

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

**IN THE MATTER OF THE RECEIVERSHIP OF
TEXTBOOK (445 PRINCESS STREET) INC.**

**AND IN THE MATTER OF AN APPLICATION UNDER 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**

**MOTION RECORD OF THE MOVING PARTY,
KSV KOFMAN INC.
(Appointing Receiver – Returnable June 29, 2018)**

June 26, 2018

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Sean Zweig (LSUC#57307I)
Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSUC#55457P)
Phone: (416) 777-6511
Email: bellj@bennettjones.com

Facsimile: (416) 863-1716

Lawyers for KSV Kofman Inc.

SERVICE LIST

CV-17-589078-00CL

June 26, 2018

TO:	<p>LAX O'SULLIVAN LISUS GOTTLIEB LLP Suite 2750, 145 King Street West Toronto, Ontario M5H 1J8</p> <p>Matthew P. Gottlieb Tel: 416-644-5353 Email: mgottlieb@counsel-toronto.com</p> <p>Andrew Winton Tel: 416-644-5342 Email: awinton@counsel-toronto.com</p> <p>Lawyers for the Applicant</p>
AND TO:	<p>RUBIN & CHRISTIE LLP 219 Finch Avenue West, 2nd Floor Toronto, Ontario M2R 1M2</p> <p>Douglas Christie Tel: 416-361-0900 Email: dchristie@rubinchristie.ca</p> <p>Lawyers for Textbook Student Suites (445 Princess Street) Inc.</p>
AND TO:	<p>DLA PIPER (CANADA) LLP Suite 6000, 1 First Canadian Place Toronto, Ontario M5X 1E2</p> <p>Edmond Lamek Tel: 416-365-3444 Email: edmond.lamek@dlapiper.com</p> <p>Danny Nunes Tel: 416-365-3421 Email: danny.nunes@dlapiper.com</p> <p>Lawyers for Textbook Student Suites (445 Princess Street) Inc.</p>

AND TO:	<p>GRANT THORNTON LIMITED 19th Floor, Royal Bank Plaza South Tower, 200 Bay Street Toronto, Ontario M5J 2P9</p> <p>Jonathan Krieger Tel: 416-360-5055 Email: jonathan.krieger@ca.gt.com</p> <p>David Goldband Tel: 416-369-6446 Email: David.Goldband@ca.gt.com</p> <p>Arsheel Muhit Tel: 416-777-6103 Email: Arsheel.Muhit@ca.gt.com</p> <p>Court-appointed Trustee</p>
AND TO:	<p>AIRD & BERLIS LLP Brookfield Place Suite 1800, 181 Bay Street Toronto, Ontario M5J 2T9</p> <p>Steven L. Graff Tel: 416-865-7726 Email: sgraff@airdberlis.com</p> <p>Ian Aversa Tel: 416-865-3082 Email: iaversa@airdberlis.com</p> <p>Jeremy Nemers Tel: 416-865-7724 Email: jnemers@airdberlis.com</p> <p>Lawyers for the Court-appointed Trustee</p>

AND TO:	<p>KSV KOFMAN INC. 150 King Street West, Suite 2308 Toronto, Ontario M5H 1J9</p> <p>Bobby Kofman Tel: 416-932-6228 Email: bkofman@ksvadvisory.com</p> <p>Noah Goldstein Tel: 416-932-6207 Email: ngoldstein@ksvadvisory.com</p> <p>Receiver and Manager</p>
AND TO:	<p>BENNETT JONES LLP 3400 One First Canadian Place Toronto, Ontario M5X 1A4</p> <p>Sean Zweig Tel: 416-777-6254 Email: zweigs@bennettjones.com</p> <p>Lawyers for the Receiver and Manager</p>
AND TO:	<p>CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, Ontario M2N 7E9</p> <p>George Benchetrit Tel: 416-218-1141 Email: george@chaitons.com</p> <p>Representative Counsel for the SMI Investors</p>

AND TO:	<p>DENTONS LLP 77 King Street West, Suite 400 Toronto, Ontario M5K 0A1</p> <p>David McCutcheon Tel: 416-863-4538 Email: david.mccutcheon@dentons.com</p> <p>Kenneth Kraft Tel: 416-863-4374 Email: kenneth.kraft@dentons.com</p> <p>Michael Beeforth Tel: 416-367-6779 Email: michael.beeforth@dentons.com</p> <p>Lawyers for John Davies and Walter Thompson</p>
AND TO:	<p>JOHN DAVIES Email: john@textbooksuites.com</p>
AND TO:	<p>WALTER THOMPSON Email: walter@textbooksuites.com</p>
AND TO:	<p>TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION 295 The West Mall Toronto, ON M9C 4Z4</p>
AND TO:	<p>SHOPPERS REALTY INC. 243 Consumers Road Toronto, Ontario M2J 4W8</p>

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Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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B E T W E E N:

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Respondent

**IN THE MATTER OF THE RECEIVERSHIP OF
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1990, C. C.43, AS AMENDED**

**NOTICE OF MOTION
(Appointing Receiver – Returnable June 29, 2018)**

The moving party, KSV Kofman Inc., in its capacity as the court-appointed receiver and manager of certain property of Textbook (445 Princess Street) Inc. (the “**Receiver**”), will make a motion, to a judge presiding over the Commercial List on June 29, 2018, at 10:00 a.m., or as soon after that time as the motion can be heard, at 130 Queen Street West, Toronto, Ontario.

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

1. THE MOTION IS FOR:

- (a) an Order, among other things:

- (i) appointing KSV Kofman Inc. (“**KSV**”) as receiver and manager, without security, of all of the assets, undertakings and properties of Textbook (445 Princess Street) Inc. (“**445 Princess**”) acquired for, or used in relation to a business carried on by 445 Princess that are not otherwise subject to a receivership order in this proceeding;
 - (ii) directing that all of the proceeds from the sale of the real property municipally described as 208 Division Street, Kingston, Ontario (the “**208 Real Property**”) be paid to the receiver forthwith; and
 - (iii) directing John Davies (“**Davies**”) and Walter Thompson (“**Thompson**”) to forthwith disclose to the receiver any and all remaining assets of any of the Davies Developers (as defined in the Third Report of the Receiver (the “**Third Report**”)); and
- (b) such further and other relief as this Honourable Court may deem just.

2. **THE GROUNDS FOR THE MOTION ARE:**

Introduction

- (a) Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on January 9, 2018, KSV was appointed as the receiver and manager of the real property municipally described as 429 and 445 Princess Street, Kingston, Ontario (the “**445 Real Property**”), which property was registered on title as being owned by 445 Princess, and of all of assets, undertakings and

properties acquired for or used in relation to the 445 Real Property (together with the 445 Real Property, the "**445 Property**").

Overview

- (a) Davies and Thompson are the sole directors and officers of 445 Princess.
- (b) The Receiver is investigating transactions involving the Davies Developers, including the use by the Davies Developers of the monies advanced to them through the Trustee Corporations (as defined in the Third Report).
- (c) Based on its findings in the investigation, KSV filed a statement of claim against various parties, including Davies and Aeolian Investments Ltd. ("**Aeolian**"), a company owned by Davies' wife, Judith Davies, and children, alleging, among other things, fraud, breach of fiduciary duty and negligence. Aeolian's sole director and officer is Davies. Aeolian is a direct or an indirect shareholder of each of the Davies Developers.
- (d) Pursuant to several orders in these proceedings, the Court granted a Mareva injunction, on an interlocutory basis, until a final disposition of the proceeding as against, *inter alia*, Davies, Aeolian and Judith Davies.

The Present Situation

- (e) Textbook Student Suites (445 Princess Street) Trustee Corporation (the "**445 Trustee**") is a lender to 445 Princess. The 445 Trustee advanced approximately

\$8.4 million under a mortgage on the 445 Real Property. The 445 Trustee has no other security registered against the Company's business and assets.

- (f) On May 9, 2018 the Receiver completed a sale of the 445 Property. The proceeds of sale were used to repay the senior ranking mortgagee on the 445 Real Property.
- (g) According to 445 Princess's books and records, there remains approximately \$9.1 million owing to 445 Princess's creditors. The largest creditor is the 445 Trustee.
- (h) As of the date of the receivership, 445 Princess also owned the 208 Real Property. The 208 Real Property is adjacent to the 445 Real Property. The 445 Trustee does not have security over the 208 Real Property, and accordingly the 208 Real Property is not currently subject to the ongoing receivership proceedings, nor is it subject to any other insolvency proceeding.
- (i) The Receiver recently learned that 445 Princess sold the 208 Real Property.
- (j) Notwithstanding that 445 Princess has millions of dollars of unpaid creditors and there is an ongoing receivership over the 445 Property, neither Davies nor Thompson advised the Receiver or the 445 Trustee that they were taking steps to sell the 208 Real Property nor that 445 Princess had completed a sale of the 208 Real Property. Based on information received by the Receiver, the Receiver is concerned that neither Davies nor Thompson intended to advise the Receiver of the sale of the 208 Real Property, and neither they nor their counsel did so until contacted by the Receiver's counsel.

- (k) In the Receiver's view, the failure of Thompson and Davies to advise the Receiver and the 445 Trustee of their steps to sell the 208 Real Property and of the sale of the 208 Real Property is consistent with the prior poor conduct of both individuals. That conduct has been the subject of many of the Receiver's prior reports.
- (l) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Third Report; and
- (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

June 26, 2018

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Sean Zweig (LSUC#57307I)
Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSUC#55457P)
Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSUC#64325B)
Phone: (416) 777-4828
Email: blinickj@bennettjones.com

Facsimile: (416) 863-1716

Lawyers for KSV Kofman Inc.

SERVICE LIST

CV-17-589078-00CL

June 26, 2018

TO:	<p>LAX O'SULLIVAN LISUS GOTTLIEB LLP Suite 2750, 145 King Street West Toronto, Ontario M5H 1J8</p> <p>Matthew P. Gottlieb Tel: 416-644-5353 Email: mgottlieb@counsel-toronto.com</p> <p>Andrew Winton Tel: 416-644-5342 Email: awinton@counsel-toronto.com</p> <p>Lawyers for the Applicant</p>
AND TO:	<p>RUBIN & CHRISTIE LLP 219 Finch Avenue West, 2nd Floor Toronto, Ontario M2R 1M2</p> <p>Douglas Christie Tel: 416-361-0900 Email: dchristie@rubinchristie.ca</p> <p>Lawyers for Textbook Student Suites (445 Princess Street) Inc.</p>
AND TO:	<p>DLA PIPER (CANADA) LLP Suite 6000, 1 First Canadian Place Toronto, Ontario M5X 1E2</p> <p>Edmond Lamek Tel: 416-365-3444 Email: edmond.lamek@dlapiper.com</p> <p>Danny Nunes Tel: 416-365-3421 Email: danny.nunes@dlapiper.com</p> <p>Lawyers for Textbook Student Suites (445 Princess Street) Inc.</p>

AND TO:	<p>GRANT THORNTON LIMITED 19th Floor, Royal Bank Plaza South Tower, 200 Bay Street Toronto, Ontario M5J 2P9</p> <p>Jonathan Krieger Tel: 416-360-5055 Email: jonathan.krieger@ca.gt.com</p> <p>David Goldband Tel: 416-369-6446 Email: David.Goldband@ca.gt.com</p> <p>Arsheel Muhit Tel: 416-777-6103 Email: Arsheel.Muhit@ca.gt.com</p> <p>Court-appointed Trustee</p>
AND TO:	<p>AIRD & BERLIS LLP Brookfield Place Suite 1800, 181 Bay Street Toronto, Ontario M5J 2T9</p> <p>Steven L. Graff Tel: 416-865-7726 Email: sgraff@airdberlis.com</p> <p>Ian Aversa Tel: 416-865-3082 Email: iaversa@airdberlis.com</p> <p>Jeremy Nemers Tel: 416-865-7724 Email: jnemers@airdberlis.com</p> <p>Lawyers for the Court-appointed Trustee</p>

AND TO:	<p>KSV KOFMAN INC. 150 King Street West, Suite 2308 Toronto, Ontario M5H 1J9</p> <p>Bobby Kofman Tel: 416-932-6228 Email: bkofman@ksvadvisory.com</p> <p>Noah Goldstein Tel: 416-932-6207 Email: ngoldstein@ksvadvisory.com</p> <p>Receiver and Manager</p>
AND TO:	<p>BENNETT JONES LLP 3400 One First Canadian Place Toronto, Ontario M5X 1A4</p> <p>Sean Zweig Tel: 416-777-6254 Email: zweigs@bennettjones.com</p> <p>Lawyers for the Receiver and Manager</p>
AND TO:	<p>CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, Ontario M2N 7E9</p> <p>George Benchetrit Tel: 416-218-1141 Email: george@chaitons.com</p> <p>Representative Counsel for the SMI Investors</p>

AND TO:	<p>DENTONS LLP 77 King Street West, Suite 400 Toronto, Ontario M5K 0A1</p> <p>David McCutcheon Tel: 416-863-4538 Email: david.mccutcheon@dentons.com</p> <p>Kenneth Kraft Tel: 416-863-4374 Email: kenneth.kraft@dentons.com</p> <p>Michael Beeforth Tel: 416-367-6779 Email: michael.beeforth@dentons.com</p> <p>Lawyers for John Davies and Walter Thompson</p>
AND TO:	<p>JOHN DAVIES Email: john@textbooksuites.com</p>
AND TO:	<p>WALTER THOMPSON Email: walter@textbooksuites.com</p>
AND TO:	<p>TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION 295 The West Mall Toronto, ON M9C 4Z4</p>
AND TO:	<p>SHOPPERS REALTY INC. 243 Consumers Road Toronto, Ontario M2J 4W8</p>

KINGSETT MORTGAGE CORPORATION
Applicant

v.

TEXTBOOK (445 PRINCESS STREET) INC.
Respondent
Court File No: CV-17-589078-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**NOTICE OF MOTION
(Appointing Receiver – Returnable June 29, 2018)**

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Sean Zweig (LSUC#57307I)

Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSUC#55457P)

Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSUC#64325B)

Phone: (416) 777-4828
Email: blinickj@bennettjones.com

Facsimile: (416) 863-1716

Lawyers for KSV Kofman Inc.

Tab 2



**Third Report of
KSV Kofman Inc.
as Receiver and Manager of Certain Property
of Textbook (445 Princess Street) Inc.**

June 26, 2018

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COURT FILE NO. CV-17-589078-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

KINGSETT MORTGAGE CORPORATION

APPLICANT

- AND -

TEXTBOOK (445 PRINCESS STREET) INC.

RESPONDENT

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

JUNE 26, 2018

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on January 9, 2018 (the "Receivership Order"), KSV Kofman Inc. ("KSV") was appointed as the receiver and manager ("Receiver") of the real property municipally described as 429 and 445 Princess Street, Kingston, Ontario (the "445 Real Property"), which property was registered on title as being owned by Textbook (445 Princess Street) Inc. (the "Company"), and of all of the assets, undertakings and properties acquired for or used in relation to the 445 Real Property (together with the 445 Real Property, the "445 Property").
2. This report ("Report") is filed by KSV in its capacity as Receiver of the 445 Property.

1.1 Currency

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

1.2 Purpose

1. The purposes of this Report are to:
 - a) advise the Court of the sale of the 208 Real Property (as defined below) and the circumstances related thereto; and
 - b) recommend that the Court issue an order (i) expanding the scope of the receivership to include all property of the Company, and (ii) directing that all of the proceeds from the sale of the 208 Real Property be paid to the Receiver forthwith.

2.0 Background

1. Pursuant to an order of the Court dated October 27, 2016, Grant Thornton Limited was appointed Trustee (the “Trustee”) of eleven entities¹, which raised monies from investors through syndicated mortgage investments (collectively, the “Trustee Corporations” and each a “Trustee Corporation”). Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements between a Trustee Corporation and eleven entities (the “Davies Developers”), including the Company.
2. John Davies (“Davies”) and/or Walter Thompson (“Thompson”) are the sole directors and officers of the Davies Developers.
3. On February 2, 2017, KSV was appointed receiver of certain property of Scollard Development Corporation, one of the Davies Developers. Since that time, KSV has been appointed the receiver of the real property and/or property related to the balance of the Davies Developers.²
4. 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 (the “Projects”) were in pre-construction.
5. 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.
6. The Receiver is investigating transactions involving the Davies Developers, including the use by the Davies Developers of the monies advanced to them through the Trustee Corporations.

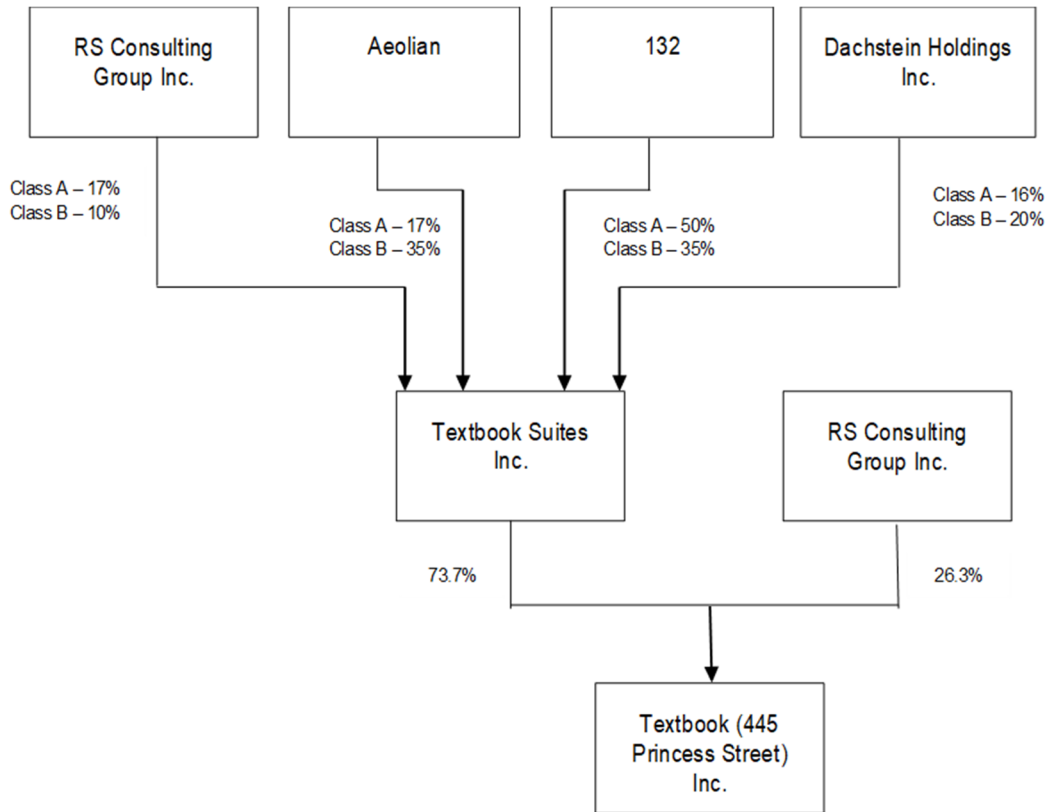
¹ Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (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 Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., 1703858 Ontario Inc., Legacy Lane Investments Ltd., Textbook (555 Princess Street) Inc., Textbook (525 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc., McMurray Street Investments Inc. and the Company.

7. Based on its findings in the investigation, KSV filed a statement of claim against various parties, including Davies and Aeolian Investments Ltd. (“Aeolian”), a company owned by Davies’ wife, Judith Davies, and children, alleging, among other things, fraud, breach of fiduciary duty and negligence. Aeolian’s sole director and officer is Davies. Aeolian is a direct or an indirect shareholder of each of the Davies Developers.
8. Pursuant to several orders in these proceedings, the Court granted a Mareva injunction, on an interlocutory basis, until a final disposition of the proceeding as against, *inter alia*, Davies, Aeolian and Judith Davies (the “Mareva Parties”). The Mareva Parties have been granted leave to appeal the Mareva injunction.

3.0 The Present Situation

1. Aeolian and 1321805 Ontario Inc. (“132”) are two of the indirect shareholders of the Company. 132 holds its equity interest on behalf of a trust of which Thompson is a beneficiary. A corporate chart for the Company is provided below.



2. Textbook Student Suites (445 Princess Street) Trustee Corporation is the Trustee Corporation in respect of the Company (the “445 Trustee”). The 445 Trustee advanced approximately \$8.4 million under a mortgage on the 445 Real Property. The 445 Trustee has no other security registered against the Company’s business and assets.

3. On May 9, 2018, the Receiver completed a sale of the 445 Property. The proceeds of sale were used to repay the senior ranking mortgagee on the 445 Property, KingSett Mortgage Corporation (“KingSett”). After repaying KingSett in full and the costs of the receivership process, there is approximately \$60,000 remaining in the receivership bank account.
4. According to the Company’s books and records, there remains approximately \$9.1 million owing to the Company’s creditors, as detailed in the table below. A claims process has not been conducted, so the amounts owing to creditors are subject to change.

(unaudited; \$000s)	Amount
445 Trustee	8,397
Related parties	645
Other	104
	9,146

5. As of the date of the receivership, the Company also owned real property municipally described as 208 Division Street, Kingston (the “208 Real Property”). The 208 Real Property is adjacent to the 445 Real Property. The 445 Trustee does not have security over the 208 Real Property, and accordingly the 208 Real Property is not currently subject to the Company’s receivership proceedings, nor is it subject to any other insolvency proceeding.
6. The Receiver recently learned that the Company sold the 208 Real Property.
7. According to a title search, the 208 Real Property was sold on June 18, 2018 to Cosmos Brands Corp. for \$348,000. The Company purchased the 208 Real Property in October 2016 for \$400,000. A copy of the title search for the 208 Real Property is attached as Appendix “A”.
8. Notwithstanding that the Company has millions of dollars of unpaid creditors and there is an ongoing receivership over the 445 Property, neither Davies nor Thompson advised the Receiver or the 445 Trustee that they were taking steps to have the Company sell the 208 Real Property nor that the Company had completed a sale of the 208 Real Property. Based on information received by the Receiver, the Receiver is concerned that neither Davies nor Thompson intended to advise the Receiver of the sale of the 208 Real Property, and neither they nor their counsel, Dentons Canada LLP (“Dentons”), did so until the Receiver’s counsel, Bennett Jones LLP (“Bennett Jones”), contacted Dentons, as more fully discussed below.
9. Upon learning about the sale of the 208 Real Property, the Receiver instructed Bennett Jones to send a letter to Dentons advising of its knowledge of the 208 Real Property sale. Accordingly, on June 23, 2018, Bennett Jones sent a letter to Dentons requiring that the proceeds therefrom be remitted to the Receiver forthwith for the benefit of the Company’s creditors, and that the funds be held in trust by Dentons (or another law firm) in the interim. A copy of Bennett Jones’ letter is attached as Appendix “B”.

10. Dentons responded to Bennett Jones in a letter dated June 25, 2018 (the “Dentons’ Letter”), as follows:
 - a) the net proceeds from the sale of the 208 Real Property total \$108,840.84, after payment of the mortgage on the 208 Real Property and the costs of sale (the “208 Proceeds”);
 - b) the 208 Proceeds are being held in trust by the law firm that completed the transaction (Dentons did not disclose the name of the law firm); and
 - c) Textbook Suites Inc. (“TSI”) and Textbook Students Suites Inc.³ (“TSSI”), which are owned partly by 132 and Aeolian, are creditors of the Company in respect of management fees and inter-company loans in the approximate amounts of \$517,234.61 and \$528,517.05, respectively, and that Davies and Thompson propose to pay the 208 Proceeds to the Receiver for the benefit of the 445 Trustee, net of \$11,986.46, in respect of amounts payable to TSI and TSSI.

A copy of the Denton’s Letter is attached as Appendix “C”.

11. In the Receiver’s view, the failure of Thompson and Davies to advise the Receiver and the 445 Trustee of their steps to sell the 208 Real Property and of the sale of the 208 Real Property is consistent with the prior poor conduct of both individuals. That conduct has been the subject of many of the Receiver’s prior reports. The Receiver’s reports can be found on its website at <http://www.ksvadvisory.com/insolvency-cases/scollard-development-corporation/>, but its Fourth Report dated June 6, 2017, being the most relevant to the investigative issues referenced in this Report, is attached (without appendices) as Appendix “D”.
12. Additionally, the payments to TSI and TSSI as proposed in Dentons’ letter are, at best, premature and, at worst, egregious and unwarranted. The Company’s books and records reflect “loans” and other fees paid to TSI and TSSI in the amount of approximately \$843,000, as reflected in the Statement of Receipts and Disbursements attached as Appendix “E”. Additionally, as these entities are owned and/or controlled by Davies and Thompson, two of the individuals who caused the Company’s investors to suffer millions of dollars of losses, payment to TSI and TSSI is inappropriate, particularly if such payment is made before distributions are made to other creditors of the Company and a determination of the claims of TSI and TSSI.

3.1 Recommendation

1. The scope of the receivership should be expanded to include all property of the Company, including the proceeds of the 208 Real Property sale, and the proceeds from the sale should be paid to the Receiver for distribution to creditors and to fund the costs of these proceedings, including the costs of the investigation and litigation referenced in Section 2 above.

³ TSI and TSSI are shareholders of several of the Davies Developers. TSI and TSSI are alleged to have provided management development services to certain of the Davies Developers.

2. To the extent that any of the Davies Developers have assets that may not fall within the definition of “property” of any of the receivership companies, Davies and Thompson should be directed by the Court to advise the Receiver of such property, and they should be precluded from dealing with such property absent further order of the Court.

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc". The signature is written in a cursive, flowing style.

**KSV KOFMAN INC.
IN ITS CAPACITY AS RECEIVER AND MANAGER OF CERTAIN PROPERTY OF
TEXTBOOK (445 PRINCESS STREET) INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

PROPERTY DESCRIPTION: PT LT 24 BLK Z CON 1 KINGSTON AS IN FR636054; S/T & T/W FR721880; KINGSTON ; THE COUNTY OF FRONTENAC

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:
RE-ENTRY FROM 36071-0430

PIN CREATION DATE:
2004/09/20

OWNERS' NAMES
COSMOS BRANDS CORP.

CAPACITY SHARE
ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2004/09/17 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2004/09/20 **						
13R9645	1990/08/08	PLAN REFERENCE				C
FR643093	1996/01/11	CHARGE		*** COMPLETELY DELETED ***	ROYAL BANK OF CANADA	
FR721880	2003/04/01	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** 1068020 ONTARIO INC.	1556910 ONTARIO LIMITED	
FR721939	2003/04/03	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 1556910 ONTARIO LIMITED	ROYAL BANK OF CANADA	
FC59664	2008/07/04	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
REMARKS: RE: FR721939						
FC121137	2011/08/30	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
REMARKS: FR643093.						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
FC228724	2016/10/06	TRANSFER		*** COMPLETELY DELETED *** 1556910 ONTARIO LIMITED	TEXTBOOK (445 PRINCESS STREET) INC.	
		REMARKS: PLANNING ACT STATEMENTS.				
FC228725	2016/10/06	CHARGE		*** COMPLETELY DELETED *** TEXTBOOK (445 PRINCESS STREET) INC.	1556910 ONTARIO LIMITED	
FC261907	2018/06/18	TRANSFER	\$348,000	TEXTBOOK (445 PRINCESS STREET) INC.	COSMOS BRANDS CORP.	C
		REMARKS: PLANNING ACT STATEMENTS.				
FC262047	2018/06/20	DISCH OF CHARGE		*** COMPLETELY DELETED *** 1556910 ONTARIO LIMITED		
		REMARKS: FC228725.				

Appendix “B”



Bennett Jones

Bennett Jones LLP
3400 One First Canadian Place, PO Box 130
Toronto, Ontario, Canada M5X 1A4
Tel: 416.863.1200 Fax: 416.863.1716

Sean H. Zweig
Partner
Direct Line: 416.777.6254
e-mail: zweigs@bennettjones.com
Our File No.: 74735.13

June 23, 2018

Via E-Mail

Michael Beeforth
Dentons Canada LLP
77 King Street West, Suite 1400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Dear Mr. Beeforth:

Re: Textbook (445 Princess Street Inc.) (“445 Princess”)

As you know, we act for KSV Kofman Inc., in its capacity as receiver with respect to various properties that were owned by the “Textbook Entities”, including property owned by 445 Princess (the “**Receiver**”).

As part of the 445 Princess receivership proceeding, the Receiver sold the real property known as 429 and 445 Princess Street, Kingston, Ontario. The property adjacent to that property – which is known as 208 Division Street, Kingston, Ontario (the “**208 Property**”) - was also owned by 445 as at the receivership date but was not subject to the receivership proceeding.

We understand that 445 Princess has now completed a sale of the 208 Property, and we are writing with respect to the proceeds from that sale. The Receiver’s position is that those proceeds are to be remitted to the Receiver forthwith for the benefit of 445 Princess’s creditors. In the interim, we trust that the proceeds will be held in trust by you (or whichever other law firm completed the sale). As you and your clients know, notwithstanding the sale of the one property in the 445 Princess receivership proceeding, 445 Princess continues to have creditors owed many millions of dollars who have claims over the 208 Property proceeds. It would be wholly inappropriate, and contrary to law, for the proceeds to be distributed to 445 Princess’s shareholders or any other parties.

Please confirm that the 208 Property proceeds will be remitted to the Receiver forthwith and held in trust by you (or another law firm) until that time. Otherwise, the Receiver has instructed us to schedule a motion with Myers J. as soon as possible this week to address these matters.

In addition, the Receiver requires an update from Mr. Davies with respect to his Arizona property, including whether any mortgagee or other person has initiated or threatened to initiate enforcement

June 23, 2018

Page 2

proceedings against the property. Please provide copies of any correspondence received from any mortgagee and a current mortgage statement.

We look forward to hearing from you prior to Monday at 10a.m. with respect to these matters. If we do not have satisfactory responses by that time, we will contact the Court office to schedule our motion as referred to above.

Please note that the Receiver reserves all of its rights, including with respect to the sale of the 208 Property, and that to the extent there is any non-compliance with this letter, the Receiver will fully avail itself of all remedies available to it, including seeking a contempt order with the maximum relief available if the existing Mareva order is breached.

Yours truly,



for

Sean H. Zweig

cc: Jon Bell and Joseph Blinick, *Bennett Jones LLP*
Bobby Kofman and Noah Goldstein, *KSV Kofman Inc.*



Appendix “C”

June 25, 2018

File No.: 569424-2

SENT VIA E-MAIL

Sean Zweig
Bennett Jones
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Dear Mr. Zweig:

RE: Textbook (445 Princess Street) Inc. ("445 Princess")

We have your letter of June 23, 2018 regarding the sale proceeds from 208 Division Street (the "**208 Property**"), which amount to \$108,840.84 after payment of the mortgage, realtor fees and legal costs. These proceeds are currently being held in trust by the law firm that handled the sale transaction.

Our clients' position is that the Receiver presumptively has no claim to the 208 Property sale proceeds. As you note in your letter, the 208 Property was not subject to the receivership proceeding and is not within the scope of the Receiver's mandate. The Receiver was appointed by KingSett in respect of its secured interest in 429 Princess and 445 Princess, which was discharged upon sale. As such, your client is not entitled to these proceeds.

Notwithstanding the above, our clients acknowledge that the 208 Property sale proceeds should flow to the benefit of 445 Princess's creditors. Indeed, Mr. Thompson raised the issue of how to distribute the sale proceeds last Friday, prior to receiving your letter. Both Textbook Suites Inc. ("**TSI**") and Textbook Student Suites Inc. ("**TSSI**") are creditors of 445 Princess in respect of accrued management fees and intercompany loans in the approximate amounts of \$517,234.61 and \$528,517.05 respectively. We note that no fees were charged by TSI for the work carried out to sell the 208 Property. These debts rank equally in priority to the \$8.45M owed to Textbook Student Suites (445 Princess Street) Trustee Corporation (the "**Trustee Corporation**"). We are not aware of any other creditors of 445 Princess.

Our clients thus propose to pay to the Receiver the 208 Property sale proceeds, net of TSI/TSSI's *pro rata* entitlement (approximately \$11,986.46), totalling \$96,854.38. Our clients will forego any claim to these remaining proceeds, which can be paid to Grant Thornton or otherwise distributed to the Trustee Corporation.

With respect to the Arizona property, Mr. Davies has not received any formal inquiries or correspondence regarding the mortgage. He was contacted informally by Bofl last week regarding when he expects to bring the mortgage into good standing. No further payments have been made towards the mortgage since the recent payments made by Mr. Davies' daughter in respect of December, January and February's instalments.

We look forward to hearing from you. In the event that your client requires an appearance before Justice Myers, we confirm that the 208 Property sale proceeds will continue to be held in trust pending an agreement with the Receiver. As such, there is no urgency and we trust we will be able to agree upon a mutually acceptable date.

Yours truly,
Dentons Canada LLP



Michael Beeforth

DMB/

cc. Jon Bell, Bennett Jones LLP
David McCutcheon
client

June 25, 2018

File No.: 569424-2

SENT VIA E-MAIL

Sean Zweig
Bennett Jones
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Dear Mr. Zweig:

RE: Textbook (445 Princess Street) Inc. ("445 Princess")

We have your letter of June 23, 2018 regarding the sale proceeds from 208 Division Street (the "**208 Property**"), which amount to \$108,840.84 after payment of the mortgage, realtor fees and legal costs. These proceeds are currently being held in trust by the law firm that handled the sale transaction.

Our clients' position is that the Receiver presumptively has no claim to the 208 Property sale proceeds. As you note in your letter, the 208 Property was not subject to the receivership proceeding and is not within the scope of the Receiver's mandate. The Receiver was appointed by KingSett in respect of its secured interest in 429 Princess and 445 Princess, which was discharged upon sale. As such, your client is not entitled to these proceeds.

Notwithstanding the above, our clients acknowledge that the 208 Property sale proceeds should flow to the benefit of 445 Princess's creditors. Indeed, Mr. Thompson raised the issue of how to distribute the sale proceeds last Friday, prior to receiving your letter. Both Textbook Suites Inc. ("**TSI**") and Textbook Student Suites Inc. ("**TSSI**") are creditors of 445 Princess in respect of accrued management fees and intercompany loans in the approximate amounts of \$517,234.61 and \$528,517.05 respectively. We note that no fees were charged by TSI for the work carried out to sell the 208 Property. These debts rank equally in priority to the \$8.45M owed to Textbook Student Suites (445 Princess Street) Trustee Corporation (the "**Trustee Corporation**"). We are not aware of any other creditors of 445 Princess.

Our clients thus propose to pay to the Receiver the 208 Property sale proceeds, net of TSI/TSSI's *pro rata* entitlement (approximately \$11,986.46), totalling \$96,854.38. Our clients will forego any claim to these remaining proceeds, which can be paid to Grant Thornton or otherwise distributed to the Trustee Corporation.

With respect to the Arizona property, Mr. Davies has not received any formal inquiries or correspondence regarding the mortgage. He was contacted informally by Bofl last week regarding when he expects to bring the mortgage into good standing. No further payments have been made towards the mortgage since the recent payments made by Mr. Davies' daughter in respect of December, January and February's instalments.

We look forward to hearing from you. In the event that your client requires an appearance before Justice Myers, we confirm that the 208 Property sale proceeds will continue to be held in trust pending an agreement with the Receiver. As such, there is no urgency and we trust we will be able to agree upon a mutually acceptable date.

Yours truly,
Dentons Canada LLP



Michael Beeforth

DMB/

cc. Jon Bell, Bennett Jones LLP
David McCutcheon
client

Appendix “D”



**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

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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

1. 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

2. Davies and Thompson are the sole officers and directors of the Textbook Entities⁸.
3. The shareholders of the Textbook Entities are:
 - a) TSI;
 - b) TSSI; and
 - c) RS Consulting Group Inc. (“RSCG”).
4. TSI and TSSI are owned (in different proportions) by Aeolian, RSCG, 1321805 Ontario Inc. (“132”) and Dachstein Holdings Inc. (“Dachstein”). The Receiver understands that:
 - a) Aeolian is owned by Davies’ wife and children;
 - b) RSCG is owned by Singh;
 - c) 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
	4,069
Ross Park	249
Other entities	251
	500
	4,569
Dividends paid to Aeolian	
525 Princess	250
555 Princess	250
Ross Park	250
Bronson	125
	875
Payments to family members	
Judith Davies	365
Sarah Davies	29
Y2 Media Group Ltd. (owned by son of John Davies)	14
Jessica Davies	14
	422
Payments to Moscowitz	935
Payments to Davies	55
Less: receipts from Aeolian	(93)
Total	6,763

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 “E”

Textbook (445 Princess Street) Inc. ("445 Princess")
Statement of Receipts and Disbursements
For the period October 7, 2015 to March 31, 2017
(\$; unaudited)

	Notes	Amount
<i>Receipts</i>		
Syndicated Mortgage Investment ("SMI") proceeds	1	8,396,750
Kingsett Mortgage Corporation		7,000,000
Rental income	2	323,557
Affiliated entities	3	58,350
Sales tax refunds		49,143
Sundry receipts		1,300
		<u>15,829,100</u>
<i>Disbursements</i>		
Land - 445 Princess Street, Kingston		9,066,134
Affiliated entities	3	1,732,225
Broker commissions and referral fees	4	1,427,448
Payments to shareholders	5	2,121,337
Interest paid and fees, including interest reserve		671,740
Amounts paid to professionals	6	470,640
Kingsett Capital Corporation (Mortgage and Interest)		292,603
Development costs		28,904
Other		17,928
		<u>15,828,959</u>
Ending Bank Balance		<u>141</u>

Notes:

1. Represents funds raised from investors through syndicated mortgages.
2. Represents rent received from Shoppers Drug Mart, the tenant at the property owned by 445 Princess.
3. Represents funds received and advanced to known affiliated entities as detailed below.

Entity	Description	Amounts Received	Amounts Advanced	Net Amounts Received / (Advanced)
Memory Care Investments (Burlington) Ltd.	Owens property in Burlington	-	(2,500)	(2,500)
Textbook (445 Princess Street) Inc.	Owens property in Kingston	-	(3,500)	(3,500)
Memory Care Investments (Kitchener) Ltd.	Owens property in Kitchener	-	(32,000)	(32,000)
Textbook (555 Princess Street) Inc.	Owens property in Kingston	-	(51,925)	(51,925)
Textbook (525 Princess Street) Inc.	Owens property in Kingston	-	(56,100)	(56,100)
McMurray Street Investments Ltd.	Owens property in Bracebridge	-	(64,000)	(64,000)
Textbook (774 Bronson Avenue) Inc.	Owens property in Ottawa	53,000	(220,500)	(167,500)
Scollard Development Corporation	Owens property in Whitby	-	(645,000)	(645,000)
Textbook Ross Park Inc.	Owens property in London	5,350	(656,700)	(651,350)
Total		58,350	(1,732,225)	(1,673,875)

4. Represents broker and referral fees paid to First Commonwealth Mortgage Corporation and Tier 1 Transaction Advisory Services Inc.
5. Represents funds paid to Shareholders and entities and individuals related to Shareholders.

Entity	Management Fees	Due Diligence Fees	Loans	Other	Total Amount
Textbook (256 Rideau Street) Inc.	-	-	-	766,500	766,500
Textbook Suites Inc.	-	-	629,200	144,000	773,200
RS Consulting Group	-	226,000	-	-	226,000
1321805 Ontario Inc.	200,000	-	-	-	200,000
Textbook Student Suites Inc.	-	-	11,000	58,500	69,500
Memory Care Investments Ltd.	-	-	36,000	12,000	48,000
Tier 1 Transaction Advisory Services Inc.	-	-	-	38,137	38,137
Total	200,000	226,000	676,200	1,019,137	2,121,337

6. Amounts paid to professionals are summarized as follows:

Firm	Amount
Harris + Harris LLP	255,057
Elliott Law Firm	29,380
Peter Tuovi (tax opinion)	11,300
Lou Vadala Professional Corporation	174,903
Total	470,640

Tab 3

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

THE HONOURABLE) FRIDAY, THIS 29th DAY OF
JUSTICE MYERS) JUNE, 2018

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

**IN THE MATTER OF THE RECEIVERSHIP OF
TEXTBOOK (445 PRINCESS STREET) INC.**

**AND IN THE MATTER OF AN APPLICATION UNDER 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**

**ORDER
(Appointing Receiver – Returnable June 29, 2018)**

THIS MOTION made by KSV Kofman Inc. (“**KSV**”) in its capacity as the court-appointed receiver and manager of certain property of Textbook (445 Princess Street) Inc. (“**445 Princess**” or the “**Debtor**”), for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing KSV as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of

445 Princess acquired for, or used in relation to a business carried on by 445 Princess that are not otherwise subject to a receivership order in this proceeding, was heard this day at 130 Queen Street West, Toronto, Ontario.

ON READING the Third Report of KSV dated June 26, 2018 and the appendices thereto (the “**Third Report**”), and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of Elsa Diaz sworn June 26, 2018,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 101 of the CJA, KSV is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor that are not otherwise subject to a receivership order in this proceeding, including all proceeds thereof, and without limiting the generality of the foregoing, all of the proceeds of the sale of the Debtor’s real property municipally known as 208 Division Street, Kingston, Ontario (the “**208 Property**”) (collectively, the “**Property**”).

RECEIVER’S POWERS

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

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

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

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets as the Receiver deems reasonable necessary in order to carry out the powers conferred on the Receiver in this Order;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, with the approval of this Court, and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;
- (k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

4. THIS COURT ORDERS that, for greater clarity, the Receiver shall be entitled take immediate possession of the proceeds of the sale of the 208 Property and this Court further directs any holders of any such proceeds to immediately transfer such proceeds to the Receiver, and that no party, shall otherwise transfer any such proceeds to any person without the written consent of the Receiver or further Order of this Court.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors (including Walter Thompson and John Davies), officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

6. THIS COURT ORDERS that Walter Thompson and John Davies shall also forthwith advise the Receiver of any and all remaining assets, undertakings and properties of any Davies Developer (as defined in the Third Report).

7. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this

paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

9. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

10. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

15. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

16. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor’s behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

PIPEDA

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

identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER’S LIABILITY

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

RECEIVER’S ACCOUNTS

20. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect

of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

SERVICE AND NOTICE

23. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: "http://ksvadvisory.com/insolvency-cases/textbook-445-princess-street-inc/".

24. THIS COURT ORDERS that the Applicant, the Receiver and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver shall post a copy of all such materials on its website at the URL listed in paragraph 22 above.

GENERAL

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

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

27. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

29. THIS COURT ORDERS that the Receiver shall have its costs of this motion, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

The Honourable Mr. Justice Myers

KINGSETT MORTGAGE CORPORATION
Applicant

v.

TEXTBOOK (445 PRINCESS STREET) INC.
Respondent
Court File No: CV-17-589078-00CL

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Sean Zweig (LSUC#57307I)

Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSUC#55457P)

Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSUC#64325B)

Phone: (416) 777-4828
Email: blinickj@bennettjones.com

Facsimile: (416) 863-1716

Lawyers for KSV Kofman Inc.

Tab 4

Revised: January 21, 2014
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario)-
Receiver

Court File No. CV-17-589078-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE _____)
JUSTICE MYERS)
)
) **WEEKDAY, THE #**
) **FRIDAY, THIS 29th** DAY OF **MONTH,**
) **20YR**
)
) **JUNE, 2018**

BETWEEN:

PLAINTIFF[†]

Plaintiff

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

DEFENDANT

Defendant

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

IN THE MATTER OF THE RECEIVERSHIP OF
TEXTBOOK (445 PRINCESS STREET) INC.

[†]The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application.
This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

AND IN THE MATTER OF AN APPLICATION UNDER 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

ORDER

(~~A~~Appointing Receiver – Returnable June 29, 2018)

THIS MOTION made by ~~the Plaintiff~~² KSV Kofman Inc. (“KSV”) in its capacity as the court-appointed receiver and manager of certain property of Textbook (445 Princess Street) Inc. (“445 Princess” or the “Debtor”), for an Order pursuant to ~~section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”)~~ and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing ~~[RECEIVER'S NAME]~~KSV as receiver {and manager} (in such capacities, the “Receiver”) without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME] (the “Debtor”)~~445 Princess acquired for, or used in relation to a business carried on by ~~the Debtor~~445 Princess that are not otherwise subject to a receivership order in this proceeding, was heard this day at ~~330 University Avenue~~130 Queen Street West, Toronto, Ontario.

ON READING the ~~affidavit of [NAME] sworn [DATE]~~Third Report of KSV dated June 26, 2018 and the ~~Exhibits~~appendices thereto (the “Third Report”), and on hearing the submissions of counsel for ~~[NAMES]~~the Receiver and such other counsel as were present, no one appearing for ~~[NAME]~~any other person on the service list although duly served as appears from the affidavit of service of ~~[NAME] sworn [DATE] and on reading the consent of [RECEIVER'S NAME] to act as the Receiver,~~Elsa Diaz sworn June 26, 2018,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated³ so that this motion is properly returnable today and hereby dispenses with further service thereof.

²Section 243(1) of the BIA provides that the Court may appoint a receiver “on application by a secured creditor”.

³If service is effected in a manner other than as authorized by the *Ontario Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to ~~section 243(1) of the BIA and~~ section 101 of the CJA, ~~[RECEIVER'S NAME]~~KSV is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor that are not otherwise subject to a receivership order in this proceeding, including all proceeds thereof ~~(the "Property", and without limiting the generality of the foregoing, all of the proceeds of the sale of the Debtor's real property municipally known as 208 Division Street, Kingston, Ontario (the "208 Property")~~ (collectively, the "Property").

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise

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of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets ~~to continue the business of the Debtor or any part or parts thereof~~ as the Receiver deems reasonable necessary in order to carry out the powers conferred on the Receiver in this Order;
 - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
 - (g) to settle, extend or compromise any indebtedness owing to the Debtor;
 - (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
 - (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
 - (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- ~~(k) —~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

⁴~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

~~(i) without the approval of this Court in respect of any transaction not exceeding \$ _____, provided that the aggregate consideration for all such transactions does not exceed \$ _____; and (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;~~ and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,⁵] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

- (k) ~~(h)~~ to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) ~~(m)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) ~~(o)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (o) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

⁵ ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

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- (p) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (q) ~~(r)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

4. THIS COURT ORDERS that, for greater clarity, the Receiver shall be entitled take immediate possession of the proceeds of the sale of the 208 Property and this Court further directs any holders of any such proceeds to immediately transfer such proceeds to the Receiver, and that no party, shall otherwise transfer any such proceeds to any person without the written consent of the Receiver or further Order of this Court.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. 4-THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, (including Walter Thompson and John Davies), officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons") and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that Walter Thompson and John Davies shall also forthwith advise the Receiver of any and all remaining assets, undertakings and properties of any Davies Developer (as defined in the Third Report).

7. 5-THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in

~~7~~

that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph ~~5~~6 or in paragraph ~~6~~7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. ~~6~~-THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

9. ~~7~~-THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

~~8~~

10. ~~8.~~ THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

14. ~~12.~~ THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering,

~~9~~

interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

15. ~~13.~~ THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

16. ~~14.~~ THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, ~~other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the Wage Earner Protection Program Act.~~

PIPEDA

17. ~~15.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete

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one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

~~-11-~~**RECEIVER'S ACCOUNTS**

20. ~~18.~~ THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁶

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

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

FUNDING OF THE RECEIVERSHIP

~~21.— THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$_____ (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as~~

⁶Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".

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~~security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.~~

~~22.— THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.~~

~~23.— THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.~~

~~24.— THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.~~

SERVICE AND NOTICE

~~23.~~ 25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL-
: "<http://ksvadvisory.com/insolvency-cases/textbook-445-princess-street-inc/>".

~~24.~~ 26. THIS COURT ORDERS that ~~if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order,~~ the Applicant, the Receiver and any party who has filed a Notice of Appearance

~~-13-~~

may serve any othercourt materials ~~and orders~~ in these proceedings, ~~any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing~~ by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver shall post a copy of all such materials on its website at the URL listed in paragraph 22 above.

GENERAL

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

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

27. ~~29.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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29. ~~31.~~ THIS COURT ORDERS that the ~~Plaintiff~~Receiver shall have its costs of this motion, up to and including entry and service of this Order, ~~provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then~~ on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

The Honourable Mr. Justice Myers

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SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. ~~THIS IS TO CERTIFY~~ that [RECEIVER'S NAME], the receiver (the "Receiver") of the ~~assets, undertakings and properties~~ [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof ~~(collectively, the "Property")~~ appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an action having Court file number __ CL _____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

4. ~~All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.~~

~~5. — Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.~~

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

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

DATED the _____ day of _____, 20__.

~~[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity~~

Per:

Name:

Title:

KINGSETT MORTGAGE CORPORATION

v.

TEXTBOOK (445 PRINCESS STREET) INC.

Applicant

Respondent

Court File No: CV-17-589078-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Sean Zweig (LSUC#57307D)
Phone: (416) 777-6254

Email: zweigs@bennettjones.com

Jonathan Bell (LSUC#55457P)

Phone: (416) 777-6511

Email: bellj@bennettjones.com

Joseph Blinick (LSUC#64325B)

Phone: (416) 777-4828

Email: blinickj@bennettjones.com

Facsimile: (416) 863-1716

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Rendering set	Standard

Legend:	
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Deletion	
Moved from	
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Style change	
Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Style change	0
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KINGSETT MORTGAGE CORPORATION
Applicant

v.

TEXTBOOK (445 PRINCESS STREET) INC.
Respondent
Court File No: CV-17-589078-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD OF THE MOVING PARTY,
KSV KOFMAN INC.
(Appointing Receiver – Returnable June 29, 2018)**

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Sean Zweig (LSUC#57307I)

Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSUC#55457P)

Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSUC#64325B)

Phone: (416) 777-4828
Email: blinickj@bennettjones.com

Facsimile: (416) 863-1716

Lawyers for KSV Kofman Inc.