,545.62		1,545.62
June 11/13		Thompson's and Sons Glass	9,190.10		9,190.10
Oct 16/12		Reprodux		80.28	80.28
Aug 21/13		Rick Kuchma		5,100.00	5,100.00
08/23/13	182	A&R Cleaning and Contracting		904.00	904.00
2013-01-05	58	RAD Concrete Footings and Flooring	1,017.00		1,017.00
09/24/13	48	Millex Excavation	819.25		819.25
09/24/13	48	Millex Excavation	50,850.00		50,850.00
09/24/13	48	Millex Excavation	3,277.00		3,277.00
2013-01-10		Simcoe Block	4,805.71		4,805.71
08/23/13	Various	Central Ontario Mechanical - Lien	62,435.20		62,435.20
2013-03-12	2013-03-12	Prepared Surfaces	1,356.00		1,356.00
		Simcoe Block		10,000.00	10,000.00
2013-08-10	2,272,860	Simcoe Block	1,181.71		1,181.71
07/15/13		McKenzie Aluminum & Vinyl		1,356.00	1,356.00
09/31/12	665-0000229	BFI Canada	21.61		21.61
	3,553.85	Lakeland Power		1,824.89	1,824.89
	2,443,368.00	TSSA	847.50		847.50
Aug 31/13		BFI Waste	521.95		521.95
July 31/13		BFI Waste	988.47		988.47
08/28/13		Call of the Wild	1,235.70		1,235.70
07/28/13	015/13	Gabriel Bodor Architect	17,162.44		17,162.44
08/28/13	018/13	Gabriel Bodor Architect	216.00		216.00
03/28/13	006/13	Gabriel Bodor Architect Marketing Drawings	9,554.39		9,554.39
June 3/13	14638	Bryon Patton & Associates Ltd.	18,175.29		18,175.29
Aug 15/13	14639	Bryon Patton & Associates Ltd.	32,082.24		32,082.24
09/30/13	13-1838	Kieffer Engineering	226.00		226.00
03/30/13	130,302.00	Atkins & Van Groll Inc.	7,396.64		7,396.64
		Planscape		9,010.65	9,010.65
	4,382.95	Planscape		6,270.35	6,270.35
	3,133.45	Planscape		6,866.60	6,866.60
	1,249.50	Planscape		1,122.75	1,122.75
		Planscape		114.99	114.99
		Planscape		609.16	609.16
		Planscape		819.35	819.35
		Planscape		904.03	904.03
		Planscape		697.35	697.35
		Planscape		1,101.87	1,101.87
	47,008.00	Planscape	4,341.59		4,341.59
9/26/2013	3,718	Church and Trought Inc.	1,820.69		1,820.69
9/25/2013	6,343	Pinestone Engineering Ltd.	1,436.52		1,436.52
2013-04-01		Avanti Surveying/ 51			-
Aug 23/13		Reprodux		465.92	465.92
April 4,2013		Scale Models Plus from Legacy Lane			-
June 30/13		The Marketing Garage Inc.	2,825.00		2,825.00
Aug 22/13		Windstone Real Estate Brokerage		33,900.00	33,900.00
		Sarah Davies		1,500.00	1,500.00
Aug 30/13	70,036.00	Sharon Express	36,160.00		36,160.00
Aug 31/13	42,495.00	Ryan Design	36,923.28		36,923.28
Sep 16/13		One Restaurant		577.99	577.99
Aug 23/13		Sarah Davies		2,000.00	2,000.00
08/22/13	1,714	Muskoka Audio Video	2,553.52		2,553.52
08/28/13	2,337,648	Metroland Media	35,538.50		35,538.50
2013-01-09	2,365,800	Metroland Media	3,553.85		3,553.85

McMurray Street Residences
Accounts Payable - October 31, 2013

DATE	PAYEE	Regular AP to Vendors	JD AP	Total Accounts Payable
09/29/13	2,431,442 Metroland Media	1,356.00		1,356.00
06/18/13	3,931 Armada	176.28		176.28
09/30/13	309,300 Paul Casselman Photography	6,215.00		6,215.00
08/24/13	384 Muskoka River Computer	755.00		755.00
2013-02-10	3,983 itrackMedia Inc.	5,537.00		5,537.00
2013-01-09	522,431,785 Bell Canada	93.43		93.43
2013-01-09	705-646-2333 Bell Canada	2,872.88		2,872.88
Aug 7/13	Union Lighting		1,597.98	1,597.98
Aug 22/13	Best Buy		138.91	138.91
Aug 22/13	Best Buy		6,881.06	6,881.06
Aug 24/13	Blooming Muskoka		183.06	183.06
Aug 21/13	Chestnut Lane Kitchens & Bath Inc.		21,966.99	21,966.99
Aug 23/13	Design within Reach		26,742.67	26,742.67
Aug 13/13	Gingers		2,077.02	2,077.02
Aug 21/13	Gingers		2,373.00	2,373.00
Aug 21/13	Gingers		1,367.98	1,367.98
Aug 21/13	Gingers		625.44	625.44
July 29/13	Modern Home Supply		13,508.13	13,508.13
Aug 12/13	Muskoka Glass		2,500.00	2,500.00
Aug 22/13	Staples		1,111.80	1,111.80
Aug 19/13	Stitchy Lizard		580.84	580.84
Aug 19/13	Stitchy Lizard		225.00	225.00
Aug 22/13	Stitchy Lizard		805.84	805.84
Aug 14/13	The Home Depot		598.82	598.82
Aug 15/13	The Home Depot		606.29	606.29
2013-06-09	Hank LeMon	3,973.12		3,973.12
2013-06-06	Maxguard	9,084.60		9,084.60
	PMF Plumbing		890.08	890.08
08/24/13	Riverwalk	339.00		339.00
08/29/13	Riverwalk	1,288.20		1,288.20
08/24/13	Riverwalk	3,143.15		3,143.15
08/24/13	MSCL082413 Dave West Photographer	300.00		300.00
	14,741.00 Bryan Patton & Associates	10,170.00		10,170.00
	Toronto Digital Imaging Inc.	31,685.20		31,685.20
	Scale Models	2,647.44		2,647.44
	Scale Models	19,764.70		19,764.70
	Thompson & Sons Glass		8,000.00	8,000.00
	MR Flooring & Cabinetry	4,463.50		4,463.50
	MR Flooring & Cabinetry	11,666.12		11,666.12
	MR Flooring & Cabinetry	1,257.13		1,257.13
	Armoured Concrete Forming	11,300.00		11,300.00
13-0051	Loshaw Drywall & Painting	1,661.10		1,661.10
	Securitas Canada Limited		2,650.98	2,650.98
	Securitas Canada Limited		1,091.58	1,091.58
	Bell Canada	1,249.50		1,249.50
	The Home Depot - Bracebridge		134.31	134.31
	Stichy Lizard		82.19	82.19
2013-01-09	Bell Canada	699.42		699.42
2013-01-10	internet Bell Canada	3,133.45		3,133.45
04/22/09	35220-525 Altus Group		9,048.90	9,048.90
04/22/09	35220-680 Altus Group		1,913.10	1,913.10
2010-10-03	deltro-3 Jones Deslaurier		27,540.00	27,540.00
2013-08-07	The Artstract Company - printing		171.20	171.20
2013-08-12	Bathroom doors		200.00	200.00
2013-08-12	Bathroom doors		242.00	242.00
2013-08-12	Bathroom doors		502.00	502.00
2013-08-16	Atm wd		301.95	301.95
2013-08-16	Gravenhurst Home Hardware		127.64	127.64

McMurray Street Residences
 Accounts Payable - October 31, 2013

DATE	PAYEE	Regular AP to Vendors	JD AP	Total Accounts Payable
2013-08-22	Fresh Home and Garden - Planters for Sales Centre		696.08	696.08
2013-08-22	Bracebridge Home Hardware		11.24	11.24
2013-08-22	Gagnon's Your		29.36	29.36
2013-08-22	Walmart		48.45	48.45
2013-08-22	Your Home Interior		469.78	469.78
2013-08-26	Band for Sales Centre Opening		1,000.00	1,000.00
2013-08-26	Tips for Servers for Sales Centre Opening		600.00	600.00
2013-11-01	73 Rob Laskey		4,031.00	4,031.00
2013-10-18	67 Rob Laskey - Repairs		4,112.14	4,112.14
8/20/2013	6,298 Pinestone Engineering Ltd.	3,961.78		3,961.78
7/24/2013	6,255 Pinestone Engineering Ltd.	8,420.78		8,420.78
2013-10-30	71 Sarah Davies		2,000.00	2,000.00
2013-11-04	O&B - Raj & Don Mintz		110.77	110.77
2013-09-13	Wabora - Consultants		166.25	166.25
2013-09-06	Wabora - John Sisson - Town of Bracebridge		161.49	161.49
2013-08-18	The Old Station Restaurant - Rob/Wayne/John		152.89	152.89
2013-10-10	The District Municipality of Muskoka		45.82	45.82
2013-10-28	50070333 Bell Canada	1,300.62		1,300.62
2013-10-30	A&R Cleaning and Contracting	423.75		423.75
2013-08-29	Modern Home Supply		149.86	149.86
2013-10-08	Securitis Canada		2,728.08	2,728.08
2013-10-08	Securitis Canada		2,183.16	2,183.16
2013-10-08	Securitis Canada		2,183.16	2,183.16
2013-10-08	Securitis Canada		1,871.28	1,871.28
2013-10-08	Securitis Canada		467.82	467.82
2013-10-08	Oliver & Bonacini - lunch with Raj		99.61	99.61
2013-08-21	Gingers		749.14	749.14
2013-09-20	Barber and Haskill Limited	2,593.40		2,593.40
2013-08-22	Barber and Haskill Limited	16,650.87		16,650.87
2013-11-01	Bell Canada - Nov 1/13	165.18		165.18
2013-10-31	3161 CB Ross Partners	1,145.70		1,145.70
2013-08-22	36132 JSW #36132	2,254.90		2,254.90
2013-09-30	393 Muskoka River Computer - Sept 30	100.00		100.00
2013-08-20	798 Mike's Landscaping and Property - Aug 20/13	532.52		532.52
2013-08-31	27730 First Service Resident Mgmt Res	2,260.00		2,260.00
SUBTOTAL ACCOUNTS PAYABLE		527,439.35	246,948.67	774,388.02
Totals from Interim spreadsheet		527,439.35	246,948.67	
Adjustment per Steve Beaumont		-	11,011.02	- 11,011.02
Agrees to AP on financials		<u>\$ 527,439.35</u>	<u>\$ 235,937.65</u>	<u>\$ 763,377.00</u>



DEPOSIT SLIP
CURRENT ACCOUNT

DATE
DAY MONTH YEAR INITIALS
DEPOSITORS TELLER'S

LIST OF CHEQUES

Pillar	235 938	00

LIST OF CHEQUES

Pillar	235 938	00

DETAILS	CASH
X 5	
X 10	
X 20	
X 50	
X 100	
COIN	
CDN CASH TOTAL ▶	
CHEQUES TOTAL ▶	235,938 00
RATE ▶	
RATE ▶	
TOTAL \$	235 938 00

COMPARED TO ORIGINAL DEPOSIT SLIP
AS TO TOTAL ONLY

CREDIT ACCOUNT OF

AEOLIAN INVESTMENTS LTD.

CHEQUES	TOTAL ▶	235,938 00
US CASH	TOTAL ▶	
US CHEQUES	TOTAL ▶	

TOTAL # OF CHEQUES

Account No.

Transit No. Institution No.
⑈0017⑈ ⑈00442⑈003⑈

101 306 9 5

McMurray Street Residences
Accounts Payable - October 31, 2013

DATE	PAYEE	Regular AP to Vendors	Payments Made to Vendors	Balance Outstanding	Details
30/10/2013	A&R Cleaning and Contracting ✓	423.75		423.75	
06/18/13	3,931 Armada ✓	176.28		176.28	
03/30/13	130,302.00 Armoured Concrete Forming ✓	11,300.00		11,300.00	
22/08/2013	Atkins & Van Groll Inc. ✓	7,396.64		7,396.64	
20/09/2013	Barber and Haskill Limited ✓	16,650.87		16,650.87	
09/01/2013	522,431,785 Barber and Haskill Limited ✓	2,593.40		2,593.40	
09/01/2013	705-646-2333 Bell Canada ✓	93.43		93.43	
09/01/2013	Bell Canada ✓	2,872.88	2,872.88	-	Pd on Nov 7/13 #212
09/01/2013	Bell Canada ✓	1,249.50		1,249.50	
10/01/2013	Internet Bell Canada ✓	699.42	699.42	-	Pd on Nov 14/13 #214
28/10/2013	50070333 Bell Canada ✓	3,133.45	3,133.45	-	Pd on Nov 18/13 #215
01/11/2013	Bell Canada - Nov 1/13 ✓	1,300.62		1,300.62	
09/31/12	665-000002297 BFI Canada ✓	165.18		165.18	
Aug 31/13	BFI Waste ✓	21.61		21.61	
July 31/13	BFI Waste ✓	521.95		521.95	
14,741.00	Bryan Patton & Associates ✓	988.47		988.47	
June 3/13	14638 Bryon Patton & Associates Ltd. ✓	10,170.00		10,170.00	
Aug 15/13	14639 Bryon Patton & Associates Ltd. ✓	18,175.29		18,175.29	
08/28/13	Call of the Wild ✓	32,082.24		32,082.24	
31/10/2013	3161 CB Ross Partners ✓	1,235.70		1,235.70	
		1,145.70		1,145.70	
					Pd \$20k on Nov 23/13 chq#217 and \$5k on Dec 6/13 chq#229 Note: payout shows \$37,880.09 as of Dec 17/13
08/23/13	Various Central Ontario Mechanical - Lien ✓	62,435.20	25,000.00	37,435.20	
9/26/2013	3,718 Church and Trought Inc. ✓	1,820.69		1,820.69	
08/24/13	MSCLO82413 Dave West Photographer ✓	300.00		300.00	
31/08/2013	27730 First Service Resident Mgmt Res ✓	2,260.00		2,260.00	
07/28/13	015/13 Gabriel Bodor Architect ✓	17,162.44		17,162.44	
08/28/13	018/13 Gabriel Bodor Architect ✓	216.00		216.00	
03/28/13	006/13 Gabriel Bodor Architect Marketing Drawings ✓	9,554.39		9,554.39	
09/06/2013	Hank LeMon ✓	3,973.12		3,973.12	
10/02/2013	3,983 itrackMedia Inc. ✓	5,537.00		5,537.00	
22/08/2013	36132 JSW #36132 ✓	2,254.90		2,254.90	
09/30/13	13-1838 Kieffer Engineering ✓	226.00		226.00	
13-0051	Loshaw Drywall & Painting ✓	1,661.10		1,661.10	
06/06/2013	Maxguard ✓	9,084.60		9,084.60	
08/28/13	2,337,648 Metroland Media ✓	35,538.50	40,448.36 ✓	35,538.50	
09/01/2013	2,365,800 Metroland Media ✓	3,553.85		3,553.85	
09/29/13	2,431,442 Metroland Media ✓	1,356.00		1,356.00	
20/08/2013	798 Mike's Landscaping and Property - Aug 20/13 ✓	532.52		532.52	
09/24/13	48 Millex Excavation ✓	819.25		819.25	
09/24/13	48 Millex Excavation ✓	50,850.00		50,850.00	
09/24/13	48 Millex Excavation ✓	3,277.00		3,277.00	
	MR Flooring & Cabinetry ✓	4,463.50		4,463.50	
	MR Flooring & Cabinetry ✓	11,666.12		11,666.12	
	MR Flooring & Cabinetry ✓	1,257.13		1,257.13	
08/22/13	1,714 Muskoka Audio Video ✓	2,553.52		2,553.52	
08/26/13	441/442/43 Muskoka Glass ✓	2,694.07		2,694.07	
08/24/13	384 Muskoka River Computer ✓	755.00		755.00	
30/09/2013	393 Muskoka River Computer - Sept 30 ✓	100.00		100.00	
09/30/13	309,300 Paul Casselman Photography ✓	6,215.00		6,215.00	
9/25/2013	6,343 Pinestone Engineering Ltd. ✓	1,436.52		1,436.52	
8/20/2013	6,298 Pinestone Engineering Ltd. ✓	3,961.78		3,961.78	
7/24/2013	6,255 Pinestone Engineering Ltd. ✓	8,420.78		8,420.78	
	47,008.00 Planscape ✓	4,341.59		4,341.59	
12/03/2013	12/03/2013 Prepared Surfaces ✓	1,356.00		1,356.00	
05/01/2013	58 RAD Concrete Footings and Flooring ✓	1,017.00		1,017.00	
08/24/13	Riverwalk ✓	339.00		339.00	
08/29/13	Riverwalk ✓	1,288.20		1,288.20	
08/24/13	Riverwalk ✓	3,143.15		3,143.15	
Aug 31/13	42,495.00 Ryan Design ✓	36,923.28		36,923.28	
	Scale Models ✓	2,647.44		2,647.44	
	Scale Models ✓	19,764.70		19,764.70	
Aug 30/13	70,036.00 Sharon Express ✓	36,160.00		36,160.00	
10/01/2013	Simcoe Block ✓	4,805.71		4,805.71	
10/08/2013	2,272,860 Simcoe Block ✓	1,181.71		1,181.71	
Aug 31/13	SMS Remats ✓	4,545.62	1,545.02	0.00	paid on Dec 12/13 #230
10/10/2013	The District Municipality of Muskoka ✓	45.82		45.82	
June 30/13	The Marketing Garage Inc. ✓	2,825.00		2,825.00	
June 11/13	Thompson's and Sons Glass - Lien ✓	9,490.40	9,490.40	-	paid on Nov 28/13 \$10730.51
	Toronto Digital Imaging Inc. ✓	31,685.20		31,685.20	
	TSSA ✓	847.50		847.50	
2,443,368.00					

*Approved
Heath
Dec. 19, 2013*

Aeolian Investments Ltd - AP per Interim statement	246,949.00
Less: Aeolian Investment Ltd Recoveries - Aug to Oct 2013	11,046.00
Small adjustment per Steve Beaumont	35.00
Net Aeolian Investments Ltd. AP	235,938.00
Total AP per financials - Oct 31/13	\$ 763,377.35

Appendix “N”

Sean H. Zweig
Partner
Direct Line: 416.777.6254
e-mail: zweigs@bennettjones.com
Our File No.: 74735-6

July 4, 2017

Via Email

Mr. David L. Nakelsky
Goldman Sloan Nash & Haber LLP
480 University Ave Suite 1600
Toronto, Ontario M5G 1V2

Dear Sir:

**Re: Moskowitz Capital Mortgage Fund II Inc. - 24 Country Club Drive, King City, Ontario
L7B 1M5**

We are the lawyers for KSV Kofman Inc., in its capacity as Court-appointed receiver of Scollard Development Corporation, Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., 1703858 Ontario Inc., Legacy Lane Investments Ltd., Textbook (555 Princess Street) Inc. and Textbook (525 Princess Street) Inc. (the "Receiver"). We are in receipt of your letter dated June 12, 2017, which enclosed a Notice of Sale Under Mortgage dated June 12, 2017 issued by Moskowitz Capital Mortgage Fund II Inc. (the "Notice of Sale").

With respect to the amounts claimed under the Notice of Sale, please provide a detailed breakdown of all such amounts, including evidence of the advances made under the mortgage and evidence that the funds were used for the property or properties. As you may know, the Receiver has initiated litigation against John Davies which includes, among others, an allegation of fraud.

We look forward to receiving the requested information as soon as possible. We are available if you would like to discuss.

Yours truly,

BENNETT JONES LLP


Sean H. Zweig

SHZ:ak

C: Bobby Kofman and Noah Goldstein, *KSV Kofman Inc.*

Appendix “O”

Aeolian Investments Ltd.
Summary of Receipts and Disbursements
For the Period October 1, 2012 to May 29, 2017
(unaudited; \$)

Receipts	<u>Note</u>	
Davies Developers		5,591,885
TSSI/TSI	1	789,971
Tier 1/Raj Singh		646,000
MCIL	1	369,808
Other related parties	2	248,659
Other receipts		130,156
2174217 Ontario Inc.	3	100,000
Unidentified receipts		695,162
Total Receipts		<u>8,571,641</u>
Disbursements		
Personal		
Judith Davies		2,509,200
Arizona House		1,841,205
AMEX bills		1,346,580
Other personal payments	4	963,528
Car payments		217,511
Generals hockey		160,000
Other Davies' family members		45,774
		<u>7,083,799</u>
Other and unidentified		
Related parties	5	487,575
RS Consulting Services Inc. (related to Raj Singh)		16,950
Bosenstein Consulting Services Inc. (related to Harris & Harris LLP)		16,950
Other payments	6	798,096
Unidentified payments		168,225
Total Disbursements		<u>8,571,595</u>
Opening bank balance, October 1, 2012		-
Net Cash Flow		46
Closing bank balance, May 29, 2017		<u>46</u>

Aeolian Investments Ltd.

Summary of Receipts and Disbursements

For the Period October 1, 2012 to May 29, 2017

(unaudited; \$)

Notes:

		<u>Comments</u>
1.	The funds received by Aeolian from TSSI, TSI and MCIL largely originated from Davies Developers.	
2.	Receipts from other related parties is comprised of the following:	
	Davies Arizona Trust	52,350
	Andrew Davies	40,000
	Memory Care Investments (Victoria) Ltd.	17,191
	Textbook (256 Rideau Street) Inc.	2,275
	1416958 Ontario Inc. (Raj Singh entity)	136,843
		<u>248,659</u>
3.	2174217 Ontario Inc. ("217") was a lender to Oakville, Kitchener, Burlington and Scollard. During the Examination, Davies advised that 217 also made an unsecured loan to Aeolian for \$100,000 and that the loan is still outstanding.	
4.	Payments which appear to relate to personal items are reflected below.	
	Shareholders	243,376
	Royal LePage Your Community Realty Inc	75,000
	Mayberry Fine Art	58,822
	Rubin and Christie	53,670
	INTERAC e-Transfer	45,290
	Hollywood Diamond	43,505
	RBC (Wire: USD to Glenn Green Gallery)	26,236
	The Distillery Restaurants Group	25,000
	Chestnut Lane	21,967
	RBC (Wire: USD to The Gallery Wall Inc)	19,238
	Goodman and Griffin, in Trust	18,921
	Town of Gravenhurst	16,905
	Enduro Sport Inc.	14,701
	The Twelfth Fre	10,130
	Fees/Dues Y.R.V.L.C.C.999	8,668
	Other personal expenses	282,099
		<u>963,528</u>

Aeolian Investments Ltd.

Summary of Receipts and Disbursements

For the Period October 1, 2012 to May 29, 2017

(unaudited; \$)

5. Other related party payments is comprised of the following:

Memory Care Investments Ltd.	162,375
Traditions Development Company (owned by a former Director and Officer of MCIL)	145,000
McMurray Street Investments Inc.	120,200
Scollard Development Corporation	25,000
Textbook Suites Inc.	20,000
Memory Care Investments (Oakville) Ltd.	15,000
	<u>487,575</u>

6. Other payments is comprised of the following. Insufficient information is available to confirm if these are personal payments.

Canada Revenue Agency	200,015
U.S. Title Alden	100,161
894390 Ontario	87,366
Receiver General of Canada	81,002
AIG Canada	58,520
Security Title	56,945
TD Bank	38,955
Windstone Real Estate	33,900
Veridian Connec	29,285
P+B Marketing Ltd.	21,188
Keystone Property Management	17,208
Miller Thompson LLP	15,440
Morrison Hershfield	11,526
Stephen Beaumont, CGA	10,000
Simcoe Block	10,000
Global Resolutions	9,276
Diana Cassidy	5,161
1753430 Ont. Inc o/a Carniello Contracting	5,000
Bank Fees	4,458
Stewart Title	2,204
Minister of Natural Resources	321
Interest	166
	<u>798,096</u>