

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

BETWEEN:

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

Plaintiff

- and -

**JOHN DAVIES AND AEOLIAN INVESTMENTS LTD.**

Defendants

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**SUPPLEMENTARY MOTION RECORD OF THE PLAINTIFF  
(Motion for a *Mareva* Injunction – Returnable August 30, 2017)**

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August 18, 2017

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**TAB 1**



**Supplement to the Sixth Report of  
KSV Kofman Inc.**

August 8, 2017

**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  
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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

SUPPLEMENT TO THE SIXTH REPORT OF  
KSV KOFMAN INC.  
AS RECEIVER AND MANAGER

AUGUST 8, 2017

## 1.0 Introduction

1. This supplemental report ("Report") is filed by KSV.
2. This Report supplements the Receiver's Sixth Report dated July 12, 2017 (the "Sixth Report").
3. Unless otherwise stated, capitalized terms used in this Report have the meanings provided to them in the Sixth Report.

## 1.1 Restrictions

1. This Report is subject to the restrictions set out in the Sixth Report.

## 2.0 Background

1. On July 14, 2017, Davies swore and produced an affidavit in response to the Receiver's Reports and in opposition to the Receiver's motion seeking, among other things, interlocutory injunctive relief as against him and Aeolian.



2. Davies and Aeolian subsequently consented to a further but temporary continuation of the Mareva Order, on a without prejudice basis, to allow for a scheduled hearing process for the Receiver's motion for interlocutory injunctive relief as against Davies and Aeolian.
3. On July 17, 2017, on the consent of the parties, the Court granted an order extending the Mareva Order as against Davies in his personal capacity and Aeolian (the "July 17<sup>th</sup> Order"). On that day, the Court also granted a Mareva Order as against Davies in his capacity as the trustee of both the Davies Family Trust and the Davies Arizona Trust, Judith Davies, in her personal capacity and in her capacity as trustee of the Davies Family Trust, and Harris, solely in his capacity as trustee of the Davies Family Trust. Copies of the July 17<sup>th</sup> Order and the endorsement are attached as Appendix "A".
4. In accordance with the terms of the July 17<sup>th</sup> Order, Davies, in his capacity as the trustee of both the Davies Family Trust and the Davies Arizona Trust, Judith Davies, in her personal capacity and in her capacity as trustee of the Davies Family Trust, and Harris, in his capacity as trustee of the Davies Family Trust, produced asset and liability statements, copies of which are collectively attached as Appendix "B".
5. On July 27, 2017, Davies swore and produced an affidavit to supplement the affidavit he swore on July 14, 2017 in opposition to the Receiver's motion seeking injunctive relief (the "Davies Affidavit" and, collectively with the affidavit sworn by Davies on July 14, 2017, the "Davies Affidavits").

## 2.1 Purpose of this Report

1. The purpose of this Report is to reply to the Davies Affidavits, including with respect to the following:
  - a) the overall nature of the Davies Developers' syndicated mortgage investment ("SMI") scheme;
  - b) the development management fees paid by the Davies Developers to affiliates of Davies and others;
  - c) the intercompany loans among the Davies Developers;
  - d) the statements which Davies alleges in the Davies Affidavit were made to him by representatives of KSV;
  - e) additional conduct by Davies and related parties; and
  - f) the necessity of continuing the Mareva injunction, on an interlocutory basis, until a final disposition of the proceeding as against Davies in his personal capacity and in his capacity as trustee of both the Davies Family Trust and the Davies Arizona Trust, Aeolian, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, and Harris in his capacity as trustee of the Davies Family Trust.

2. This Report does not, for reasons of practicality, address every issue in the Davies Affidavits and the Receiver should not be taken to agree with statements in the Davies Affidavits simply because the Receiver has not replied to each issue or statement raised by Davies in the Davies Affidavits.
3. The Receiver repeats and relies on its Fourth Report and Sixth Report. Nothing in the Davies Affidavits changes any of the Receiver's findings, conclusions or recommendations set out therein. In many respects, the Davies Affidavits, including the emails and memoranda he appends, reinforce the prior findings of the Receiver.

### 3.0 The Syndicated Mortgage Investment Scheme

1. There are seven projects that are subject to these receivership proceedings - and four others for which Davies raised monies from SMI Investors but are too distressed to be placed into an insolvency process by the Trustee because the value of these entities' assets appear to be insufficient to repay first-ranking third party mortgages owing on those properties. Because the Investors rank behind these mortgagees, any recovery for the Investors of the non-receivership Davies Developers is likely to be nominal, at best<sup>1</sup>.
2. The Fourth Report and the Sixth Report provide an overview of the structure of the SMI loans and focus on the flow of funds from the Investors to the Davies Developers, among the Davies Developers and from the Davies Developers to their parent companies, indirect shareholders and other related parties. This section of the Report provides further details about the SMI scheme.
3. For each of the Davies Developers' projects, the applicable Davies Developer raised monies from Investors through SMIs which were sourced by Tier 1 Transaction Advisory Inc. or entities related to Tier 1 (collectively, "Tier 1"). Of the SMI monies raised, approximately 30% was used to pay fees to Tier 1, amounts due to agents who sold the SMI product to Investors, professional costs and to fund a one-year interest reserve (the "Initial Costs").
4. To support the amounts raised, the Davies Developers retained an appraiser, Michael Cane Consultants ("Cane"), to provide an "estimated hypothetical market value of the subject site, assuming it could be developed" [emphasis added]. These appraisals were based on several assumptions, such as: (i) development costs, as estimated by the applicable Davies Developer and as set out in the applicable project pro forma, remaining consistent with the budget; (ii) the necessary planning approvals being obtained in a timely manner; and (iii) the development being commenced in a timely manner.

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<sup>1</sup> The Investors were to have a first ranking security interest on the real property of the Davies Developers, subject only to construction financing. There are a few exceptions to this, but not in respect of any of the Receivership Companies (defined in paragraph 5 below).

5. Investors were led to believe that the advances would be fully secured against the real property, including in presentations prepared by Tier 1 which can be viewed on YouTube<sup>2</sup> and in marketing materials for the projects. As reflected in the table below, each initial SMI fundraise for the Davies Developers that is subject to these receivership proceedings (the "Receivership Companies") significantly exceeded the purchase price of the real property, reflecting that the loans were undersecured from the day they were made. The table reflects that Investor monies were used to acquire the land, as the initial SMI advance and the purchase price are on the same date, in all but one case. None of these projects had any equity from the principals of the applicable Davies Developer.

(unaudited,\$000s) Entity	Purchase Price	Date Property Purchased	SMI Initial Advance	Date of SMI Initial Advance	Loan to Purchase Price Ratio
525 Princess	2,400	Dec 16, 15	5,854	Dec 16, 15	244%
555 Princess	2,000	Oct 20, 15	6,615	Oct 20, 15	331%
Scollard	9,000	Dec 8, 14	11,956	Dec 8, 14	133%
Kitchener	3,950	Feb 25, 14	4,918	Feb 25, 14	125%
Oakville	1,945	Oct 29, 12	2,550	Oct 29, 12	131%
Burlington	2,500	May 17, 13	5,499	May 17, 13	220%
Legacy Lane	650	Oct 2, 12	2,315	Apr 2, 13	356%
	<u>22,445</u>		<u>39,707</u>		<u>177%</u>

6. Attached as Appendix "C" are marketing materials for the Receivership Companies. In promoting the SMIs, the marketing materials indicated that the SMIs were to have first ranking security on the real property, which would only be subordinated to construction financing. Notwithstanding this representation to the public, after raising the SMIs, several of the Receivership Companies<sup>3</sup> borrowed funds on a first ranking secured basis against the Receivership Companies' real property. The Trustee Corporations would have been required to subordinate to these mortgages – notwithstanding this representation. Singh is the primary representative of Trustee Corporations.
7. It appears from the Davies Affidavit that in several instances when the Davies Developers faced liquidity problems, Davies would request a fresh appraisal from Cane, which appraisal would then be provided by Davies to Tier 1 to raise more money from Investors. In some instances, the increases in appraised value appear to have been justified by, *inter alia*, spending money on development activities. The marketing materials note that such increases would be "certified by independent quantitative surveys". The Receiver is uncertain if these certifications were obtained, and if so, whether these were consistently obtained. The Receiver has seen no evidence that such certifications were obtained. The Receiver is unaware if Cane has these credentials, but typically these would be provided by a cost consultant who reviews the costs incurred and determines whether they are consistent with budget. To the extent further monies were raised by a Davies Developer based on a fresh

<sup>2</sup> <https://www.youtube.com/watch?v=09Yt90AfkIo>. This video, a Tier 1 promotion, compares a SMI to a traditional bank mortgage secured by real estate. The video highlights, among others, Singh and Davies.

<sup>3</sup> Scollard, Kitchener, Burlington and Oakville each have a mortgage ranking in priority to the SMIs.

Cane appraisal, the Davies Developer appears to have routinely advanced such monies to other Davies Developers. Examples of this are provided in the email correspondence between Davies and others provided in Appendix "D" and Appendix "K".

8. The Receiver believes that the development projects undertaken by the Davies Developers had no prospect of success due to, among other things, a lack of equity capital, the significant Initial Costs and the amounts paid to related parties out of the SMI advances, including to affiliates of Davies, persons related to Davies and others.
9. Davies asserts in the Davies Affidavit that he believes the projects would have been successfully completed and each loan would have been repaid had Tier 1 Mortgage Corporation not been replaced as trustee of the Trustee Corporations by the Trustee. However, at the time the Trustee was appointed, each of the projects was significantly over-levered as the value of the debt substantially exceeded the value of the real property and none of the Receivership Companies had any capital to further advance its project. The cash balance of each of the Receivership Companies on the date the Trustee was appointed is provided below:

(unaudited; \$)	
Entity	Bank Balance
525 Princess	7,657
555 Princess	7,663
Scollard	1,868
Kitchener	233
Oakville	359
Burlington	83
Legacy Lane	25
Total	<u>17,888</u>

10. Certain (and perhaps all) of the Davies Developers were insolvent from the date of the first SMI advance. An example of this is 525 Princess.
11. 525 Princess raised \$6.387 million from Investors, comprised of \$5.854 million on December 16, 2015 and \$533,000 on January 22, 2016. This amount was 263% greater than the purchase price of the real property. By January 28, 2016, 525 Princess had a cash balance of approximately \$111,000 and had not spent any money on development activity. Notwithstanding that it could not advance the project, 525 Princess managed to pay from the SMI proceeds a \$1 million dividend to entities related to Singh, Thompson, Harris and Davies (see Appendix "E", which discusses this dividend and other matters concerning the illiquidity of the various projects).

12. A summarized Statement of Receipts and Disbursements for 525 Princess for the period December 16, 2015 to January 28, 2016 is provided below.

(unaudited; \$000s)	Amount
<b>Receipts</b>	
Syndicated Mortgage Investment	6,387
Other	14
<b>Total</b>	<b>6,401</b>
<b>Disbursements</b>	
Land	2,131
Broker Commissions	1,086
Interest holdback	511
Professional fees	225
Payments to shareholders	
Dividends	1,000
Other	1,337
Development costs	-
<b>Total</b>	<b>6,290</b>
 Cash balance, January 28, 2016	 <b>111</b>

#### 4.0 Pro Formas Prepared by John Davies

- Davies claims that the pro formas attached as Exhibit "B" to the Davies Affidavit reflect a genuine estimate of the costs that would be incurred and the fees that would be earned during the development process. The Receiver notes the following issues with the pro formas appended to the Davies Affidavit and therefore questions the extent to which they can and should be relied upon:
  - many of the pro formas reflect an equity injection by the respective Davies Developer. In no case did a Davies Developer make an equity injection<sup>4</sup>;
  - certain of the pro formas fail to account for a significant portion of the Initial Costs, including the pro formas for 525 Princess, 555 Princess and Burlington;
  - the pro formas for 525 Princess and 555 Princess do not appear to reflect the payment of dividends, which were paid from the initial SMI advance for each of these projects;
  - the 555 Princess pro forma reflects mortgage obligations (other than construction financing) ranking in priority to the syndicated mortgage investments even though such senior ranking debt was prohibited under the applicable Loan Agreements;

<sup>4</sup> Other than Oakville which raised \$1 million from the sale of preferred shares. These shares were sold to individuals who are also Investors.

- the pro forma for 555 Princess contains cells with “#VALUE!”, which means there are errors in the Excel formulas used by Davies. A copy of the pro forma for 555 Princess is attached as Appendix “F”; and
  - Davies had previously provided the Receiver with pro formas. Certain of the pro formas in the Davies Affidavit are different than the ones previously provided. The Receiver is uncertain which pro formas should be relied upon, if any. Certain of the pro formas previously provided have different profit projections due to different revenue and cost assumptions.
2. The Receiver has not retained a consultant to assess the reasonableness of the revenue and costs assumptions used in the pro formas attached to the Davies Affidavit.
  3. On August 1, 2017, the Receiver sent an email to Cane requiring that he provide the Receiver with copies of all appraisals and valuation reports that he prepared in respect of the Receivership Companies and all correspondence with the Receivership Companies and their principals. Cane provided the Receiver with some appraisals (and related pro formas) on August 4, 2017. An initial review of certain of the pro formas provided by Cane indicates that they are not consistent with the ones attached to the Davies Affidavit or the ones Davies previously provided. Additionally, the Receiver has not received any of the requested correspondence from Cane. If this correspondence is not provided forthwith, the Receiver intends to bring a motion in this regard. The Receiver’s email advised Cane of this intention.

## 5.0 Improper Development Management Fees

1. Davies takes the position that the development management fees paid by the Davies Developers were reasonable and earned. As detailed below, the Receiver has the following issues with these fees:
  - a) the amounts paid do not appear to have been earned or reasonable as they were disproportionate to the development progress of the Davies Developers’ projects; and
  - b) absent the written consent of the Trustee, development management fees are not permitted under the Loan Agreements for Oakville, Kitchener, Burlington, Scollard and Legacy Lane. Development management fees appear to be permissible in respect of the two Princess projects, provided they are reasonable and made in the ordinary course.

2. At paragraph 17 of the Davies Affidavit, Davies states that 57% of the budgeted development management fees across all projects have been paid - notwithstanding that construction has not commenced on any of the Receivership Companies<sup>5</sup> nor has construction financing been secured<sup>6</sup>. Many of the projects require changes in zoning. For example, the project contemplated to be developed by 525 Princess was intended to be a 12-storey building. It is presently zoned to be no more than four storeys. In the best-case scenario, each of these projects is years from completion, including Burlington, Oakville and Kitchener, which are at the most advanced stages of the development process. Based on the stage of development of the Receivership Companies, the Receiver sees no basis on which nearly 60% of the development management fees should have been paid to date.
3. Davies states in the Davies Affidavit that the development management fees as a percentage of total project costs ranged from 2% (e.g. for Scollard) to 6% (e.g. for Burlington and Kitchener). Development management fees appear to have been paid to affiliates of Davies and others on an accelerated basis, prior to being earned. An example is reflected below in the context of the Scollard development, which had total anticipated project costs of approximately \$73.2 million and total anticipated development management fees of approximately \$1.8 million. Of the total capital raised to-date by Scollard (\$15.946 million), \$846,000 was, according to Davies, used to pay development management fees.<sup>7</sup> Assuming a correlation between the rate at which project costs are incurred and management fees earned, the Receiver estimates that the earned management fees should have been approximately \$395,000, as reflected below.

	(unaudited, \$000s)
Total estimated project cost	73,159
Project costs to-date	15,946
Costs to-date as a percentage of total estimated project costs	21.8%
Total estimated management fees over project	1,803
Percentage of earned management fees	21.8%
Expected management fees to-date	393
Actual management fees paid	846
Estimated unearned management fees	453

4. Attached as Appendix "G" is a chart setting out, among other things, the total estimated project costs, the total estimated development management fees, the total amount spent on the projects to-date (including as a percentage of total estimated project costs) and the total amount spent on development management fees to date (including as a percentage of total estimated development management fees) for each of the Receivership Companies. The chart reflects that the Receivership Companies have total anticipated project costs of approximately \$248 million and total projected development management fees of \$11.119 million (4.5% of total project costs). Of the \$68.721 million to-date raised by Receivership Companies, \$6.466 million of development management fees has already been paid (9.4% of project costs to-date).

<sup>5</sup> With the exception of footings and foundations on Burlington.

<sup>6</sup> With the exception of Scollard, which had signed a Letter of Commitment with Centurion Mortgage Capital Corporation to provide construction financing.

<sup>7</sup> According to Scollard's books and records, Scollard paid Aeolian \$1.244 million, approximately \$400,000 more than the development management fees reflected in the Davies Affidavit. If the amount in the Davies Affidavit is correct, it is unclear to what the additional \$400,000 paid to Aeolian relates.

Assuming that there is a correlation between project costs and development management fees earned, the Receiver estimates that the management fees earned would be approximately \$3.3 million, meaning that development management fees have been overpaid by approximately \$3.1 million.

5. The issue of the premature (or unearned) payment of development management fees was raised by Singh in an email to Davies dated March 19, 2013, a copy of which is attached as Appendix "H". Singh states:

*"I am not concerned about the quantum of the development fee (I am assuming this is fair market rates and will take your word for it). What I am concerned about [is] my complete reliance on you that construction financing will be successfully raised and the projects will be successful. The development fees being paid out prior to this is an extreme worry and makes me very uncomfortable. This allows \$3.2M of development fees to be withdrawn ahead of even knowing if construction financing can be arranged at all (a discussion that has come up several times)".*

6. Under certain of the Loan Agreements, development management fees are also only permitted to be paid to shareholders with the prior written consent of the Trustee. Based on the currently available evidence reviewed by the Receiver, it does not appear that Singh or the Trustee Corporations consented to such payments in writing, in accordance with the terms of the applicable Loan Agreements. Even if Singh agreed in writing to some of these fees, or if he implicitly agreed to some of these fees, it is not clear that he agreed to all of them, and even if he did so, it is unclear if he permitted them to be paid at a rate greater than the development of the project. It is also unclear that he would allow development management fees in respect of one Davies Developer to be paid by another Davies Developer. Even if Singh or the Trustee Corporations did provide written consent, which is not supported by the evidence provided by Davies, such consent would only increase the Receiver's serious concerns regarding Singh's conduct and his participation in this scheme.

## 6.0 Improper Intercompany Loans

1. As described in more detail in the Fourth Report, over \$17 million was transferred among the Davies Developers. In the Davies Affidavit<sup>8</sup>, Davies attempts to justify the intercompany loans by suggesting that all intercompany loans stayed within the "umbrella" of the organization. For instance, at paragraph 31 of the Davies Affidavit, Davies states that:

*"the umbrella nature of the [enterprise] allowed available cash to be deployed through intercompany loans to projects which were short on funds".*

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<sup>8</sup> Including a memorandum he appears to have prepared found in Appendix "Q" of the Davies Affidavit which acknowledges the movement of monies.



2. The Receiver has no knowledge of which entities are included in Davies' alleged "umbrella". For example, the Receiver notes that \$3.7 million was advanced from various Davies Developers (including some that are not Receivership Companies) to Rideau, which did not have an SMI and which is owned indirectly by Davies, Thompson, Singh and Harris or individuals related to them. Additionally, loans were made by Davies Developers to TSI, TSSI and/or MCIL, which are parent companies of the Davies Developers and against which the Trustee Corporations have no direct connection or recourse.<sup>9</sup>
3. As discussed in more detail below, such intercompany loans are not permitted under the Loan Agreements and the Receiver is aware of no legitimate or reasonable commercial basis for such intercompany loans. Davies also appears to have been aware of the inappropriate nature of such intercompany loans, yet he continued to cause such loans to be made. For instance, on May 24, 2016, Harris, of Harris + Harris LLP ("Harris LLP"), legal counsel to the Davies Developers, sent an email to Davies wherein he expressly advised Davies that:

*"you don't want to be obtaining financing from [Scollard] and then using it to further fund interest payments for other projects."*

4. In response to this correspondence, Davies advised Harris that:

*"[Scollard] is a good story. Lots of sales. Investors will want this loan. The net \$1.7 million from a \$2.4 million [Scollard] raise will fund 6 months of interest on all projects. I don't see an alternative and time will soon become a factor given the summer slowdown".*

A copy of this email correspondence is attached as Appendix "I".

5. Contrary to Davies' assertion in his examination, Harris LLP was counsel to the Davies Developers, not counsel to Singh or to the Trustee Corporations. Under section 2.01 of the Loan Agreements, "Borrower's Solicitors" (i.e. the Davies Developers' solicitors) is defined to mean "Harris + Harris LLP, or such other solicitors that the Borrower may in writing designate". While "Lender's Solicitors" (i.e. the Trustee Corporations' solicitors) is defined to mean "Nancy Elliot, Barrister & Solicitor, or such other solicitors that the Lender may in writing designate", pursuant to delegation agreements between Harris LLP and Nancy Elliot ("Elliot"), certain mortgage administration and facilitation responsibilities were delegated by Elliot to Harris LLP. Collectively, attached as Appendix "J" are copies of the delegation agreements between Harris LLP and Elliot.
6. The Loan Agreements require that funds advanced from Investors be used solely for the project for which the funds were raised. Under the Loan Agreements, intercompany loans would only be permitted with the written consent of the trustee of the Trustee Corporations (i.e. Singh). While Davies has produced email correspondence at Exhibit "P" to the Davies Affidavit which allegedly reflects that Singh and the Trustee Corporations were aware of and consented to the making of intercompany loans, he has failed to include other relevant correspondence relating to this issue. For example, Appendix "K" includes email correspondence between Messrs. Davies and Singh and others, which reflect, among other things, that the

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<sup>9</sup> TSI and TSSI are owned by Aeolian (Davies), 132 (Thompson), RSCG (Singh) and Dachstein (Harris). MCIL is owned by Aeolian and Erika Harris.

Davies Developers were facing a liquidity crisis and they were “*completely tapped out of cash*”<sup>10</sup> on some projects, which necessitated the making of intercompany loans to perpetuate the scheme and avoid defaulting on the loans from the Trustee Corporations. It was paramount to Singh that all interest payments be made, as there would be a confidence crisis among the Investors if that did not happen. This would impact some or all of the Davies Developers and the ability of Tier 1 to continue to raise monies through SMIs.

7. Further, based on the currently available evidence that the Receiver has reviewed, it does not appear that Singh or the Trustee Corporations formally consented to such intercompany loans in writing, in accordance with the terms of the applicable Loan Agreements. Even if Singh or the Trustee Corporations did provide written consent, which is not supported by the evidence provided by Davies, such consent would only increase the Receiver's concerns regarding Singh's conduct and his participation in this scheme.

## 7.0 Alleged Statement made by Representatives of KSV to Davies

1. In the latter part of 2016, certain of the Davies Developers were considering filing for protection under the *Companies' Creditors Arrangement Act* (“CCAA”) and seeking the appointment of KSV as the court-appointed monitor.
2. Davies alleges in the Davies Affidavit that in late 2016, Mr. Kofman of KSV expressed the view that intercompany loans were permissible if they stayed within the “enterprise” and were made with the consent of the Trustee Corporations. Mr. Kofman never expressed any such view nor made any such comment.
3. At time of the comments attributed to Mr. Kofman, Mr. Kofman had no knowledge of the prior movement of monies among the Davies Developers, all of which occurred before KSV had any involvement with the Davies Developers. Mr. Kofman did not have the requisite information to comment on any of the past activities of the Davies Developers and he did not do so.
4. Given that Mr. Kofman expressed no views about the Davies Developers' past activities, there was nothing for Mr. Goldstein to confirm in the subsequent meeting that took place on February 3, 2017.
5. As the prospective filing entities had no cash, there was a need to secure debtor-in-possession (“DIP”) funding for the CCAA proceedings. As part of structuring the DIP facility, consideration was given to seeking the Court's approval of an intercompany charge to secure any amounts funded by one entity to another. The proposed DIP facility and its attributes would have been subject to secured charges and to Court approval. It is possible that this is the discussion referenced in the Davies Affidavit. In any event, the Davies Developers' application for creditor protection was denied.

---

<sup>10</sup> Email from Davies to Singh dated August 25, 2014.

## 8.0 Additional Improper Conduct by Davies and Related Parties

1. Notwithstanding the Mareva Order, Davies and Judith Davies continue to list and market for sale their personal residence. Further to these efforts, on July 18, 2017, they received an offer to purchase the residence. Although the Receiver understands that the offer has not yet been accepted, given all of Davies' and Judith Davies' efforts to date, there are concerns that they may sell the property and further deplete any assets that may be able to satisfy a judgment in this matter. The Receiver also has questions concerning the mortgage on the property.
2. Further, counsel for the Receiver has requested that Davies consent to the Mareva Order being registered on title to the Arizona Property; however, Davies refused to do so. While Davies did maintain his previously given undertaking not to sell or encumber the Arizona Property pending the return hearing for the motion, based on his refusal to consent to the registration of the Mareva Order, and all the other conduct of Davies as described herein and in the Fourth and Sixth Reports, there are concerns that the already depleted misappropriated assets may well continue to be further transferred to frustrate recovery efforts.

## 9.0 The Necessity of Continuing the Mareva Injunction on an Interlocutory Basis

1. Based on the above and all the other circumstances, including the reasons detailed in the Fourth and Sixth Reports, the Receiver recommends that the Court continue the Mareva Order as against Davies, in his personal capacity and in his capacity as trustee of both the Davies Family Trust and the Davies Arizona Trust, and Aeolian, as well as Judith Davies, in her personal capacity and in her capacity as trustee of the Davies Family Trust, and Harris, solely in his capacity as trustee of the Davies Family Trust, on an interlocutory basis until a final disposition of the proceeding.
2. Davies asserts in the Davies Affidavit that the effect of the receivership and the Receiver's purportedly unwarranted allegations against the Davies Developers and him personally have been harmful and caused him to lose virtually all of his assets; however, as detailed in the Sixth Report, Davies' asset and liability statement reflects that he has no assets and that he has not had any assets since prior to the commencement of the receivership proceeding.

\* \* \*

All of which is respectfully submitted,

*KSV Kofman Inc*

**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 CAPACITY**

**TAB A**

## Appendix "A"

Court File No. CV-17-11822-00CL

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

THE HONOURABLE  
MR. JUSTICE MYERS

)  
)  
)  
MONDAY, THE 17<sup>th</sup>  
DAY OF JULY, 2017



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

Plaintiff

- and -

**JOHN DAVIES AND AEOLIAN INVESTMENTS LTD.**

Defendants

**ORDER**

**NOTICE**

If you, the defendants and intended defendants, John Davies in your personal capacity and in your capacity as trustee and/or representative of both the Davies Arizona Trust and the Davies Family Trust (in all such capacities, "**Mr. Davies**"), Judith Davies in your personal capacity and in your capacity as trustee and/or representative of the Davies Family Trust (in all such capacities, "**Ms. Davies**"), Gregory Harris solely in your capacity as trustee and/or representative of the Davies Family Trust ("**Mr. Harris**") and Aeolian Investments Ltd. ("**Aeolian**") and, collectively with Mr. Davies, Ms. Davies and Mr. Harris, the "**Defendants**", disobey this order, you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least twenty-four (24) hours notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits the Defendants to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

**THIS MOTION**, made on notice by the Plaintiff, KSV Kofman Inc. (“**KSV**” or the “**Receiver**”), 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 capacity or in any other capacity, for an interlocutory Order (in the case of Mr. Davies in his personal capacity and Aeolian) and an interim Order (in the case of Mr. Davies in his capacity as trustee and/or representative of the Davies Family Trust and the Davies Arizona Trust, Ms. Davies and Mr. Harris) both in the form of a worldwide *Mareva* injunction restraining the Defendants from dissipating their assets and other relief, was heard this day at 393 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, KSV’s Fourth Report dated June 6, 2017 with the appendices thereto, KSV’s Sixth Report dated July 12, 2017 with the appendices thereto, the factum and book of authorities of the Plaintiff, and the affidavit of Mr. Davies sworn July 14, 2017,

**AND ON HEARING** the submissions of counsel for the Plaintiff and counsel for Mr. Davies, Aeolian and Ms. Davies, with Mr. Harris’s counsel having advised that he takes no position on the motion,

**Service**

1. **THIS COURT ORDERS** that service of the Notice of Motion, Motion Record, Factum and Book of Authorities is hereby abridged and validated.

**Mareva Injunction**

2. **THIS COURT ORDERS** that the Defendants and, as applicable, their respective servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of the Defendants, wherever situate worldwide, including but not limited to the assets and accounts listed in Schedule “A” hereto;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

3. **THIS COURT ORDERS** that paragraph 1 applies to all of the Defendants' assets whether or not they are in their own name and whether they are solely or jointly owned. For the purpose of this order, the Defendants' assets include any asset which they have the power, directly or indirectly, to dispose of or deal with as if it were their own. The Defendants are to be regarded as having such power if a third party holds or controls the assets in accordance with their direct or indirect instructions.

4. **THIS COURT ORDERS** that if the total value free of charges or other securities of the Defendants' assets worldwide exceeds \$9,039,740, the Defendants may sell, remove, dissipate, alienate, transfer, assign, encumber, or similarly deal with them so long as the total unencumbered value of the Defendants' assets worldwide remains above \$9,039,740.

#### **Ordinary Living Expenses**

5. **THIS COURT ORDERS** that Ms. Davies, in her personal capacity, is hereby authorized and permitted to access and spend up to an aggregate amount of \$25,000 for ordinary living expenses and legal advice and representation.

6. **THIS COURT ORDERS** that the Defendants may apply for an order, on at least twenty-four (24) hours notice to the Plaintiff, specifying the amount of funds which they are entitled to spend on ordinary living expenses and legal advice and representation.

#### **Disclosure of Information**

7. **THIS COURT ORDERS** that Mr. Davies (solely in his capacity as trustee and/or representative of both the Davies Family Trust and the Davies Arizona Trust), Ms. Davies and Mr. Harris prepare and provide to the Plaintiff within five (5) days of the date of service of this Order, sworn statements describing the nature, value, and location of their assets worldwide, whether in their own name or not and whether solely or jointly owned.

8. **THIS COURT ORDERS** that Mr. Davies (solely in his capacity as trustee and/or representative of both the Davies Family Trust and the Davies Arizona Trust), Ms. Davies and Mr. Harris submit to examinations under oath within two (2) days of the delivery of the aforementioned sworn statements.

9. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate Mr. Davies (in his capacity as trustee and/or representative of both the Davies Family Trust and the Davies Arizona Trust), Ms. Davies and Mr. Harris, they may be entitled to refuse to provide it, but are recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information referred to in paragraph 5 herein is contempt of court and may render the Defendants liable to be imprisoned, fined, or have their assets seized.

#### **Third Parties**

10. **THIS COURT ORDERS** Royal Bank of Canada, The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, Bank of Nova Scotia, Bank of Montreal, National Bank of Canada, Laurentian Bank of Canada, Tangerine Bank, President's Choice Bank, JP Morgan



Chase and all other banks, credit unions, trusts, financial institutions and financial services companies, whether in Canada or elsewhere, including all of their respective affiliates and branches (collectively, the “Banks”), to forthwith freeze and prevent any removal or transfer of monies or assets of the Defendants held in any account or on credit on behalf of the Defendants, with the Banks, until further Order of the Court, including but not limited to the accounts listed in Schedule “A” hereto.

11. **THIS COURT ORDERS** that the Banks forthwith disclose and deliver up to the Plaintiff any and all records held by the Banks concerning the Defendants’ assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate worldwide, held on behalf of the Defendants by the Banks.

**Alternative Payment of Security into Court**

12. **THIS COURT ORDERS** that this Order will cease to have effect if the Defendants provide security by paying the sum of \$9,039,740 into Court, and the Accountant of the Superior Court of Justice is hereby directed to accept such payment.

**Dispensing with Requirement of Rule 40.03**

13. **THIS COURT ORDERS** that the requirements of Rule 40.03 of the *Rules of Civil Procedure* shall be and are hereby dispensed with pending further Order of this Court.

**Extra-Territorial Application**

14. **THIS COURT ORDERS** that, insofar as this Order purports to have any effect outside of the territorial jurisdiction of this Court, no person shall be affected by it or concerned by the terms of it until this Order is declared enforceable or registered or enforced by a foreign court of competent jurisdiction for that purpose, unless that person is:

- (a) a party to this action or any agent of a party to this action; or
- (b) a person who is subject to the judicial jurisdiction of this Court, who has received written notice of this Order within the territorial jurisdiction of this Court.

**Extra-Territorial Assistance**

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or elsewhere 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.

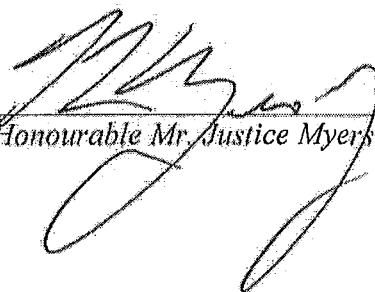
**Variation, Discharge or Extension of Order**

16. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this Order, on four (4) days notice to the Plaintiff.

17. **THIS COURT ORDERS** that this Order shall remain in full force and effect until August 31, 2017, unless varied or amended by further Order of this Court. The making of this Order is without prejudice to any argument that the Defendants may make on a motion moving to set aside this Order prior to that time and on a schedule to be agreed to by the parties.

**Costs**

18. **THIS COURT ORDERS** that the costs of this motion are reserved to a Judge hearing the action on the merits.



*The Honourable Mr. Justice Myers*

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

JUL 17 2017

PER / PAR: *CA*

## SCHEDULE "A"

ACCOUNTS			
BANK	ADDRESS	ACCOUNT NO.	ACCOUNT HOLDER
Royal Bank of Canada	Aurora-Yonge & Edward Branch, 14785 Yonge St-Unit 101, 14785 Yonge St, Aurora, ON L4G 1N1	00442 101 3069	Aeolian Investments Ltd.
JP Morgan Chase Bank, N.A.	270 Park Avenue, New York, NY, 10017	939712261	Davies Arizona Trust
Toronto Dominion Bank	TBD	TBD	Judith Davies

REAL PROPERTY		
MUNICIPAL ADDRESS	PROPERTY PIN	LEGAL DESCRIPTION
24 Country Club Drive King City, ON L7B 1M5	29530-0018 (LT)	UNIT 18, LEVEL 1, YORK REGION VACANT LAND CONDOMINIUM PLAN NO. 999 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT  BLK 1 PL 65M3631, PTS 2, 3 & 4, 65R26022; TOWNSHIP OF KING. S/T & T/W AS SET OUT IN SCHEDULE "A" OF DECLARATION YR325496. S/T EASE IN YR342172.
35411 N. 66th Place, Carefree, Arizona, USA, 85377  -and/or-  35410 N. Ridgeway Drive, Carefree, Arizona, USA, 85377	APN 216-32-102	PARCEL 1:  LOT 17, CAREFREE GRAND VIEW ESTATES UNIT I, ACCORDING TO BOOK 224 OF MAPS, PAGE 26, RECORDS OF  MARICOPA COUNTY, ARIZONA.  PARCEL2:  AN EASEMENT FOR INGRESS AND EGRESS AND PUBLIC UTILITIES, APPURTENANT TO PARCEL

<b>REAL PROPERTY</b>		
<b>MUNICIPAL ADDRESS</b>	<b>PROPERTY PIN</b>	<b>LEGAL DESCRIPTION</b>
		<p>NO. 1, AS SET FORTH IN INSTRUMENT RECORDED IN DOCKET 14945, PAGE 461 AND IN DOCKET 14945, PAGE 464, RECORDS OF MARICOPA COUNTY, ARIZONA, OVER ALL THE PRIVATE ROADS IN CAREFREE GRAND VIEW ESTATES I, ACCORDING TO BOOK 224 OF MAPS, PAGE 26, BOULDER VISTA ESTATES, ACCORDING TO BOOK 227 OF MAPS, PAGE 35; AND CAREFREE GRAND VIEW ESTATES II, ACCORDING TO BOOK 228 OF MAPS, PAGE 2, RECORDS OF MARICOPA COUNTY, ARIZONA.</p>

**KSV KOFMAN INC. in its capacity as Receiver and Manager of  
Certain Property of Scollard Development Corporation, et al.**  
Plaintiff

v.

**JOHN DAVIES et al.**  
Defendants  
Court File No: CV-17-11822-00CL

**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

Facsimile: (416) 863-1716

Lawyers for the Plaintiff

KSV KOFMAN INC. in its capacity as Receiver and Manager of  
Certain Property of Scollard Development Corporation, et al.  
Plaintiff

JOHN DAVIES et al.

Defendants

Court File No: CV-17-11822-00CL

July 17/17

July 17/17

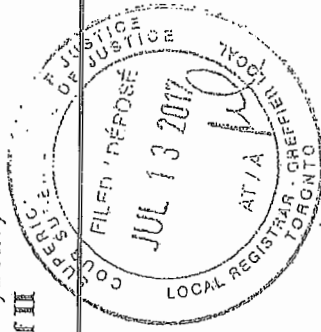
For Enrolment attached, order to go  
Despite the Courts set out in the  
attached Enrolment Mrs Davies is  
authorised and ~~entitled~~ allowed  
to access and spend up to an  
aggregate amount of \$25,000  
to return covered debt system being  
in the return period. *[Signature]*

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT  
TORONTO

MOTION RECORD

(Motion for an Extension of the Mareva Injunction -  
Returnable July 17, 2017)  
Volume I of II



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

Sean Zweig (LSUC#573071)  
Phone: (416) 777-6254  
Email: zweigs@bennettjones.com

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

Facsimile: (416) 863-1716

Lawyers for the Plaintiff

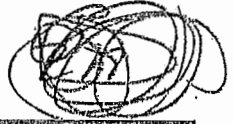
Superior Court of Justice

(Name of Court)

at 393 University Avenue, 10th Floor, Toronto, Ontario  
M5G 1E6

(Court office address)

Endorsement



Date	Applicant(s):	<input type="checkbox"/> Present
	Counsel: <u>KSV KOFMAN Inc.</u> <u>et al.</u>	<input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
	Respondent(s): <u>JOHN DAVIES et al.</u>	<input type="checkbox"/> Present
	Counsel: _____	<input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel

Order to go in accordance with minutes of settlement or consent filed.

THE COURT PREVIOUSLY FOUND A SUFFICIENTLY STRONG PRIMA FACIE CASE EXISTS AGAINST THE DEFENDANTS TO JUSTIFY EXTRAORDINARY PRETRIAL INJUNCTIVE RELIEF ISSUING AGAINST THEM. A VERY SUBSTANTIAL AMOUNT OF MONEY INVESTED BY PUBLIC SHAREHOLDERS APPEARS TO HAVE BE MISAPPROPRIATED AT FIRST BLUSH. WHETHER THAT CONCLUSION CHANGES AS THE MATTER PROCEEDS WILL BE DETERMINED AT A LATER DATE.

THE DS CONSENT TO A BRIEF CONTINUATION OF THE MAREVA INJUNCTION WITH NO ADMISSION THAT IT IS PROPER BUT MERELY TO ALLOW FOR A SCHEDULED, EFFICIENT HEARING & PROCEED FOR HIS INTENDED MOTION TO SET THE INJUNCTION ASIDE. THE CONSENT THEREFORE IS WHOLLY WITHOUT PREJUDICE TO THE DS

1/2

**Superior Court of Justice**

(Name of Court)

at **393 University Avenue, 10th Floor, Toronto, Ontario  
M5G 1E6**

(Court office address)

Endorsement  
**2**

Date	Applicant(s): <input type="checkbox"/> Present Counsel: <input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
	Respondent(s): <input type="checkbox"/> Present Counsel: <input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
<input type="checkbox"/> Order to go in accordance with minutes of settlement or consent filed.	
<p><i>IT CANNOT BE USED TO ANSWER ANY LATER ADJUDICATIONS THAT THEY MAKE.</i></p> <p><i>THE RECEIVER ASKS TO EXTEND THE ORDER TO JUSTIA DAVIES PERSONALLY AND SAB AND TWO OTHERS AS TRUSTEES. THE RECEIVER HAS DEMONSTRATED THAT FUNDS FROM THE PUBLIC INVESTORS THAT ARE SUBJECT TO THE CLAIMS AGAINST US WE GIVEN TO MRS DAVIES AND ALL 3 TRUSTEES. AMONG OTHER THINGS, ALLEGEDLY MISAPPROPRIATED FUNDS ARE ADMITTED BY JOHN DAVIES TO HAVE BEEN USED TO BUY AND RENOVATE THE HOME IN ARIZONA THAT WAS PURCHASED THROUGH THE AZ. TRUST.</i></p> <p><i>THE U WAS A CLEAR CLAIM UNDER ONTARIO LAW TO OWNERSHIP OF AN</i></p>	

*15*



Superior Court of Justice

(Name of Court)

at 393 University Avenue, 10th Floor, Toronto, Ontario  
M5G 1E6

(Court office address)

Endorsement

Date	Applicant(s):	<input type="checkbox"/>	Present
	Counsel:	<input type="checkbox"/>	Present
		<input type="checkbox"/>	Duty Counsel
	Respondent(s):	<input type="checkbox"/>	Present
	Counsel:	<input type="checkbox"/>	Present
		<input type="checkbox"/>	Duty Counsel
<input type="checkbox"/> Order to go in accordance with minutes of settlement or consent filed.			
<p>INTEREST IN PROPERTY PURCHASES WITH FUNDS IT PROVES AT TRIAL WERE MISAPPROPRIATED AND USED IN NON-ARMY'S LEGITIMATE TRANSACTIONS SUCH AS FUNDING ONE'S SPOUSE OR HOME.</p> <p>I AM SATISFIED THAT DESPITE THE DAVIES UNDERTAKING TO HOLD THE AS PROPERTY, AN ORDER SHOULD ISSUE AS SOUGHT BY THE RELIEVER, THE COURT CANNOT PROTECT PUBLIC INVESTORS' INTERESTS BY ACCEPTING THE WORDS OF SOMEONE WHO IS ALLEGED TO HAVE MISAPPROPRIATED AND HIDDEN MILLIONS OR TENS OF MILLIONS OF INVESTORS' MONEY, BUT IN LIGHT OF THE OFFER OR THE UNDERTAKING, I AM SATISFIED THAT THE BALANCE OF CONVENIENCE SUPPORTS THE ORDER SOUGHT. THERE IS A REAL RISK OF DISSIPATION OF</p>			

**Superior Court of Justice**

(Name of Court)

at **393 University Avenue, 10th Floor, Toronto, Ontario  
M5G 1E6**

(Court office address)

**Endorsement**

(4)

Date	Applicant(s): _____	<input type="checkbox"/> Present
	Counsel: _____	<input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
	Respondent(s): _____	<input type="checkbox"/> Present
	Counsel: _____	<input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
<input type="checkbox"/> Order to go in accordance with minutes of settlement or consent filed.		
<p>ASSETS BY MRS. DAVIES AND THE TRUSTS. THEY ARE ALL UNDER MR. DAVIES CONTROL TO A GREATER OR LESSER EXTENT. MR. DAVIES SAYS HE HAS NO BANK ACCOUNT. HIS PERSONAL EXPENSES COME FROM THE CORPORATE Δ OR FROM FUNDS GIVEN BY THAT COMPANY TO MRS. DAVIES. Δ IS BUT A FUNNEL THROUGH WHICH INVESTOR FUNDS ARE Poured AS PART OF THE LAUNDERING CYCLES OF CORPORATE SATITIES AND TRUSTS LINKED UP TO PROTECT AND HIDE POTENTIALLY ILL-GOTTEN <del>AND</del> FUNDS. MRS. DAVIES ALSO IN CONCERT WITH MR. DAVIES IN RESPONSE TO THEIR MORTGAGEE'S SUPPOSED ENFORCEMENT EFFORTS AND RE-LISTING THEIR TORONTO HOME DESPITE THIS COURT'S ORDER. MR. DAVIES SAYS THE RECOVER IS TOO LATE AS HE HAS</p>		

Superior Court of Justice

(Name of Court)

at 393 University Avenue, 10th Floor, Toronto, Ontario  
M5G 1E6

(Court office address)

Endorsement

5

Date	Applicant(s): _____	<input type="checkbox"/> Present
	Counsel: _____	<input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
	Respondent(s): _____	<input type="checkbox"/> Present
	Counsel: _____	<input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel

Order to go in accordance with minutes of settlement or consent filed.

NO ASSETS LEFT. PERHAPS IT IS NOT TOO LATE TO FIND ~~IT'S~~ FUNDS (OR PRODUCE) WITH MRS DAVIES AND THE TRUSTS TO WHICH THEY WERE TITLED. MRS DAVIES ASKS HOW HER FAMILY IS TO SUSTAIN ITSELF. IF THIS IS A REFERENCE TO FUNDS THAT ORIGINATED WITH PUBLIC INVESTORS SUBJECT TO THIS ACTION, THE ANSWER IS THAT THE COURT WILL RESPOND TO REASONABLE REQUESTS FOR ACCESS TO FUNDS ON MRS. DAVIES PROVIDING FULL DISCLOSURE. SHE ALSO MAY HAVE SOME PERSONAL EMPLOYMENT FUNDS THAT SHE MIGHT BE ABLE TO SHOW ARE ENTIRELY INDEPENDENT OF IT'S CLAIMS.

THIS IS NOT A CASE FOR AN UNDERTAKING ON DAMAGES. IT ASKS FOR PUBLIC INVESTORS WHOSE FUNDS ARE MISSING. IF ~~IT'S~~ LEFT

1/2

Superior Court of Justice

(Name of Court)

at 393 University Avenue, 10th Floor, Toronto, Ontario  
MSG 1B6

(Court office address)

Endorsement

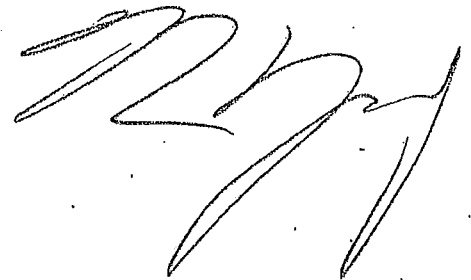
Page

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Date

THEMSELVES VULNERABLE TO SUBV SUCH  
EXTRAORDINARY RELIEF. AS A TRAVELER  
INSUNCTION, THEN THEY HAVE TO BEAR THE  
RISK OF COSTS INCURRED DURING THE ENSUING  
INVESTIGATION OF THE IT'S STRONG PRIMA  
FACTE CASE.

ORDERS SIGNO AS ASKED. THE  
COURT RESPECTFULLY REQUESTS THE AID  
AND RECOGNITION BY THE STATE ~~AND~~  
COURTS OF ARIZONA AND THE FEDERAL  
DISTRICT COURTS IN THAT STATE AS THIS  
COURT STANDS READY TO RECOGNIZE  
OUR NEIGHBOUR'S ORDERS AND PROBLEMS.



**TAB B**

## Appendix “B”

Court File No. CV-17-11822-00CL

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

**BETWEEN:**

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

Plaintiff

-and-

**JOHN DAVIES AND AEOLIAN INVESTMENTS LTD.**

Defendants

**AFFIDAVIT OF  
GREGORY HARRINGTON HARRIS**

I, Gregory Harrington Harris, of the Township of King, Regional Municipality of York, MAKE OATH AND SAY AS FOLLOWS:

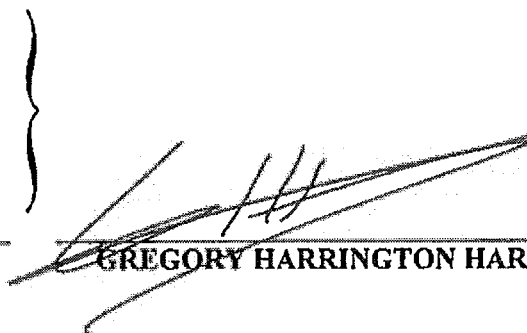
1. I, Gregory Harrington Harris (“Harris”), am a trustee of the Davies Family Trust (“DFT”) and am subject, in my capacity as a Trustee of the DFT, to a Court Order by the Honourable Justice Myers dated July 17, 2017 (“Order”) in the within matter.
2. I have been provided with a copy of the Order dated July 17, 2017. Attached hereto and marked as Exhibit “A” is a true copy of the Order.
3. In response to my obligations pursuant to paragraphs 7 and 8 the Order, I can advise that I am aware of the following assets of the DFT, inclusive of their location:

- (a) 300 shares of McMurray Street Investments Inc., an Ontario corporation which was developing a property in Muskoka, Ontario;
  - (b) a property municipally known as 24 Country Club Drive, King, Ontario;
  - (c) a property municipally known as 220 Parkers Point Road, Gravenhurst, Ontario (which property I understand was sold on April 24, 2017).
4. Further to the immediately preceding paragraph, I am not aware as to the value of any of the assets.
  5. I am not aware of any other assets owned by the DFT.
  6. I make this Affidavit in response to the Order and pursuant to my obligations as a Trustee of the DFT pursuant to the Order and for no other or improper purpose.

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario on  
July 20, 2017



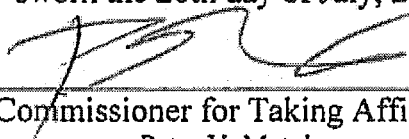
Commissioner for Taking Affidavits  
Peter V. Matukas



GREGORY HARRINGTON HARRIS



This is Exhibit "A"  
to the Affidavit of  
**GREGORY HARRINGTON HARRIS,**  
sworn the 20th day of July, 2017.



---

Commissioner for Taking Affidavits  
Peter V. Matukas



- 2 -

Any other person who knows of this order and does anything which helps or permits the Defendants to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

**THIS MOTION**, made on notice by the Plaintiff, KSV Kofman Inc. ("KSV" or the "Receiver"), 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 capacity or in any other capacity, for an interlocutory Order (in the case of Mr. Davies in his personal capacity and Aeolian) and an interim Order (in the case of Mr. Davies in his capacity as trustee and/or representative of the Davies Family Trust and the Davies Arizona Trust, Ms. Davies and Mr. Harris) both in the form of a worldwide *Mareva* injunction restraining the Defendants from dissipating their assets and other relief, was heard this day at 393 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, KSV's Fourth Report dated June 6, 2017 with the appendices thereto, KSV's Sixth Report dated July 12, 2017 with the appendices thereto, the factum and book of authorities of the Plaintiff, and the affidavit of Mr. Davies sworn July 14, 2017,

**AND ON HEARING** the submissions of counsel for the Plaintiff and counsel for Mr. Davies, Aeolian and Ms. Davies, with Mr. Harris's counsel having advised that he takes no position on the motion,

#### **Service**

1. **THIS COURT ORDERS** that service of the Notice of Motion, Motion Record, Factum and Book of Authorities is hereby abridged and validated.

#### **Mareva Injunction**

2. **THIS COURT ORDERS** that the Defendants and, as applicable, their respective servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of the Defendants, wherever situate worldwide, including but not limited to the assets and accounts listed in Schedule "A" hereto;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

- 3 -

3. **THIS COURT ORDERS** that paragraph 1 applies to all of the Defendants' assets whether or not they are in their own name and whether they are solely or jointly owned. For the purpose of this order, the Defendants' assets include any asset which they have the power, directly or indirectly, to dispose of or deal with as if it were their own. The Defendants are to be regarded as having such power if a third party holds or controls the assets in accordance with their direct or indirect instructions.

4. **THIS COURT ORDERS** that if the total value free of charges or other securities of the Defendants' assets worldwide exceeds \$9,039,740, the Defendants may sell, remove, dissipate, alienate, transfer, assign, encumber, or similarly deal with them so long as the total unencumbered value of the Defendants' assets worldwide remains above \$9,039,740.

#### **Ordinary Living Expenses**

5. **THIS COURT ORDERS** that Ms. Davies, in her personal capacity, is hereby authorized and permitted to access and spend up to an aggregate amount of \$25,000 for ordinary living expenses and legal advice and representation.

6. **THIS COURT ORDERS** that the Defendants may apply for an order, on at least twenty-four (24) hours notice to the Plaintiff, specifying the amount of funds which they are entitled to spend on ordinary living expenses and legal advice and representation.

#### **Disclosure of Information**

7. **THIS COURT ORDERS** that Mr. Davies (solely in his capacity as trustee and/or representative of both the Davies Family Trust and the Davies Arizona Trust), Ms. Davies and Mr. Harris prepare and provide to the Plaintiff within five (5) days of the date of service of this Order, sworn statements describing the nature, value, and location of their assets worldwide, whether in their own name or not and whether solely or jointly owned.

8. **THIS COURT ORDERS** that Mr. Davies (solely in his capacity as trustee and/or representative of both the Davies Family Trust and the Davies Arizona Trust), Ms. Davies and Mr. Harris submit to examinations under oath within two (2) days of the delivery of the aforementioned sworn statements.

9. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate Mr. Davies (in his capacity as trustee and/or representative of both the Davies Family Trust and the Davies Arizona Trust), Ms. Davies and Mr. Harris, they may be entitled to refuse to provide it, but are recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information referred to in paragraph 5 herein is contempt of court and may render the Defendants liable to be imprisoned, fined, or have their assets seized.

#### **Third Parties**

10. **THIS COURT ORDERS** Royal Bank of Canada, The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, Bank of Nova Scotia, Bank of Montreal, National Bank of Canada, Laurentian Bank of Canada, Tangerine Bank, President's Choice Bank, JP Morgan

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Chase and all other banks, credit unions, trusts, financial institutions and financial services companies, whether in Canada or elsewhere, including all of their respective affiliates and branches (collectively, the "Banks"), to forthwith freeze and prevent any removal or transfer of monies or assets of the Defendants held in any account or on credit on behalf of the Defendants, with the Banks, until further Order of the Court, including but not limited to the accounts listed in Schedule "A" hereto.

11. **THIS COURT ORDERS** that the Banks forthwith disclose and deliver up to the Plaintiff any and all records held by the Banks concerning the Defendants' assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate worldwide, held on behalf of the Defendants by the Banks.

#### **Alternative Payment of Security into Court**

12. **THIS COURT ORDERS** that this Order will cease to have effect if the Defendants provide security by paying the sum of \$9,039,740 into Court, and the Accountant of the Superior Court of Justice is hereby directed to accept such payment.

#### **Dispensing with Requirement of Rule 40.03**

13. **THIS COURT ORDERS** that the requirements of Rule 40.03 of the *Rules of Civil Procedure* shall be and are hereby dispensed with pending further Order of this Court.

#### **Extra-Territorial Application**

14. **THIS COURT ORDERS** that, insofar as this Order purports to have any effect outside of the territorial jurisdiction of this Court, no person shall be affected by it or concerned by the terms of it until this Order is declared enforceable or registered or enforced by a foreign court of competent jurisdiction for that purpose, unless that person is:

- (a) a party to this action or any agent of a party to this action; or
- (b) a person who is subject to the judicial jurisdiction of this Court, who has received written notice of this Order within the territorial jurisdiction of this Court.

#### **Extra-Territorial Assistance**

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or elsewhere 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.

- 5 -

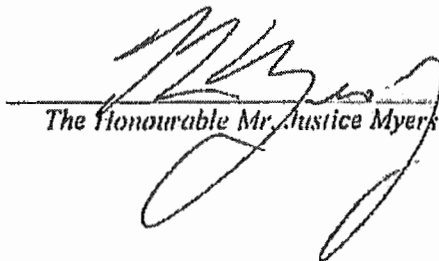
**Variation, Discharge or Extension of Order**

16. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this Order, on four (4) days notice to the Plaintiff.

17. **THIS COURT ORDERS** that this Order shall remain in full force and effect until August 31, 2017, unless varied or amended by further Order of this Court. The making of this Order is without prejudice to any argument that the Defendants may make on a motion moving to set aside this Order prior to that time and on a schedule to be agreed to by the parties.

**Costs**

18. **THIS COURT ORDERS** that the costs of this motion are reserved to a Judge hearing the action on the merits.



*The Honourable Mr. Justice Myers*

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

JUL 17 2017

PER / PAR: *A*

## SCHEDULE "A"

ACCOUNTS			
BANK	ADDRESS	ACCOUNT NO.	ACCOUNT HOLDER
Royal Bank of Canada	Aurora-Yonge & Edward Branch, 14785 Yonge St-Unit 101, 14785 Yonge St, Aurora, ON L4G 1N1	00442 101 3069	Aeolian Investments Ltd.
JP Morgan Chase Bank, N.A.	270 Park Avenue, New York, NY, 10017	939712261	Davies Arizona Trust
Toronto Dominion Bank	TBD	TBD	Judith Davies

REAL PROPERTY		
MUNICIPAL ADDRESS	PROPERTY PIN	LEGAL DESCRIPTION
24 Country Club Drive King City, ON L7B 1M5	29530-0018 (LT)	UNIT 18, LEVEL 1, YORK REGION VACANT LAND CONDOMINIUM PLAN NO. 999 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT BLK 1 PL 65M3631, PTS 2, 3 & 4, 65R26022; TOWNSHIP OF KING. S/T & T/W AS SET OUT IN SCHEDULE "A" OF DECLARATION YR325496. S/T EASE IN YR342172.
35411 N. 66th Place, Carefree, Arizona, USA, 85377 -and/or- 35410 N. Ridgeway Drive, Carefree, Arizona, USA, 85377	APN 216-32-102	PARCEL 1: LOT 17, CAREFREE GRAND VIEW ESTATES UNIT 1, ACCORDING TO BOOK 224 OF MAPS, PAGE 26. RECORDS OF MARICOPA COUNTY, ARIZONA. PARCEL2: AN EASEMENT FOR INGRESS AND EGRESS AND PUBLIC UTILITIES, APPURTENANT TO PARCEL

- 7 -

REAL PROPERTY		
MUNICIPAL ADDRESS	PROPERTY PIN	LEGAL DESCRIPTION
		NO. 1, AS SET FORTH IN INSTRUMENT RECORDED IN DOCKET 14945, PAGE 461 AND IN DOCKET 14945, PAGE 464, RECORDS OF MARICOPA COUNTY, ARIZONA, OVER ALL THE PRIVATE ROADS IN CAREFREE GRAND VIEW ESTATES I, ACCORDING TO BOOK 224 OF MAPS, PAGE 26, BOULDER VISTA ESTATES, ACCORDING TO BOOK 227 OF MAPS, PAGE 35; AND CAREFREE GRAND VIEW ESTATES II, ACCORDING TO BOOK 228 OF MAPS, PAGE 2, RECORDS OF MARICOPA COUNTY, ARIZONA.



**KSV KOFMAN INC. in its capacity as Receiver and Manager of  
Certain Property of Scollard Development Corporation, et al.  
Plaintiff**

**JOHN DAVIES et al.  
Defendants**

Court File No: CV-17-11822-00CL

**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#573071)  
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 the Plaintiff**

**KSV KOFMAN INC.**  
Plaintiff

**JOHN DAVIES, et al.**  
Defendants

**Court File No. CV-17-11822-00CL**

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

Proceedings commenced at  
**TORONTO**

**AFFIDAVIT OF**  
**GREGORY HARRINGTON HARRIS**

**HARRIS + HARRIS LLP**  
Barristers and Solicitors  
2355 Skymark Avenue, Suite 300  
Mississauga, ON L4W 4Y6

**Peter V. Matukas**  
LSUC #55898Q  
petermatukas@harrisandharris.com  
Tel: 905-629-7800  
Fax: 905-629-4350

**Lawyers for**  
**Gregory Harrington Harris, Trustee**

Court File No.: CV-17-11822-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

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

Plaintiffs

- and -

**JOHN DAVIES and AEOLIAN INVESTMENTS LTD.**

Defendants

**AFFIDAVIT OF JOHN DAVIES**

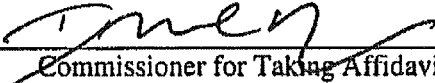
(Sworn July 24, 2017)

I, John Davies, of King City in the Province of Ontario, MAKE OATH AND SAY:

1. I am a trustee of the Davies Family Trust and the Davies Arizona Trust. As such, I have personal knowledge of the information set out in this affidavit.
2. Attached as **Exhibit "A"** are statements of the assets and liabilities of the Davies Family Trust and the Davies Arizona Trust as of July 24, 2017.
3. In my personal statement of assets and liabilities previously provided to the Receiver, I had listed our house at 24 Country Club Drive as an asset. The house is in fact held by me and my wife in our capacity as trustees for the Davies Family Trust. As such, the house has been included as an asset of the Davies Family Trust and should not be considered an asset that I hold personally.

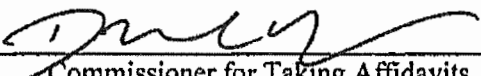
4. I swear this affidavit in response to the Order of the Honourable Justice Myers dated July 17, 2017.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on July 24, 2017

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)  
Michael Beetz

}   
\_\_\_\_\_  
JOHN DAVIES

THIS IS EXHIBIT "A"  
REFERRED TO IN THE AFFIDAVIT OF  
**JOHN DAVIES**  
SWORN BEFORE ME  
THIS 24<sup>th</sup> DAY OF JULY, 2017

  
\_\_\_\_\_  
Commissioner for Taking Affidavits, etc.  
*Michael Beckett*



Davies Arizona Trust  
Assets and Liabilities  
as of July 24, 2017

Assets	Value (USD)	Location
1) 35410 N. 66th Place, Carefree - value depends on \$/sf; range is based on comparable properties	1,090,000 - 1,440,000	Arizona
2) Household furnishings	30,000 (est.)	Arizona
3) Desert Mountain equity membership	20,000	Arizona
<b>Total Assets</b>	<u><u>1,140,000 - 1,490,000</u></u>	

Liabilities		
1) First Mortgage - Bank of Internet	600,000 (est.)	Arizona
2) Unpaid invoice - Identity Construction - stated liability does not include interest at 18% per annum	167,517	Arizona
3) Construction deficiencies to be remedied	150,000 (est.)	Arizona
4) Chase Bank Account (overdrawn)	280.78	Arizona
5) Bills:		
Property tax	12,000 (est.)	Arizona
Utilities	2,200 (est.)	Arizona
Link Architects	4,000 (est.)	Arizona
Bascia Interiors	10,000 (est.)	Arizona
<b>Total Liabilities</b>	<u><u>945,997.78</u></u>	

KSV KOFMAN INC. in its capacity as Receiver and Manager of - and -  
Certain Property of Scollard Development Corporation, et al.  
Plaintiffs

JOHN DAVIES et al.  
Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**AFFIDAVIT OF JOHN DAVIES  
(Sworn July 24, 2017)**

Dentons Canada LLP  
77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto, ON M5K 0A1

**Kenneth Kraft**  
LSUC #: 31919P  
Tel.: (416) 863-4374  
Fax: (416) 863-4592  
kenneth.kraft@dentons.com

**Michael Beeforth**  
LSUC #: 58824P  
Tel.: (416) 367-6779  
Fax: (416) 863-4592  
michael.beeforth@dentons.com

Lawyers for the Defendants



Court File No.: CV-17-11822-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

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

Plaintiffs

- and -

**JOHN DAVIES and AEOLIAN INVESTMENTS LTD.**

Defendants

**AFFIDAVIT OF JUDITH DAVIES**

**(Sworn July 24, 2017)**

I, Judith Davies, of King City in the Province of Ontario, MAKE OATH AND SAY:

1. I am the spouse of John Davies, one of the defendants in the above noted action. I am also a trustee of the Davies Family Trust. As such, I have personal knowledge of the information set out in this affidavit. For convenience, terms which are not otherwise defined in this affidavit have the same meaning as the defined terms in the Affidavit of John Davies sworn on July 14, 2017.
2. I swear this affidavit in opposition to the Receiver's motion seeking certain interim and interlocutory Mareva relief against me, my husband, his holding company Aeolian, the Davies Family Trust and the Davies Arizona Trust.

- 2 -

3. I was not and have never been involved in my husband's development business, and played no active role in any of the development companies that are the subject of this action and of the Receiver's various reports. As such, I have no evidence to provide in respect of the allegations made by the Receiver regarding those companies.

4. I attach as Exhibit "A" to my affidavit a statement of my assets and liabilities as at today's date. My only assets are my personal and household effects, and my interest as a discretionary beneficiary of the Davies Arizona Trust. My liabilities include the first mortgage on our home at 24 Country Club Drive, and income tax arrears owing to the CRA in an approximate amount of \$400,000.00. These arrears stem from fees earned by my husband, which were paid to me from Aeolian from time to time in order to reduce my husband's personal income tax burden. All such payments that I received have long since been spent on our living expenses. I have not received any payments from Aeolian or any of my husband's development companies since June 2015.

5. I do not currently have a bank account. I previously had two accounts at TD Canada Trust (a Canadian dollar account and a linked US dollar account), both of which were frozen by the CRA in or about June 2015. The Canadian dollar account was closed in August 2015 by TD with a balance owing of \$319.58. I believe the US dollar account was closed at or around the same time. I also had a bank account at Chase in Maricopa, Arizona which was opened in March 2011. To the best of my knowledge, there has been no activity in that account since January 2014.

6. These proceedings have created stress and frustration for me, my husband and my family. My husband has been unable to continue with his business and his reputation has been severely

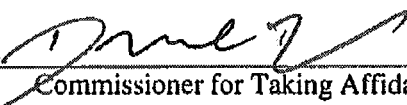
- 3 -

impacted. As a result, we have lost our assets and have been forced to take steps to sell our home. We have had to sell artwork held in the name of our children and I have had to pawn personal belongings in order to fund our day-to-day living expenses. While I recognize that this Court has provided me with a temporary \$25,000 exemption for living expenses, the fact is that we do not have \$25,000 to spend and have no ability to raise this amount in our current circumstances.

7. In an effort to support my family, I recently began working part-time in a clerical position at a real estate office. I am earning approximately \$22 an hour and have earned one paycheck to date, which I gave to my stepdaughter to cash through her bank account. We used the proceeds of my paycheck to pay our utility bills.

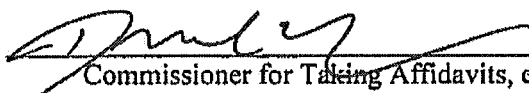
8. In the event that this Court grants the order sought by the Receiver, the Receiver should be required to provide an undertaking as to the damages that we have incurred and continue to incur as a result of these proceedings.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario on July  
24, 2017

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)  
Michael Butcher

  
\_\_\_\_\_  
JUDITH DAVIES

THIS IS EXHIBIT "A"  
REFERRED TO IN THE AFFIDAVIT OF  
JUDITH DAVIES  
SWORN BEFORE ME  
THIS 24<sup>th</sup> DAY OF JULY, 2017

  
\_\_\_\_\_  
Commissioner for Taking Affidavits, etc.  
Michael Beebe

Judy Davies  
Assets and Liabilities  
as of July 24, 2017

Assets		Value	Location
1)	Household and personal effects	20,000 (est.)	Ontario
2)	Davies Arizona Trust - Discretionary Beneficiary	unknown	Arizona
	Total Assets	<u>20,000 (est.)</u>	

Liabilities			
1)	First Mortgage 24 Country Club	1,050,000 (est.)	Ontario
2)	CRA	400,000 (est.)	Ontario
	Total Liabilities	<u>1,450,000 (est.)</u>	

KSV KOFMAN INC. in its capacity as Receiver and Manager of - and -  
Certain Property of Scollard Development Corporation, et al.  
Plaintiffs

JOHN DAVIES et al.

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**AFFIDAVIT OF JUDITH DAVIES  
(Sworn July 24, 2017)**

Dentons Canada LLP  
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Toronto-Dominion Centre  
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**Kenneth Kraft**  
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**Michael Beeforth**  
LSUC #: 58824P  
Tel.: (416) 367-6779  
Fax: (416) 863-4592  
michael.beeforth@dentons.com

Lawyers for the Defendants

**TAB C**

## Appendix "C"



# MEMORY CARE OAKVILLE



DEDICATED ALZHEIMER'S AND DEMENTIA CARE RESIDENCE

## ADDITIONAL FIRST MORTGAGE FINANCING \$2.5 MILLION

- 8% annual fixed rate of interest
- Interest paid quarterly
- 4% per annum end-of-term investor bonus
- Up to 24-month term
- Cash, RRSP, RESP, TFSA and LIRA eligible
- \$25,000 minimum

# OAKVILLE

## MARKET AND DEMOGRAPHICS

- 11.7% of Oakville's residents are senior citizens, making Oakville one of the most aged (per capita) cities in Canada. On a national basis, 8% of the Canadian population is 65 or older.
- Oakville is part of the GTA and is in Halton Region. Oakville has a population of 200,000 residents, up 10% since 2007. Median household income is \$43,982. The average house price is \$306,200.
- Oakville's average income ranks it in the top 8% in Canada, and it is the 12th wealthiest community in Canada.
- Oakville is rated as the second most livable city in Canada.
- There are 900,000 persons in the Hamilton and Halton catchment area. That service area includes Burlington, Halton Hills, Milton, Oakville and the east side of Hamilton. ([www.alzheimer.ca](http://www.alzheimer.ca))
- There are 13,000 registered Alzheimer's patients in the Halton Hills catchment area, which includes Oakville. That represents 1.5% of the catchment area's total population. There are 500,000+ registered Alzheimer's patients in Canada. That represents approximately 1.7% of the national population.
- By extrapolation of the catchment area numbers, there are approximately 3,500 persons with Alzheimer's disease living in Oakville. Our facility seeks to house 80 of them.

The Oakville Alzheimer's Society chapter is part of the Alzheimer Society of Hamilton Halton and encompasses the communities of Hamilton, Burlington, Oakville and Dundas.

The area has a population of 900,000 persons and there are 13,000 registered Alzheimer's patients within the service area.

That number is expected to double by 2024.



## SYNDICATED MORTGAGE

In a syndicated mortgage, your RRSP or cash investment is secured and registered as a mortgage on a real estate asset. Memory Care Investments Ltd. (Memory Care), the developer of the specialty care facility, through its principals has 30 years of experience in commercial, residential and resort property development and has assembled a world-class team of award-winning architects, engineers and marketing consultants, each with a proven track record of delivering projects on time and on budget.

## SECURITY AND RISK MITIGATION

### Mortgage Registration:

The mortgage that will secure the investment by investors will be registered as a first mortgage against the property, in the name of each lender through a nominee trust corporation and in the case of RRSP investors, directly in the name of the RRSP account and the RRSP trustee. The first mortgage will be subordinate only to construction financing. At that point, the syndicated mortgage lenders will rank in second position behind the construction lender. No other financing will be permitted to be registered ahead of the syndicated mortgage holders.

### Loan to Value Ratio:

The loan to value ratio during development and construction shall not exceed 80% of the completed and stabilized value. Funds will be advanced on a cost-to-complete basis and certified by independent quantitative surveys. The developer has contracted the acquisition of the land and retained the entire consulting team. Design and development have begun in conjunction with Oakville Town Staff, the immediate neighbourhood and the operations management team.

### Nominee Trust Corporation:

A trustee corporation will hold the syndicated mortgage on behalf of each lender, while RRSP accounts will hold the mortgage interest directly. Mr. Raj Singh, officer and director of the nominee corporation, will provide status reports to the lenders throughout the term of the mortgage and will serve as liaison between the lenders and borrower.



## THE DEVELOPER

59

### Memory Care Investments Ltd.



#### John Davies

Memory Care Investments Ltd., the developer of the Oakville Alzheimer's and Dementia Care facility, was founded by John Davies, a founding partner of GenerX Inc., one of Canada's most successful condominium, resort, retail and office developers. John has a wealth of real estate development, construction and finance experience across a broad spectrum of the development industry. For more than 35 years, John has been involved in the acquisition, financing, design, development and construction of real estate development projects across North America, including well-anchored strip centres, retail power centres, seniors' housing, and commercial office, recreation and high-rise residential developments. The development team has significant experience conceiving and successfully executing a wide spectrum of real estate projects resulting in substantial financial returns by implementing innovative design, engineering, construction and marketing strategies. They have developed and built over \$1 billion of real estate assets for their own account and in joint venture partnerships with some of Canada's largest development firms. Projects they have been involved in have won numerous Urban Development, Design and Sustainable Architecture awards, including a Governor General's Award for Design in 1991.

## THE FINANCIER

### Tier1 Transaction Advisory Services Inc.



**Raj Singh** is the President and founder of Tier1 Transaction Advisory Services Inc., a firm specializing in financing real estate related projects in Canada.

A senior executive with over 20 years' experience in business services, his responsibilities have included operations management; corporate finance (mergers and acquisitions, raising debt and equity financing); capital markets activities; operational and financial restructuring; building and managing high-performance sales and delivery teams; conceptualizing, developing and executing sales and marketing strategies; and technology product development and management.

Raj has solid experience selling to and servicing a broad range of industries, including financial services; retail; oil and gas; refinery; nuclear; consumer products; educational institutions; federal, provincial and municipal governments; and consulting and staffing industry clients.

He holds a BSc from York University and an MBA from Florida International University and has completed post-graduate studies in mergers and acquisitions at Wharton School of Business, University of Pennsylvania. He has been a frequent speaker at industry conferences and trade shows. He co-authored and published three research studies in prestigious international scientific journals while an undergraduate.

## PROJECT DESCRIPTION

Alzheimer's disease and dementia patients and their families face an impending dilemma in their search for quality, sustainable care in Canada. Victims of the second most feared disease in this country have very few options when it comes to the prospect of finding appropriate housing and care. The governmental agencies charged with finding a solution to the huge shortage of beds and proper care in Canada have been unable to effect a viable solution for a disease that is developing at an unmanageable rate. The problem is getting worse and the disease is affecting Canadians at a younger and younger age every year. There simply are not enough beds in Canada for patients today, let alone in 2024, when there will be over 1 million Alzheimer's-afflicted Canadians.

The majority of Ontario's long-term care facilities are in need of modernizing, so much so that the government has recently initiated stricter compliance standards to combat the systemic problems inherent in the care and housing of dementia patients today. The physical configuration, decor and amenities of existing seniors' facilities are not designed to respond to the specialized requirements of people with Alzheimer's disease. Most facilities do not have capable, trained or well-equipped staff or management.

While some seniors' residence operators in Canada allow limited Alzheimer's patient residency in their facilities, the vast majority of operators are ill-equipped to meet the minimum daily requirements of these special-needs residents. Warehousing of dementia patients is not the answer. Multi-purpose, multi-use seniors' facilities cannot provide a suitable quality standard of care or living environments close to those designed and implemented by **Memory Care**.

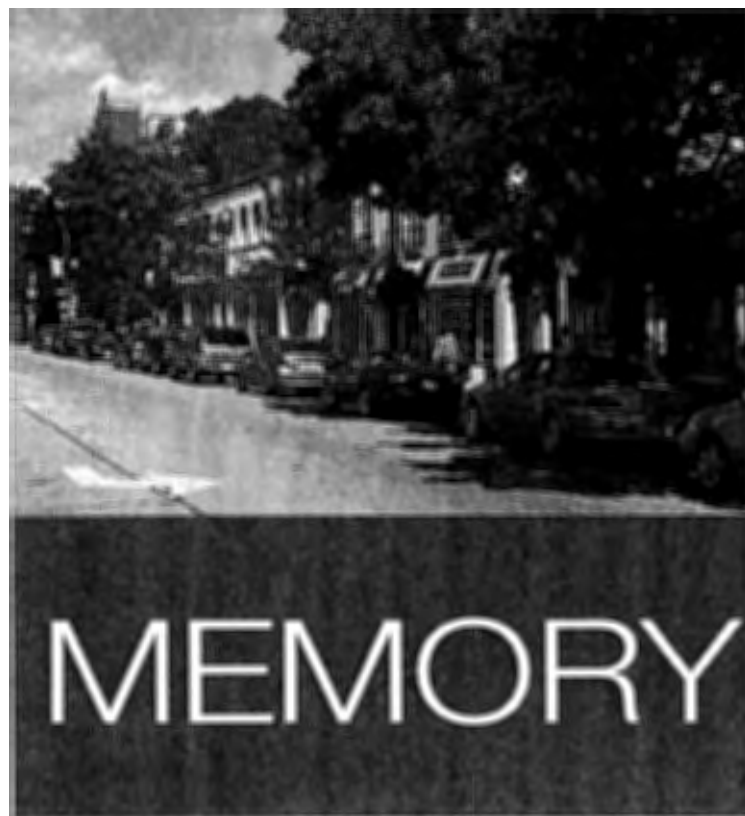
The fight against Alzheimer's disease and dementia is upon us. The United States has pioneered new, innovative forms of care and housing. Private-pay, stand-alone, specially designed and constructed facilities are being built throughout the US by specialty national providers, but Canada has lagged far behind our American counterparts. This battle cannot be won by our government alone and the disease is fast outpacing public-sector initiatives, which are too little, too late.

**Memory Care** facilities are taking the lead in this fight in Canada. **Memory Care** is establishing a nationally recognized standard of care and residency for Alzheimer's and dementia patients and we are meeting this challenge head on by providing quality, private-pay, stand-alone residences for Alzheimer's and dementia patients across Canada.

## PROJECT UPDATE

The development team applied for a building permit and submitted architectural plans and specifications to the Town of Oakville in December 2014. The building department has since reviewed the plans and has provided formal comments following its detailed review. Those comments are considered minimal, dealing mostly with exiting requirements, and the team is responding to the Town's concerns. In order to move forward with construction of the building, **Memory Care** is required by the Town of Oakville to pay development charges and servicing connection fees totalling \$1.2 million. In addition, **Memory Care** has made a joint water-main servicing agreement with our northerly neighbour to reduce servicing costs and timing. **Memory Care** paid half of this \$300,000 water-main cost in the fall of 2014. These additional fees, security and servicing costs will be paid out of the upcoming Tier1 advance.

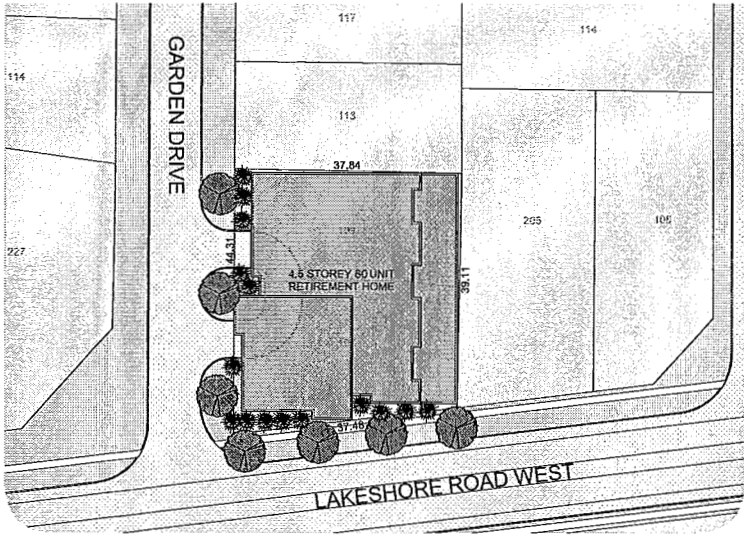
Refinements to the building permit set of drawings have been ongoing since receipt of building department comments and the architects and engineers expect to be in a position to resubmit their final drawings within three weeks. The developer has received a CCDC (Canadian Construction Documents Committee) Construction Management Contract from Leeswood Design Build Contractors. Leeswood has engaged a shoring and excavation subcontractor to prepare an application for an excavation, shoring and foundation permit. Once development charges and other fees are paid to the Town of Oakville, the building permit will be released.





**Memory Care Oakville** is a specially designed assisted-living facility that enhances quality of life by catering to the specific requirements of people with dementia.

- 78-resident maximum to allow for an unrivalled level of care and treatment
- Highly trained management and personnel
- On-site medical practitioners
- Carefully designed accommodations that include circular routes and corridors without ends, bright and contrasting colours, classical music, indirect lighting, natural light and outdoor spaces to enhance the experience and help create a calm living environment



**Location:** NE corner of Lakeshore Road West and Garden Drive, Oakville, Ontario

**Zoning:** High-density residential

**Site Area:** 0.7 acre

**Building Size:** 61,200 sq. ft.

**Height:** 4.5 storeys

**Parking:** Underground

**Units:** 60 proposed suites housing 78 residents



Within a generation, the number of Canadians with Alzheimer's disease or other dementia will more than double to between 1 and 1.3 million people.

# CARE OAKVILLE

# LIMITED-TIME OFFERING

Once the full amount has been raised, the offering is closed to new investors. Ask your advisor today about how to participate with your RRSP, LIRA, RESP, TFSA or cash.

## Professional Services

**Facility Manager and Operator:**  
Eldercare Consulting Inc.

**Quantity Surveyors:**  
Pelican Woodcliff Inc.

**Legal Advisors:**  
Harris + Harris LLP

**Appraisers:**  
Michael Cane Consultants

**Registered Custodian:**  
Olympia Trust Company

**Architects:**  
Fabiani Architects

**Structural Engineers:**  
SWS Engineering

**Site Servicing Engineers:**  
WMI Engineering

**Electrical Engineers:**  
Tristar Engineering

**Landscape:**  
Terraplan

**Planners:**  
Lucas and Associates

**Environmental:**  
Church and Trought Ltd.

## Management Firm –

### Tier1 Transaction Advisory Services Inc.

3100 Steeles Avenue East, Suite 902, Markham, Ontario L3R 8T3  
tel: 647-748-8437 | fax: 647-689-2374



Tier1 Transaction Advisory Services Inc. advises in the creation and design of mortgage products. Tier1 Advisory's products are distributed through First Commonwealth Mortgage Corporation (FSCO licence #10636) and Tier1 Mortgage Corporation (FSCO licence #12314). Note: Tier1 Transaction Advisory Services Inc. is not a mortgage broker or investment dealer.

## Mortgage Brokerages –

### First Commonwealth Mortgage Corporation



First Commonwealth has been in business since 1994. Its principal broker is Jude Cassimy (FSCO licence #10636). Mr. Cassimy has been licensed by the Financial Services Commission of Ontario since 1991. All syndicated mortgage transactions will be handled by licensed mortgage agents and brokers.

## Tier1 Mortgage Corporation

Broker: Dave Balkissoon (FSCO licence #12314)

## Law Firm –

### Harris + Harris LLP



HARRIS + HARRIS LLP  
BARRISTERS AND SOLICITORS

Harris + Harris LLP is a very well respected business law firm in the GTA that has lawyers who practise in a variety of business and commercial areas.

Harris + Harris LLP has significant experience in commercial real estate transactions, including real estate financing using syndicated mortgages.

This is not an offer to sell securities. Licensed mortgage agents/brokers close all transactions. All mortgages are closed through First Commonwealth Mortgage Corporation, Financial Services Commission of Ontario (FSCO) licence #10636.

Mortgage investments have risks and may not be suitable for all investors. Potential investors are encouraged to seek independent legal and financial advice before investing.



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Edercano Management and Consulting Corp.

**Quantity Surveyor:**  
Pulcin Woodcraf Inc.

**Legal Advisors:**  
Harris + Harris LLP

**Appraisers:**  
Metcalfe Consultants

**Registered Custodian:**  
Olympia Trust Company

**Architects:**  
Falcon Architects

**Structural Engineers:**  
SWS Engineering

**Site Servicing Engineers:**  
WHL Engineering

**Electrical Engineers:**  
Trestar Engineering

**Landscape:**  
Tensipen

**Planners:**  
Lucas and Associates

**Environmental:**  
Church and Knight Ltd.

### Management Firm –

**Tier1 Transaction Advisory Services Inc.**  
3100 Bayview Avenue, Suite 2000, Scarborough, Ontario M1R 9Y3  
Tel: 416-749-0487 | Fax: 416-749-2574

**TIER1 ADVISORY** Tier1 Transaction Advisory Services Inc. advises in the creation and design of mortgage products. Tier1 Advisory's products are designed through a partnership with a mortgage lender. Tier1 Mortgage Company (PSCCO) is a mortgage lender with a PSCCO license #12314. Note: Tier1 Transaction Advisory Services Inc. is not a mortgage broker or investment dealer.

### Mortgage Brokerages –

**First Commonwealth Mortgage Corporation**  
First Commonwealth has been in business since 1981. It is a fully licensed mortgage broker with a PSCCO license #10588. Mr. Cech has been licensed by the Financial Services Commission of Ontario since 1981. All syndicated mortgage transactions will be handled by licensed mortgage agents and brokers.

### Tier1 Mortgage Corporation

Broker name: Dave Batissoon (PSCCO license #2214)

### Law Firm –

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**MEMORY CARE INVESTMENTS LTD.**

**TIER1 ADVISORY**

**MEMORY CARE OAKVILLE**



## ADDITIONAL FIRST MORTGAGE FINANCING \$3.5 MILLION

- 8% annual fixed rate of interest
- Interest paid quarterly
- 4% per annum end-of-term investor bonus
- Up to 36-month term
- Cash, RRSP, RESP, TFSA and LIRA eligible
- \$25,000 minimum



## THE DEVELOPER

Memory Care Investments Ltd.



**John Davies** is the developer of Memory Care Investments Ltd., the Ontario Alzheimer's and Dementia Care facility, located in Oakville, Ontario. He has been instrumental in the development of numerous residential, resort, retail and office developments. John's projects have received numerous awards, including a Governor General's Award for design, an OSC Award of Merit, an ASLA Gold Medal award and a Green Building Award. He is also a past president of the Ontario Real Estate Association and a past president of the Ontario Real Estate Council. John is responsible for the acquisition, development and lease-up of over 2000 units of Class A office space in major US office markets, as well as overseeing the renovation of the company's 20 million square foot office building in Oakville, Ontario. John is a past president of the Ontario Real Estate Association and a past president of the Ontario Real Estate Council. John is responsible for the acquisition, development and lease-up of over 2000 units of Class A office space in major US office markets, as well as overseeing the renovation of the company's 20 million square foot office building in Oakville, Ontario. John is a past president of the Ontario Real Estate Association and a past president of the Ontario Real Estate Council.

## THE FINANCIER

Tier1 Transaction Advisory Services Inc.



**Raj Singh** is the President and founder of Tier1 Transaction Advisory Services Inc., a firm specializing in financing real estate related projects in Canada.

A senior executive with over 20 years' experience in business services, his responsibilities have included operations management; corporate finance (mergers and acquisitions, raising debt and equity financing); capital structure optimization; business development; sales and marketing; and managing high-performance sales and delivery teams; conceptualizing, developing and executing sales and marketing strategies; and technology product development and management.

Raj has solid experience selling to and servicing a broad range of clients, including financial institutions, educational institutions, nuclear, consumer products, educational institutions, leisure, private and public sector organizations; and consulting and staffing industry clients.

He holds a BSc from York University and an MBA from Florida International University and has completed postgraduate studies in members and associates at Wharton School of Business, University of Pennsylvania. He has been a frequent speaker at industry conferences and trade shows. He co-authored and published three research studies in prestigious, international scientific journals while an undergraduate.

## PROJECT DESCRIPTION

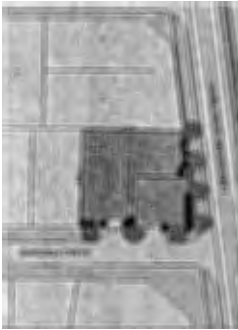
Alzheimer's disease and dementia patients and their families face an impending dilemma. In their search for quality sustainable care in Canada, victims of the second most feared disease in this country have very few options when it comes to the prospect of finding appropriate housing and care. The governmental agencies charged with finding a solution to the huge shortage of beds and proper care in Canada have been unable to effect a viable solution for a disease that is developing at an alarming rate. The problem is getting worse and the dementia care facilities are not enough beds in Canada for patients today, let alone in 2024, when there will be over 1 million Alzheimer's-afflicted Canadians.

The majority of Ontario's long-term care facilities are in need of modernizing, so much so that the government has recently initiated stricter compliance standards to combat the systemic problems inherent in the care and housing of dementia patients today. The physical facilities are not designed to respond to the specialized requirements of people with Alzheimer's disease. Most facilities do not have capable, trained or well-equipped staff or management.

While some seniors' residence operators in Canada allow limited Alzheimer's patient residency in their facilities, the vast majority of operators are ill-equipped to meet the minimum daily requirements of these special-needs residents. Multi-unit senior care facilities cannot provide a suitable quality standard of care or living environments close to those designed and implemented by Memory Care.

The fight against Alzheimer's disease and dementia is upon us. The United States has pioneered new, innovative forms of care and housing. Private pay, stand-alone, specially designed and constructed facilities are being built throughout the US by specially national providers. Canada is lagging behind in the development of Alzheimer's care facilities. This lag cannot be won by our government alone and the disease is fast outpacing public-sector initiatives, which are too little, too late.

Memory Care facilities are taking the lead in this fight in Canada. Memory Care is establishing a nationally recognized standard of care and residency for Alzheimer's and dementia patients and we are meeting this challenge head on by providing quality, private pay, state-of-the-art residences for Alzheimer's and dementia patients across Canada.



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**Site Area:** .7 acre

**Building Size:** 61,200 sq. ft.

**Height:** 4.5 storeys

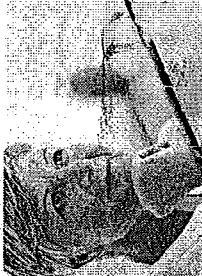
**Parking:** Underground

**Units:** 60 proposed suites housing 78 residents



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- Carefully designed accommodations that include circular routes and corridors without ends, soft colours, classical music, indirect lighting, natural light and outdoor spaces to enhance the experience and help create a calm living environment



Within a generation, the number of Canadians with Alzheimer's disease or other dementia will more than double to between 1 and 1.3 million people.

# MEMORY CARE OAKVILLE



# TOWN HOMES AT WHITBY HARBOUR

A MULTI-PHASE MASTER PLANNED RESIDENTIAL COMMUNITY

## A WORLD-CLASS INVESTMENT OPPORTUNITY SYNDICATED MORTGAGE

- 8% annual fixed rate of interest
- Interest paid quarterly
- 4% per annum end-of-term investor bonus paid in distributable cash proceeds
- 36-month term
- Cash or RRSP eligible
- \$25,000 minimum

# WHITBY



***One of Canada's most  
diversified and stable economies***

Located within the GTA and less than an hour away from downtown Toronto, Whitby is a picturesque, quickly growing community with two gorgeous heritage downtowns. Ideally situated along Lake Ontario, and bisected by Highway 407, Whitby is one of Canada's most diversified and stable economies. Whitby also has one of the fastest growing populations in Canada. The population in 2012 was 127,400 and by 2021 the population is projected to reach 205,000.

Whitby's growing population can be attributed to low land prices. A wide range of housing is available at prices 30-40% lower than elsewhere in the GTA. Competitive industrial land costs are more than 60% lower than in Markham and Mississauga.

With Highway 407 as well as GO Transit service being expanded, living in Whitby has great appeal. These services will also be useful for the students of Durham College and the University of Ontario Institute of Technology, both of which have facilities in Whitby.

Whitby is home to extensive recreation, tourism and cultural facilities, including:

- Iniquis Park Sports Centre
- The Abilities Centre
- Scientific waterfront park
- Marina with 400 slips
- The Whitby Yacht Club
- Thousands of acres of parks, conservation areas and trails
- Golf courses, sports clubs and nearby skiing
- State-of-the-art public library

There are 45 elementary and high schools as well as over 20 medical clinics and five hospitals in the area. Whitby ranks high on lists of best places to raise a family and best places to retire.

Whitby's population is rising because of affordable house prices, convenient access to highways and public transit, and a wealth of state-of-the-art recreation facilities, parks, waterfront and open space. Residents of Whitby can rest assured they are living in the best area of Durham, which can only continue to flourish.

## THE DEVELOPER

### Scollard Development Corporation



**John Davies**

Scollard Development Corporation was formed by John Davies to undertake large, complex residential development projects primarily in the GTA. He has a wealth of real estate development, construction and finance experience across a broad spectrum of the development industry. For more than 35 years, John has been involved in the acquisition, financing, design, development and construction of real estate development projects across North America, including well-anchored strip centres, retail power centres, seniors' housing, and commercial office, recreation and high-rise residential developments. The development team has significant experience conceiving and successfully executing a wide spectrum of real estate projects resulting in substantial financial returns by implementing innovative design, engineering, construction and marketing strategies. They have developed and built over \$1 billion of real estate assets for their own account and in joint venture partnerships with some of Canada's largest development firms. Projects they have been involved in have won numerous Urban Development, Design and Sustainable Architecture awards, including a Governor General's Award for Design in 1991.

## SYNDICATED MORTGAGE

In a syndicated mortgage, your RRSP or cash investment is secured and registered as a mortgage on a real estate asset. Scollard Development Corporation, the developer of the condominium project, through its principals has 30 years of experience in commercial, residential and resort property development and has assembled a world-class team of award-winning architects, engineers and marketing consultants who work with a proven track record of delivering projects on time and on budget.

## SECURITY AND RISK MITIGATION

### Mortgage Registration:

The mortgage that will secure the investment by investors will be registered as a first mortgage against the property, in the name of each lender through a nominee trust corporation and in the case of RRSP investors, directly in the name of the RRSP account and the RRSP trustee. The first mortgage will be subordinated only to construction financing. At that point, the syndicated mortgage holders will rank in second position behind the construction lender. No other financing will be permitted to be registered ahead of the syndicated mortgage holders.

### Loan to Value Ratio:

The loan to value ratio during development and construction shall not exceed 80% of the completed and stabilized value. Funds will be advanced on a draw-to-complete basis and certified by independent quantitative surveys. The developer has contracted the acquisition of the land and retained the entire consulting team. Design and development have begun in conjunction with Whiteby town staff, the immediate neighbourhood and the operations management team.

### Nominee Trust Corporation:

A trustee corporation will hold the syndicated mortgage on behalf of each lender, while RRSP accounts will hold the mortgage interest directly. Mr. Raj Singh, officer and director of the nominee corporation, will provide status reports to the lenders throughout the term of the mortgage and will serve as liaison between the lenders and borrower.

## THE FINANCIER

### Tier1 Transaction Advisory Services Inc.



**Raj Singh**

Raj Singh is the President and founder of Tier1 Transaction Advisory Services Inc., a firm specializing in financing real estate related projects in Canada. A senior executive with over 20 years' experience in business services, his responsibilities have included operations management; corporate finance (mergers and acquisitions, raising debt and equity financing); capital markets activities; operational and financial restructuring; building and managing high-performance sales and delivery teams; conceptualizing, developing and executing sales and marketing strategies; and technology product development and management.

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# THE ARCHITECT

## IBI-Young and Wright Architects



Governor General's Award winning designers IBI-Young and Wright Architects have been retained to conceive the overall community master plan. They are the fourth largest architectural firm in the world, with over 80 offices around the globe employing more than 3,000 people.



**Drummond Hassan**, a Senior Partner and Director of IBI-Young and Wright Architects, is the architect in charge of the project. He has over 30 years of experience, has received dozens of design awards and has been the architect in charge of many large, successful mixed-use development projects. He has been the architect in charge on over \$2 billion of construction projects around the world. He and his staff are at work preparing detailed building designs for the first phase of the development, which will be built on approximately 1.4 acres. Future phases are envisioned on land to the south and north of the site.

The first phase of development will contain approximately 120 suites in a four-storey building configuration of stacked townhome and luxury condominium suites. Ground-floor suites will have private walkout terraces and the top-floor units will have the option of adding a 250 square-foot roof-top "Lighthouse" along with a 600 square-foot private deck featuring spectacular views of the Yacht Club and Lake Ontario, a five-minute walk away. When fully developed, the project is envisioned to encompass over 800 residential suites and an acre of private parkland, open space and gardens.

## THE MARKETING TEAM

### pb marketing



Award winning graphic designers and the go-to specialists in the marketing of residential and mixed-use development projects for over 30 years, pb marketing has been retained by Scollard Development Corporation to conceive the overall project identity and direct marketing efforts. Many different concepts for the project's name were considered before the development team selected "Boathaus." This name was selected because the marketing team believes the name will position the project as a waterfront community. Our target purchaser is predominately a young, married professional who will commute to work in Toronto via GO Transit. Our market audience will appreciate young, hip, contemporary building design, the proximity to public transit and Highway 401, the open spaces, parks and shopping within walking distance, and the proximity of the development to Lake Ontario. Web design is underway. We expect to commence marketing in the Summer of 2014.



**Clarence Poirier**  
For over 25 years, Clarence has specialized in the marketing of all aspects of real estate. He has assisted in over \$20 billion of real estate sales, including well over 400 condominium projects, adult lifestyle developments, major residential communities and commercial properties. His involvement with clients such as Tridel, Monarch, Minto and Greenwin has brought him many industry awards.



Architect Rendering

## PROJECT DESCRIPTION

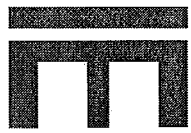
Scollard Development Corporation is pleased to announce Boathaus, its newest condominium townhouse development in Whitby, Ontario, one of the fastest growing municipalities in Canada. The three-acre development site is zoned and approved for a mix of housing types. Scollard plans to design and construct the project in two phases. The first phase is a 120-unit, stacked low rise complex on approximately 1.4 acres.

The site is strategically located just south of Highway 401 at the Brock Street exit and less than 300 metres from the Whitby GO station, making the property an ideal residential location for commuters seeking accommodations a short walk from the train. Convenient access to transportation is not this property's only attraction. 500 metres to the south is Whitby Harbour. A picturesque lakeside trail system winds its way east and west from the yacht club through forested areas, sports fields, biking trails and 50 acres of outdoor public amenity space. Iroquois Park Sports Complex is the largest sports-plex east of Toronto and is home to six ice pads, fitness facilities, a gymnasium, an Olympic-sized swimming pool and a community centre, all open to the public and located less than a five-minute walk from the property.

A well-established single-family home residential neighbourhood lies directly east of the property, and three 18-storey condominium towers are situated to the north and west of our site. Sales prices in these buildings are strong and market demand for suites in these buildings remains robust.

Scollard Development believes this site may be one of the best undeveloped residential sites east of Toronto. Market demand for this type of product is high. Sales prices are expected to be above \$400,000 for a 1,000 square-foot suite.





# BOATHAUS

YOUR GO TO PLACE IN WHITBY



# LIMITED-TIME OFFERING

Once the full amount has been raised, the offering is closed to new investors. Ask your advisor today about how to participate with your RRSP, LIRA, RESP, TFSA or cash.

## Professional Services

### Legal Advisors:

Harris + Harris LLP

### Architects:

IBI-Young and Wright Architects

### Structural Engineering:

Atkins & Vangroll Ltd.

### Appraisers:

Michael Cane Consultants

### Planners:

Tunney Planning Inc.

### Registered Custodian:

Olympia Trust Company

### Landscape:

JVV Ltd.

## Management Firm –

### Tier1 Transaction Advisory Services Inc.

3100 Steeles Avenue East, Suite 902, Markham, Ontario L3R 8T3  
tel: 647-748-8437 | fax: 647-689-2374



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Broker: Dave Balkissoon (FSCO licence #12314)

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**HARRIS + HARRIS LLP**  
BARRISTERS AND SOLICITORS

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# 525 PRINCESS ST.

BY TEXTBOOK (525 PRINCESS STREET) INC.



**KINGSTON**

## FIRST MORTGAGE FINANCING UP TO \$6.4 MILLION

- 8% annual fixed rate of interest
- Interest paid quarterly
- 4% per annum end-of-term investor bonus paid from distributable cash proceeds
- 36-month term
- Cash, RRSP, RESP, TFSA and LIRA eligible
- \$25,000 minimum







PROJECT DESCRIPTION

The first phase of the Village at Legacy Lane development is currently under construction. The Village at Legacy Lane is a 100-acre, low- and mid-rise apartment building...

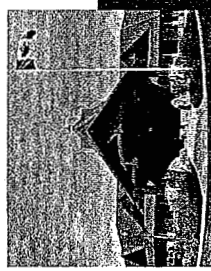
The first phase of development is the construction of the Legacy Lane development. The Village at Legacy Lane is a 100-acre, low- and mid-rise apartment building...

The Village at Legacy Lane is located among four acres of prime commercial development. The Village at Legacy Lane is a 100-acre, low- and mid-rise apartment building...

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Official letter from the Office of the Mayor, dated October 17, 2012, addressed to M. Louis Stewart, President of Legacy Lane Investments LLC. The letter discusses the Village at Legacy Lane project and mentions the involvement of the City of Huntsville and the Board of Huntsville Council.

SYNDICATED MORTGAGE

The Village at Legacy Lane is a 100-acre, low- and mid-rise apartment building. The Village at Legacy Lane is a 100-acre, low- and mid-rise apartment building...

THE DEVELOPER

Legacy Lane Investments LLC. Legacy Lane Investments LLC is a privately incorporated company and developer of the Village at Legacy Lane...

John Daniels, the Vice President of Legacy Lane Investments LLC, has been named as the President of Legacy Lane Investments LLC...

THE FINANCIER

First-Tier Transaction Advisory Services Inc. First-Tier Transaction Advisory Services Inc. is a leading provider of financial advisory services...

Rayleigh is the President and founder of First-Tier Transaction Advisory Services Inc. Rayleigh is the President and founder of First-Tier Transaction Advisory Services Inc...

SECURITY AND RISK MITIGATION

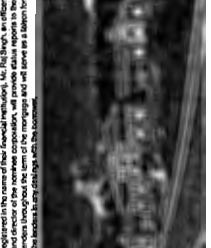
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Mortgage Registration

The Village at Legacy Lane is a 100-acre, low- and mid-rise apartment building. The Village at Legacy Lane is a 100-acre, low- and mid-rise apartment building...

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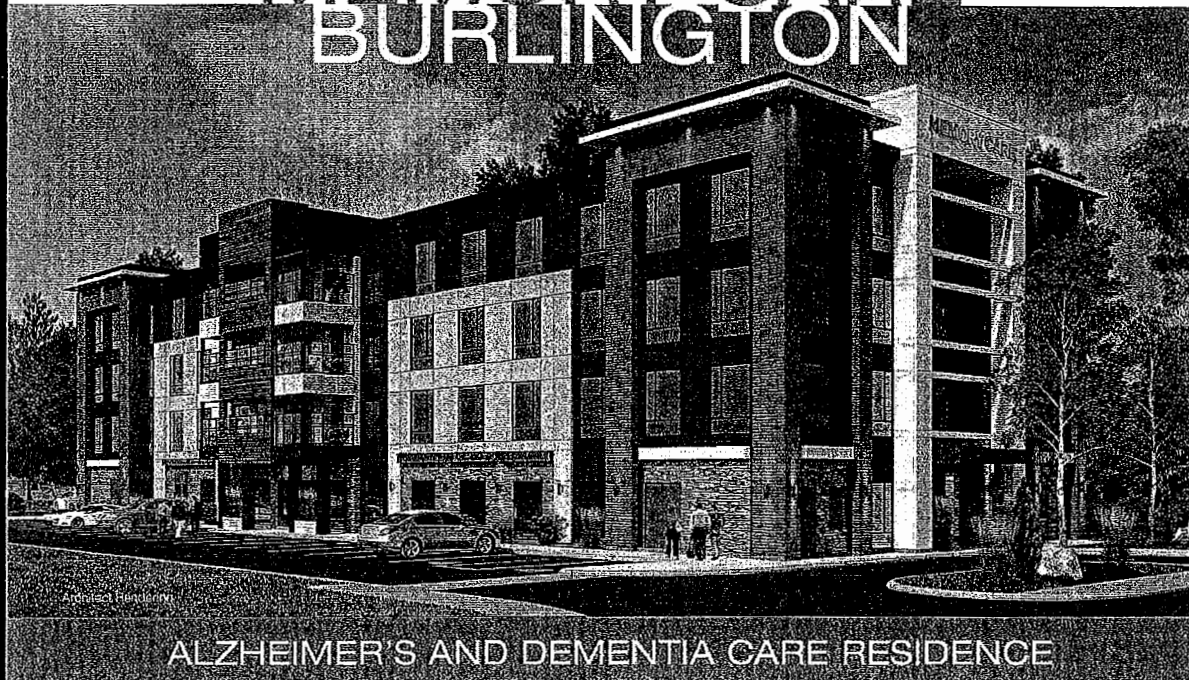


**MEMORY CARE**  
INVESTMENTS LTD.

Investment offered through  
First Commonwealth Mortgage Corporation  
(FSCO licence #10636)



# MEMORY CARE BURLINGTON



ALZHEIMER'S AND DEMENTIA CARE RESIDENCE

## FIRST MORTGAGE FINANCING UP TO \$13 MILLION

- 8% annual fixed rate of interest
- Interest paid quarterly
- \$25,000 minimum
- Construction financing
- 1-year term plus two possible 6-month extensions
- Cash, RRSP, RESP, TFSA and LIRA eligible

BURLINGTON



John Davies  
Memory Care  
Investments  
(Burlington) Ltd.

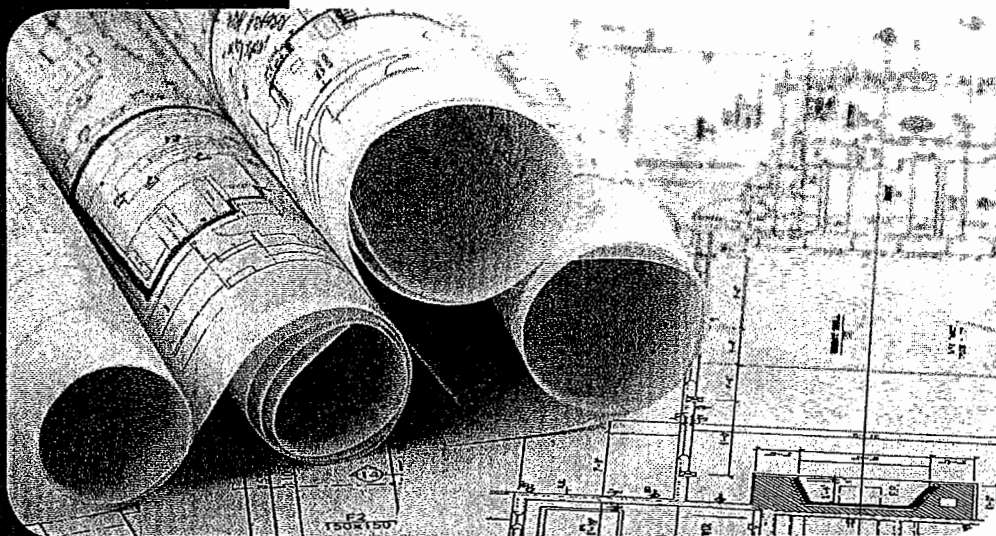


Raj Singh  
Tier 1 Transaction  
Advisory Services Inc.

## THE DEVELOPER

### Memory Care Investments (Burlington) Ltd.

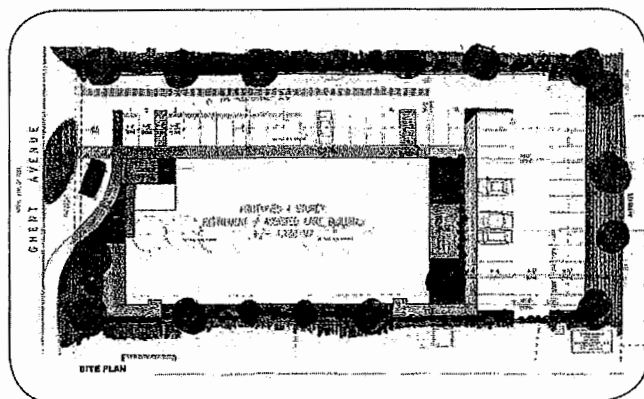
Memory Care Investments (Burlington) Ltd., the developer of the Burlington Alzheimer's and Dementia Care facility, was founded by John Davies, a founding partner of GenerX Inc., one of Canada's most successful condominium, resort, retail and office developers. John has a wealth of real estate development, construction and finance experience across a broad spectrum of the development industry. For more than 35 years, John has been involved in the acquisition, financing, design, development and construction of real estate development projects across North America, including well-anchored strip centres, retail power centres, seniors' housing, and commercial office, recreation and high-rise residential developments. The development team has significant experience conceiving and successfully executing a wide spectrum of real estate projects resulting in substantial financial returns by implementing innovative design, engineering, construction and marketing strategies. They have developed and built over \$1 billion of real estate assets for their own account and in joint venture partnerships with some of Canada's largest development firms. Projects they have been involved in have won numerous Urban Development, Design and Sustainable Architecture awards, including a Governor General's Award for Design in 1991.



## PROJECT DESCRIPTION

Memory Care Burlington is a specially designed assisted-living facility that enhances quality of life by catering to the specific requirements of people with dementia.

- Approximately 80-resident maximum to allow for an unrivalled level of care and treatment
- On-site medical practitioners
- Accommodations that include circular routes and corridors without ends, bright and contrasting colours, classical music, indirect lighting, natural light and outdoor spaces to enhance the experience and help create a calm living environment



<b>Location:</b>	2170 Ghent Avenue, Burlington, Ontario
<b>Zoning:</b>	Retirement Residence (zoning fully in place)
<b>Site Area:</b>	Approximately 1 acre
<b>Building Size:</b>	Approximately 57,000 sq. ft.
<b>Height:</b>	4 storeys
<b>Parking:</b>	Surface
<b>Units:</b>	60 proposed suites to accommodate 80 residents

## PROJECT UPDATE

The development team has met the requirements of the municipality including the payment of \$1.4 million to the City on July 13th, 2016 for Development Charges, Levies, Securities and Fees. The city issued the full building permit the week of August 1st, 2016. Varcon Construction has cleared the site and installed perimeter fencing. Their site trailer is now on site. Construction is expected to take 11 months.

## BURLINGTON MARKET AND DEMOGRAPHICS

- 15% of Burlington's residents are senior citizens, making it one of the most aged (per capita) cities in Canada. On a national basis, 8% of the Canadian population is 65 or older.
- Burlington is part of the GTA and is in Halton Region. It has a population of 175,799 residents, up 7% since 2007. Median household income is \$74,969. The average house price is \$421,008.
- Burlington has been ranked the best city in the GTA and the second best in Canada in which to live by *Moneysense* magazine.
- There are 900,000 persons in the Hamilton and Halton catchment area. That service area includes Burlington, Halton Hills, Milton, Oakville and the east side of Hamilton. ([www.alzhh.ca](http://www.alzhh.ca))
- There are 13,000 registered Alzheimer's sufferers in the Halton Hills catchment area, which includes Burlington. That represents 1.5% of the catchment area's total population. There are 500,000+ registered Alzheimer's sufferers in Canada. That represents approximately 1.7% of the national population.
- By extrapolation of the catchment area numbers, there are approximately 4,800 persons with Alzheimer's disease living in Burlington. Our facility seeks to house 80 of them.

Sources: [statcan.gc.ca](http://statcan.gc.ca), [burlington.ca](http://burlington.ca) and [moneysense.ca](http://moneysense.ca)

BURLINGTON

**Professional Services**

**Legal Advisors:**  
Harris + Harris LLP

**Appraisers:**  
Michael Cane Consultants

**Registered Custodian:**  
Olympia Trust Company

**Mortgage Brokerage –  
First Commonwealth Mortgage Corporation**



First Commonwealth has been in business since 1994. Its principal broker is Jude Cassimy (FSCO licence #10636). Mr. Cassimy has been licensed by the Financial Services Commission of Ontario since 1991. All syndicated mortgage transactions will be handled by licensed mortgage agents and brokers.

**Law Firm –  
Harris + Harris LLP**



**HARRIS + HARRIS LLP**  
BARRISTERS AND SOLICITORS

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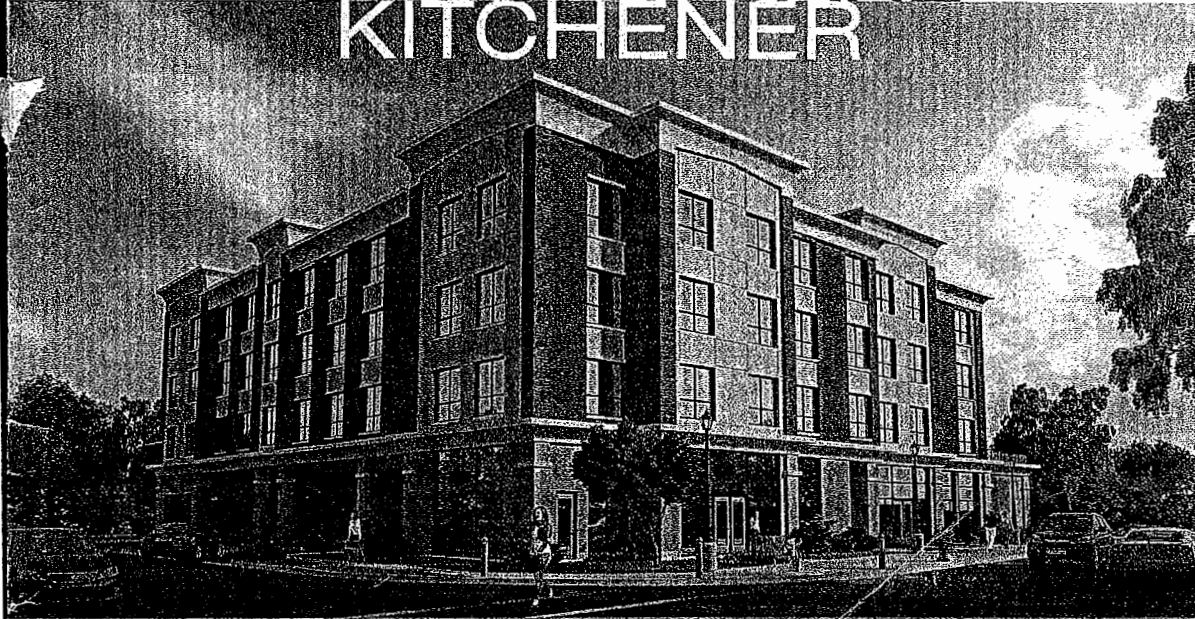
This is not an offer to sell securities. Licensed mortgage agents/brokers close all transactions. All mortgages are closed through First Commonwealth Mortgage Corporation, Financial Services Commission of Ontario (FSCO) licence #10636.

Mortgage investments have risks and may not be suitable for all investors. Potential investors are encouraged to seek independent legal and financial advice before investing.

MEMORY CARE  
INVESTMENTS LTD.

TIER1  
ADVISORY

# MEMORY CARE KITCHENER

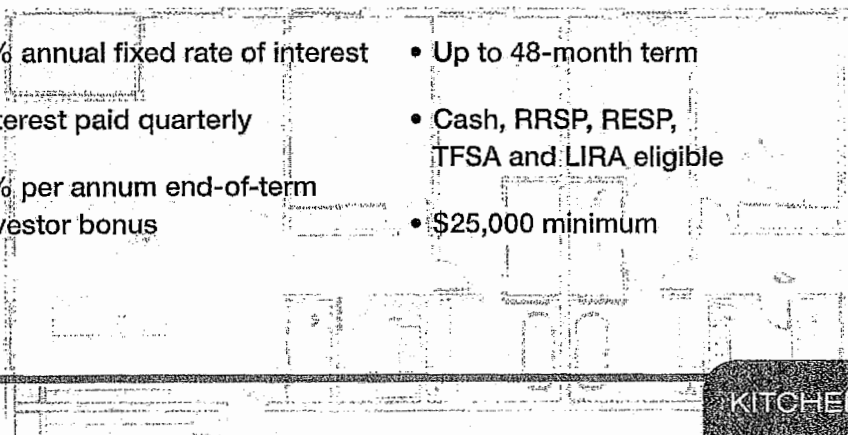


DEDICATED ALZHEIMER'S AND DEMENTIA CARE RESIDENCE

## A WORLD-CLASS INVESTMENT OPPORTUNITY SYNDICATED MORTGAGE

*Handwritten notes:*  
Call - 905-882-1600  
@ 11:00 AM  
# 3020  
@ 11:00 AM

- 8% annual fixed rate of interest
- Interest paid quarterly
- 4% per annum end-of-term investor bonus
- Up to 48-month term
- Cash, RRSP, RESP, TFSA and LIRA eligible
- \$25,000 minimum



KITCHENER



## THE LARGEST GENERATION IN HISTORY IS APPROACHING THE YEARS OF DEMENTIA

The Baby Boom generation is the largest the world has ever seen and the oldest Boomers are now approaching 65 years of age. This generation faces two daunting and terrifying challenges: the need to care for parents who suffer from dementia and the possibility that they will suffer from it themselves. There are currently about 500,000 Canadians with Alzheimer's disease or a related dementia. One in 10 Canadians over the age of 65 suffers from some form of dementia but it is not just an affliction of the elderly. Over 120,000 dementia patients are under 65 and they are the leading edge of the Baby Boom. As it has been in virtually every area of society, the Baby Boomers are creating an unprecedented demand for dementia care as both caregivers and those in need of care themselves.

## THE NEED FOR CARE FACILITIES IS DIRE AND GROWING

Dementia is a brain illness that affects memory, behaviour and the ability to perform even familiar tasks. About 70% of cases are believed to be caused by Alzheimer's disease. Regardless of the cause, the results of dementia are an increasing need for care and treatment for those afflicted. At present the vast majority of this care is being provided by family members. One in five Canadians over the age of 45 is providing some form of care to seniors, while over 200,000 caregivers in Canada are over 75 themselves. This is the front line of care for dementia patients and it is fracturing. Forty percent of family members who are caring for a loved one with dementia say they suffer from conditions such as depression, rage and the inability to cope.

With the number of dementia patients expected to rise to over 1 million during this generation, the need for care facilities will outstrip health-care resources. In fact, the World Health Organization has found that the drive to place dementia patients in institutions is "a mistake that some developed countries have made that is neither financially viable nor providing the best care." There is an urgent need for care options from the private sector that are both effective and sustainable.



### By 2038:

- 1,125,200 people will have dementia in Canada – 2.8% of the Canadian population.
- The cumulative economic burden will be \$872 billion.
- Demand for long-term care will increase 10-fold

—Alzheimer Society  
of Canada

## A SOLUTION WITH REAL OPPORTUNITIES

Memory Care and its dedicated team of professionals have over 20 years of experience designing, building and operating seniors' retirement facilities. They have now turned their expertise to the development of the first Alzheimer's-only care facilities in Canada. These facilities will offer full-time care by health-care professionals as well as a wide range of amenities. The focus of each facility will be to provide individualized care to residents that reflects their needs and abilities.

Memory Care facilities will feature a variety of suites with private baths, individual climate control and emergency call systems. A state-of-the-art GPS monitoring and communications system will protect residents at all times while health and wellness care is integrated with local hospitals and physicians.

Some of the features for residents include:

- Central control and front entry plus swipe access at all entrances and exits
- Bright and contrasting colours and different design and décor throughout to enhance residents' experience
- Purpose-specific rooms (fitness, spa, dining, etc.)
- No dead-end hallways or corners and clear, simple, eye-level signage
- Everyday places such as bathrooms and dining rooms are easily accessible and visible
- Minimal obstacles in hallways and common areas
- Handrails and grab bars in bathrooms and hallways
- Sensors in each bed to alert nurses when patients are up
- Home-like atmosphere: residents encouraged to place personal pictures, mementos or familiar things on doors and in rooms
- Sound-proofed activity rooms to prevent noise carrying to other patients' activities and rooms
- Outdoor living space for physical activities
- Roof gardens and horticultural rooms
- Activity baskets for residents
- Meeting areas for friends and family
- Coffee room and wine bar on ground floor
- Registered nurse on call 24/7

In addition to these amenities and services, each Memory Care facility will be conveniently located adjacent to shopping venues, dining options and medical facilities. Most importantly, each of Memory Care's 20 proposed residences will be located in the communities across Canada where the need is greatest.

Memory Care has devised a sustainable model for the creation and operation of these facilities that provides much-needed care while reinvesting in future development. Through a financing model that uses both traditional lenders and private investors, Memory Care can achieve its goal of building 20 residences by 2021.



"The predicted surge in dementia cases will certainly overwhelm Canada's health care system unless specific and targeted action is taken. Canada must act now."

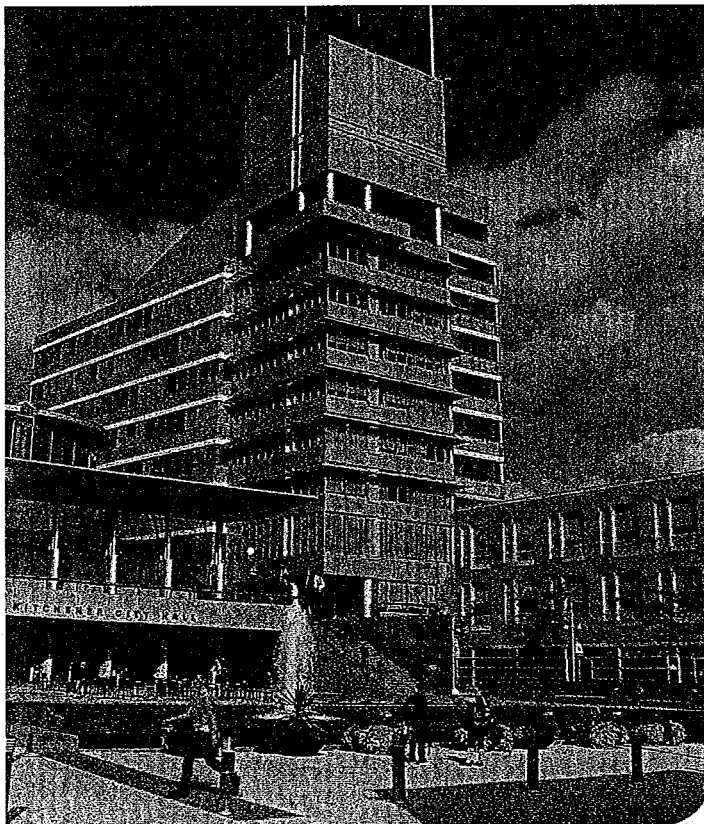
—Richard Nakoneczny  
Volunteer President  
Alzheimer Society of Canada

One in five people receiving home-care services suffers from Alzheimer's disease or other forms of dementia.

—Canadian Institute for  
Health Information

Currently, there are no standalone Alzheimer's-only care facilities specifically designed and managed to provide for the care of dementia patients in Canada.



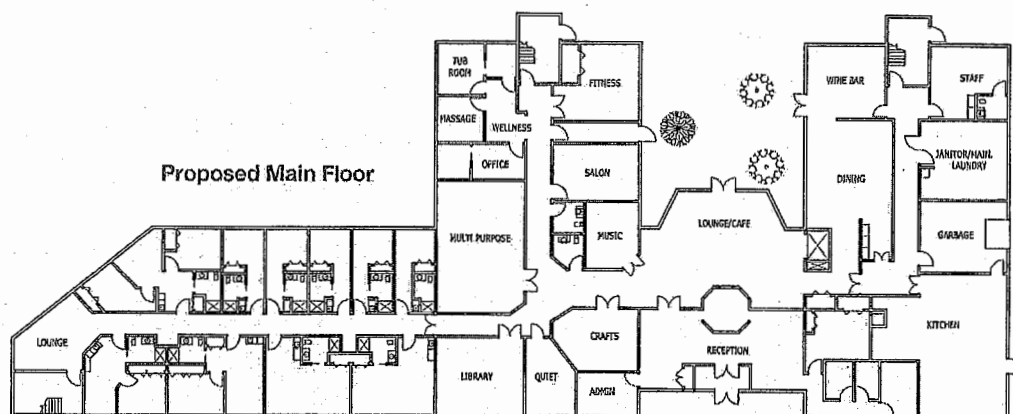


## MARKET AND DEMOGRAPHICS

- With a population of more than 232,000, Kitchener is the largest city in Waterloo Region, which is home to over 550,000.
- The Kitchener catchment area has more than 63,000 residents aged 60 or older and this cohort is growing at a rate of 13% per year.
- Kitchener boasts an average household income that is 4% above the national average due in part to the large high-tech industry that is based in the region.
- Despite its aging population, Kitchener has only 646 hospital beds and a limited number of private facilities offering long-term care for dementia sufferers.
- There are over 6,500 Alzheimer's sufferers in Kitchener and that number is expected to double over the next decade.

Sixty-five percent of Kitchener's seniors are women and women account for over 75% of all Alzheimer's sufferers. Women also tend to outlive men by five years, increasing the need for long-term care.





<b>Location:</b>	169 Borden Avenue North, Kitchener, Ontario
<b>Zoning:</b>	Retirement Residence (zoning fully in place)
<b>Site Area:</b>	1.85 acre +/-
<b>Building Size:</b>	63,000 square feet
<b>Height:</b>	3 storeys
<b>Parking:</b>	Surface
<b>Units:</b>	63 proposed suites, housing up to 90 residents

## PROJECT DESCRIPTION

Memory Care Kitchener is a 63-suite development to be located on Borden Avenue North in the core of the City of Kitchener. The surrounding area comprises century homes, parks and local attractions, including the Kitchener Memorial Auditorium Complex, within walking distance of the site. Borden Avenue is virtually at the intersection of highways 7 and 8 and minutes from the 401, thereby providing excellent access for all 550,000 residents of the Waterloo Region.

Memory Care Kitchener will house up to 90 residents on three levels that will include state-of-the-art accommodations for those with dementia. Residents will live in an environment that meets their physical needs and engages their senses positively to reduce the impacts of the disease. In addition to benefiting from a physical environment unavailable in any other facility, Memory Care Kitchener residents will be cared for by a specialized group of professionals trained specifically in the treatment and care of people with Alzheimer's and other forms of dementia.

Memory Care Kitchener is a specially designed assisted-living facility that enhances quality of life by catering to the specific requirements of people with dementia.

- 90-resident maximum to allow for an unrivalled level of care and treatment
- Highly trained management and personnel
- On-site medical practitioners
- Carefully designed accommodations that include circular routes and corridors without ends, bright and contrasting colours, classical music, indirect lighting, natural light and outdoor spaces to enhance the experience and help create a calm living environment

# KITCHENER



John Davies  
Memory Care  
Investments Ltd.



Bruce W. Stewart  
Memory Care  
Investments Ltd.



Raj Singh  
Tier 1 Transaction  
Advisory Services Inc.



Manny Simon  
Eldercare  
Equities Inc.



Shrael Simon  
Eldercare  
Consulting Inc.

## THE DEVELOPER

### Memory Care Investments Ltd.

Memory Care Investments Ltd., the developer of the Kitchener Alzheimer's and Dementia Care facility, was founded by John Davies, a founding partner of GenerX Inc., one of Canada's most successful condominium, resort, retail and office developers. John's projects have received numerous awards, including a Governor General's Award for design, an ICSC Award of Merit, an ASLA Gold Medal and over one dozen Urban Design Awards. John served as Vice President, Acquisitions and Development, at Markborough Properties Inc., at the time Canada's third largest real estate developer, with assets in excess of \$3 billion. John was responsible for the acquisition, development and lease-up of over \$300 million of Class A office space in major US office markets, as well as overseeing the renovation of the company's 20 million square foot regional shopping centre portfolio in Canada and the expansion of Meadowvale Business Park in Mississauga, Ontario. Since 1995, companies in which John has been a principal have borrowed and re-paid over \$200 million in real estate development financing. John Davies has 30 years of experience conceiving and successfully executing a wide spectrum of real estate development projects resulting in substantial financial returns by employing innovative design, engineering, construction and marketing strategies.

Bruce W. Stewart is the founder and president of the Traditions Development Company, a nationally recognized developer of quality seniors' housing providers. Bruce has a 25 year proven track record in real-estate development and construction, specializing in seniors housing and care management. Traditions has joint ventured with some of Canada's leading seniors' housing providers as well as developing and building for the Traditions portfolio. Bruce has been the proponent of the design, development, construction and management of over 1700 seniors' units in Ontario as well as numerous residential housing developments. To date, the total value of these projects exceeds \$300 million. Formerly Bruce was a senior executive of two major Canadian financial institutions specializing in seniors' housing development and construction financing.

## THE FINANCIER

### Tier 1 Transaction Advisory Services Inc.

Raj Singh is the President and founder of Tier 1 Transaction Advisory Services Inc., a firm specializing in financing real estate related projects in Canada.

A senior executive with over 20 years' experience in business services, his responsibilities have included operations management; corporate finance (mergers and acquisitions, raising debt and equity financing); capital markets activities; operational and financial restructuring; building and managing high-performance sales and delivery teams; conceptualizing, developing and executing sales and marketing strategies; and technology product development and management.

Raj has solid experience selling to and servicing a broad range of industries, including financial services; retail; oil and gas; refinery; nuclear; consumer products; educational institutions; federal, provincial and municipal governments; and consulting and staffing industry clients.

He holds a BSc from York University and an MBA from Florida International University and has completed post-graduate studies in mergers and acquisitions at Wharton School of Business, University of Pennsylvania. He has been a frequent speaker at industry conferences and trade shows. He co-authored and published three research studies in prestigious international scientific journals while an undergraduate.

## FACILITY MANAGER

### Eldercare Management Group

Eldercare Management Group provides management and consulting services to retirement homes, residential homes for Alzheimer's and dementia care and long-term care facilities through Eldercare Equities Inc., Eldercare Management & Consulting Corp., and Eldercare Consulting Inc. The principals of these companies are Manny Simon and Shael Simon. Eldercare has been an approved manager for First National Financial Corp., Sun Life Financial, Carlisle Capital, RBC, Bank of Montreal and CMHC. Eldercare currently oversees a portfolio of four retirement homes and two long-term care facilities and recently provided extensive consulting services for three specialized residential homes for Alzheimer's and dementia care, which are currently in various stages of construction or development.

Manny Simon, President of Eldercare Equities Inc., has been involved in the industry as an owner and operator since taking over management of a family-owned nursing home from his father in 1975. Over the course of his career, Manny has been involved, in various capacities, with approximately 25 retirement and long-term care homes, several of which have planned or incorporated specialized care programs for Alzheimer's disease and dementia. He has served on the executive and board of directors of the Ontario Nursing Home Association (now OLTCOA) and the executive of the Council on Aging for York Region and was a founding member and past chair of the board of directors of the Community Care Access Centre (CCAC) for York Region. A chartered accountant by training, Manny couples a vast knowledge of the financial side of the business with his broad operating experience.

As President of Eldercare Consulting Inc., Shael Simon has nine years of retirement home and long-term care home management experience. Shael was first exposed to the industry at an early age thanks to his father and mentor, Manny Simon, a 37-year industry veteran. He has been involved in all aspects of the business, including business development, finance and marketing. Shael earned a BSc from the University of Western Ontario as well as an MBA from the University of Toronto. Upon graduation, Shael got his start in the health-care field at a generic pharmaceutical company, where he was employed for two years as a Financial Analyst.

## SYNDICATED MORTGAGE

In a syndicated mortgage, your RRSP or cash investment is secured and registered as a mortgage on a real estate asset. Memory Care Investments Ltd. (Memory Care), the developer of this specialty care facility, through its principals has 30 years of experience in commercial, residential and resort property development and has assembled a world-class team of award-winning architects, engineers and marketing consultants who each has a proven track record of delivering projects on time and on budget.

## SECURITY AND RISK MITIGATION

### Mortgage Registration:

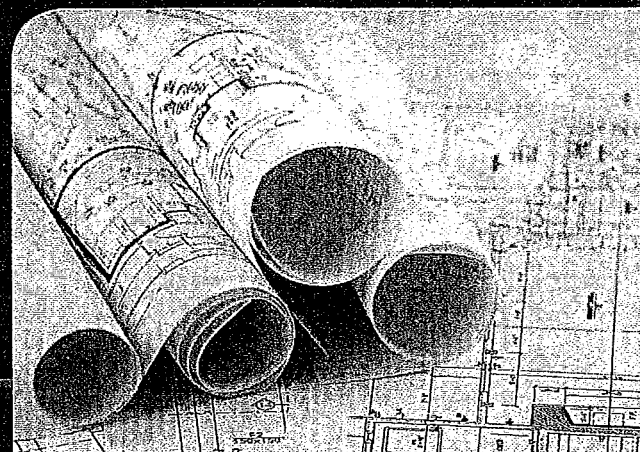
The mortgage that will secure the investment by investors will be registered as a first mortgage against the property. In the name of each lender through a nominee trust corporation and in the case of RRSP investors, directly in the name of the RRSP account and the RRSP trustee. The first mortgage will be subordinated only to construction financing. At that point, the syndicated mortgage holders will rank in second position behind the construction lender. No other financing will be permitted to be registered ahead of the syndicated mortgage holders.

### Loan to Value Ratio:

The loan to value ratio during development and construction shall not exceed 80% of the completed and stabilized value. Funds will be advanced on a cost-to-complete basis and certified by independent quantitative surveys. The developer has contracted the acquisition of the land and retained the entire consulting team. Design and development have begun in conjunction with Kitchener city staff, the immediate neighbourhood and the operations management team.

### Nominee Trust Corporation:

A trustee corporation will hold the syndicated mortgage on behalf of each lender, while RRSP accounts will hold the mortgage interest directly. Mr. Raj Singh, officer and director of the nominee corporation, will provide status reports to the lenders throughout the term of the mortgage and will serve as liaison between the lenders and borrower.



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# LIMITED-TIME OFFERING

Once the full amount has been raised, the offering is closed to new investors. Ask your advisor today about how to participate with your RRSP, LIRA, RESP, TFSA or cash.

## Professional Services

**Facility Manager and Operator:**  
Eldercare Consulting Inc.

**Quantity Surveyors:**  
Pelican Woodcliff Inc.

**Legal Advisors:**  
Harris + Harris LLP

**Appraisers:**  
Michael Cane Consultants

**Registered Custodian:**  
Olympia Trust Company

**Architects:**  
Fabiani Architects

**Structural Engineers:**  
SWS Engineering

**Site Servicing Engineers:**  
WMI Engineering

**Electrical Engineers:**  
Tristar Engineering

**Landscaps:**  
Terraplan

**Planners:**  
Lucas and Associates

**Environmental:**  
Church and Trought Ltd.

## Management Firm –

**Tier 1 Transaction Advisory Services Inc.**  
3655 Kingston Road, Scarborough, ON M1M 1S2  
tel: 647-748-8434 | fax: 416-218-0236



Tier 1 Transaction Advisory Services Inc. is the creator, provider and administrator of syndicated second mortgages, also known as principal secured mortgages. The syndicated mortgage is an FSCO-regulated investment, requiring a full team of professional support services to complete each syndicated mortgage transaction.

## Mortgage Brokerage –

### First Commonwealth Mortgage Corporation



First Commonwealth has been in business since 1994. Its principal broker is Jude Cassimy, FSCO licence #10636. Mr. Cassimy has been licensed by the Financial Services Commission of Ontario since 1991. All syndicated mortgage transactions will be handled by licensed mortgage agents and brokers.

## Tier 1 Mortgage Corporation

## Law Firm – Harris + Harris LLP



**HARRIS + HARRIS LLP**  
BARRISTERS AND SOLICITORS

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Harris + Harris LLP has significant experience in commercial real estate transactions, including real estate financing using syndicated mortgages.

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**TAB D**

## **Appendix “D”**



**From:** John Davies  
**To:** 'Raj Singh'  
**CC:** 'Chris Giamou'  
**Sent:** 11/3/2014 3:54:51 PM  
**Subject:** FW: Guildwood Timing

Raj:

See response from Greg Wood below about Loan to Value Ratio on Guildwood.

I'll work on Michael Cane to see if he can get us to \$5.5 million or \$6.0 million appraised value.

JD

**From:** John Davies [mailto:john@memorycare.ca]  
**Sent:** October 31, 2014 4:35 PM  
**To:** 'Greg Wood'  
**Cc:** 'Chris Giamou'; 'Ethan Wood'  
**Subject:** RE: Guildwood Timing

Hey Greg:

OK. We can discuss. Maybe \$2 million is aggressive opposite the LTV. If the new appraisal comes in at \$5.5 million, he'd qualify with Olympia Trust for \$1.5 million. That would be back under 30%. I'll get started on the answers to all your questions next week.

Enjoy the weekend.

John.

**From:** Greg Wood [mailto:woodg@icfunding.com]  
**Sent:** October 31, 2014 12:16 PM  
**To:** John Davies; 'Chris Giamou'  
**Cc:** Ethan Wood  
**Subject:** RE: Guildwood Timing

Thanks for the update John. I look forward to information in support of our lender discussions. Just a couple of initial comments

- Given that the LTV on this land parcel may be 50%, have you discussed with Raj covenant support ? ( compared to Whitby at 25% LTV and no covenant required)
- How does current value compare to original purchase price ( acquisition history?)
- Given lender opinion regarding the quality of the David Crane report provided for Whitby and assuming the that ask for Guildwood will be more aggressive, we would recommend a brand name appraisal report that will be received as undoubted in terms of the land value estimate....no sense spending money twice.....we can get you some recommendations as you require
- A break down of disbursements will be helpful information

I seems like we should proceed to get at least the term sheet issued and have the appraisal as a condition precedent to funding ( advance not to exceed \*\*\*% of value)

Look forward to your information as available.

*Greg Wood*  
 Broker | Principal

373 Commissioners Road West, Suite 200  
 London, ON N6J 1Y4  
 T 519.673.3528 x128  
 C 519.671.3528  
[woodg@icfunding.com](mailto:woodg@icfunding.com)  
[www.icfunding.com](http://www.icfunding.com)

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**From:** John Davies [<mailto:john@memorycare.ca>]  
**Sent:** October-31-14 11:49 AM  
**To:** Greg Wood; 'Chris Giamou'  
**Cc:** Ethan Wood  
**Subject:** Guildwood Timing

Hello Greg:

I had a meeting with our partner Raj Singh regarding Guildwood on Wednesday evening. We are looking for approximately \$2 million in new capital to advance the Guildwood project which goes to market in a week. Looking for new funding to cover costs related to build-out of sales presentation centre, architects, engineers, City of Toronto fees, and sales commissions and sales centre costs to get the project to 70% pre-sold.

Existing appraisal is \$4.5 million. In order to obtain additional financing beyond the \$4 million currently registered against the property (which will subordinate to new financing) and receive Olympia Trust approval, we'll need an updated appraisal. As we've discussed, we can only fund up to the appraised value. We'll get going on that new appraisal shortly.

In the interim, we can pull some basic info together for you but there is nothing that can be advanced until we have the new appraised valuation which will determine the quantum of the new loan. Let's get Boathaus finished off and by the time that loan funds in the next few weeks we should have our house in order to discuss Guildwood in a more meaningful way.

Thanks Greg,

John.

**From:** Greg Wood [<mailto:woodg@icfunding.com>]  
**Sent:** October 31, 2014 11:13 AM  
**To:** Chris Giamou  
**Cc:** John Davies; Ethan Wood  
**Subject:** RE: Scollard

Thanks for the quick response Chris.. I have spoken to Meridian...these questions are just dotting the "i's" kind of issues.....trying to anticipate questions that may be asked by credit.  
 He did acknowledge that his question on the RSC was premature.

So..... committed to having this off his desk today....expecting approval by the end of next week.

Re Guildwood....John said that you would be preparing a similar information package for us...look forward to that package and of course any updates on the Memory Care – Burlington-Oakville developments.

Have a great weekend

**Greg Wood**

Broker | Principal

373 Commissioners Road West, Suite 200  
 London, ON N6J 1Y4  
 T 519.673.3528 x128  
 C 519.671.3528  
[woodg@icfunding.com](mailto:woodg@icfunding.com)  
[www.icfunding.com](http://www.icfunding.com)

**Seniors Housing | Apartment | Retail | Industrial | Office**

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**From:** Chris Giamou [<mailto:chris@memorycare.ca>]  
**Sent:** October-31-14 10:33 AM  
**To:** Greg Wood  
**Cc:** 'John Davies'; Ethan Wood  
**Subject:** RE: Scollard

Hi Greg,

The RSC has not been done. It can only be certified at the point in time when excavation is complete. Typically, an RSC is required as a pre-condition to construction financing. The zoning designation / change does not require an RSC.

John provided Ryan with a copy of the Phase 2 soils report. This should be sufficient for now.

-Chris

**From:** Greg Wood [<mailto:woodg@icfunding.com>]  
**Sent:** October 31, 2014 8:51 AM  
**To:** [chris@memorycare.ca](mailto:chris@memorycare.ca)  
**Cc:** John Davies; Ethan Wood  
**Subject:** FW: Scollard

Chris:

Also, has an RSC (Record of site condition) been done, or will one be done? Golder report says it was done to support the RSC but when I search the MOE database nothing is there.

This is required when there is a change from commercial/industrial to residential use.

Pls advise

**Greg Wood**

Broker | Principal

373 Commissioners Road West, Suite 200  
 London, ON N6J 1Y4  
 T 519.673.3528 x128  
 C 519.671.3528  
[woodg@icfunding.com](mailto:woodg@icfunding.com)  
[www.icfunding.com](http://www.icfunding.com)

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*received this email in error, please notify the sender by reply email and then destroy all copies of the transmission.*

**From:** John Davies  
**To:** Raj Singh  
**CC:** Gregory H. Harris  
**Sent:** 11/20/2015 11:59:09 PM  
**Subject:** Re: Bronson Views.

Will do Raj.

Sent from my Porsche Design P'9983 smartphone from BlackBerry.

**From:** Raj Singh  
**Sent:** Friday, November 20, 2015 6:54 PM  
**To:** John Davies  
**Cc:** Gregory H. Harris  
**Subject:** Re: Bronson Views.

That's great John. Also would be great if you can send me the electronic copies so that I can insert in my power point.

/raj

Raj Singh  
CEO  
Tier1 Advisory

My LinkedIn Profile:

<http://ca.linkedin.com/in/rajsingh100>

On Fri, Nov 20, 2015 at 4:06 PM, John Davies <[john@textbooksuites.com](mailto:john@textbooksuites.com)> wrote:

Hey Guys:

This is Bronson. There are some further refinements still being added over the weekend. Raj, I'll have the final renderings and floor plans printed into a half dozen 11"x17" drawing sets for you on Monday to take to Ottawa with you Tuesday.

Cane is in Ottawa today. I think we'll be at \$16 million, give or take. Andre has sent him some additional back-up on costs and revenues that should bump his \$13.750 million initial appraisal number. Sarah sent a draft brochure to you this morning for any comments. We'll substitute the renderings with new ones Monday and print the sets mid-afternoon. Sarah can deliver them to your office Raj Monday afternoon.

Timing OK?

Have a good weekend!!

John.

**From:** Feby Kuriakose [mailto:[FKuriakose@smarchitects.ca](mailto:FKuriakose@smarchitects.ca)]  
**Sent:** November 20, 2015 3:31 PM  
**To:** John Davies <[john@textbooksuites.com](mailto:john@textbooksuites.com)>  
**Cc:** Wilson Costa <[WCosta@smarchitects.ca](mailto:WCosta@smarchitects.ca)>; Ryan Hicks <[rhicks@smarchitects.ca](mailto:rhicks@smarchitects.ca)>  
**Subject:** Re: Rideau, Bronson adn Ross Park - Precast Panel

Hi John,

Attached are the latest renderings for Bronson based on your comments.

The following items are outstanding on the renderings:

- Chris is working on the updated landscape plan, we will incorporate it into the renderings as soon as we have it.
- The residential entrance canopy has to be refined and additional columns supports to be added.
- The stair along Cambridge street has to be designed to be part of the landscape design.

Please review and let me know your comments. Also please let me know when you want the final renderings, we are expecting the landscape revisions early next week to incorporate into the model.

Thanks,

Feby

P.S. Hawaii was incredible!

---

**From:** John Davies <[john@textbooksuites.com](mailto:john@textbooksuites.com)>  
**Sent:** November 20, 2015 2:29 PM  
**To:** Feby Kuriakose  
**Subject:** RE: Rideau, Bronson adn Ross Park - Precast Panel

Important we get a design that can be approved and worry about how we're going to execute it later. How was Hawaii?

**From:** Feby Kuriakose [<mailto:FKuriakose@srmarchitects.ca>]  
**Sent:** November 20, 2015 2:17 PM  
**To:** John Davies <[john@textbooksuites.com](mailto:john@textbooksuites.com)>  
**Subject:** Re: Rideau, Bronson and Ross Park - Precast Panel

Thanks John.

Regards,

Feby

---

**From:** John Davies <[john@textbooksuites.com](mailto:john@textbooksuites.com)>  
**Sent:** November 20, 2015 2:07 PM  
**To:** Feby Kuriakose  
**Subject:** RE: Rideau, Bronson and Ross Park - Precast Panel

Stick with the plan. Keep going with what you're refining.

**From:** Feby Kuriakose [<mailto:FKuriakose@srmarchitects.ca>]  
**Sent:** November 20, 2015 2:02 PM  
**To:** John Davies <[john@textbooksuites.com](mailto:john@textbooksuites.com)>  
**Cc:** Edward Thomas <[edward@srmarchitects.ca](mailto:edward@srmarchitects.ca)>; Ryan Hicks <[rhicks@srmarchitects.ca](mailto:rhicks@srmarchitects.ca)>  
**Subject:** Rideau, Bronson and Ross Park - Precast Panel

Hi John,

In the meeting with Stubbes you mentioned that the precast cladding is to be coloured concrete and no form liners. Is that the approach for Rideau, Bronson and Ross Park? If so, we will have to revise Ross Park renderings as well as the concept that we have been sending you for Bronson. Both these projects currently show precast treatments that would require form liners.

Please advise how you want us to proceed.

Thanks and regards,

Feby

**From:** John Davies  
**To:** Andre Antanaitis ;'Gregory Harris'  
**CC:** 'Amy Lok' ;'Nicole Cristiano'  
**Sent:** 9/29/2015 3:02:47 PM  
**Subject:** Re: 445 Princess Street, Kingston-Appraisal Report

Greg, Andre: Held for rental. This will not be sold as a condo notwithstanding that is the assumption in Cane's appraisal. All of MC's appraisals derive their valuation on a sale basis regardless of whether it's a hold or not. Highest valuation this way given Cane's conservative cap assumptions. John.

Sent from my Porsche Design P'9983 smartphone from BlackBerry.

**From:** Andre Antanaitis  
**Sent:** Tuesday, September 29, 2015 10:59 AM  
**To:** 'Gregory Harris'; 'John Davies'  
**Cc:** 'Amy Lok'; 'Nicole Cristiano'  
**Subject:** RE: 445 Princess Street, Kingston-Appraisal Report

Hi Greg,

At this point, I'm not sure if that's been decided yet. The figures sent to Michael Cane have the project modeled as a condo sale, but that could change.

525 Princess and 555 Princess Street, which are across the street from each other (north-west of 445 Princess), are coming through the pipeline before 445 Princess, and I know John and Walter have discussed options of keeping one as a rental property and one as a condo, but again, all discussions about condo vs. rental that I've been privy to have been preliminary.

I'd prefer to let John address any final decisions regarding condo vs. rental, so I've re-copied him to this email.

Thanks,  
 Andre

**From:** Gregory Harris [mailto:GregHarris@harrisandharris.com]  
**Sent:** September-29-15 10:45 AM  
**To:** Andre Antanaitis  
**Cc:** Amy Lok ; Nicole Cristiano  
**Subject:** RE: 445 Princess Street, Kingston-Appraisal Report

Andre:

Is this the property that will be held as a rental property and not sold as condo units?

Greg

Gregory H. Harris  
 Harris + Harris LLP  
 2355 Skymark Avenue  
 Suite 300  
 Mississauga, Ontario  
 L4W 4Y6  
 Phone 905.629.7800 x 240  
 Fax 905.629.4350  
 Cell 416.460.2507  
 Email [gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)  
 Web [www.harrisandharris.com](http://www.harrisandharris.com)





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CHARTERED ACCOUNTANTS AND FINANCIAL ADVISORS

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**From:** Andre Antanaitis [<mailto:andre@textbooksuites.com>]  
**Sent:** September-29-15 10:23 AM  
**To:** 'John Davies'; Amy Lok; Gregory Harris  
**Subject:** FW: 445 Princess Street, Kingston-Appraisal Report

John, Amy, and Greg,

For your review, please find attached Michael Cane's Appraisal Report for 445 Princess Street in Kingston, ON, which was distributed September 22<sup>nd</sup>, 2015.

Thanks,  
Andre

Andre Antanaitis, M.A.  
Analyst

**TEXTBOOK**  
STUDENT SUITES INC.

51-A Caldari Road, Unit 1M  
Vaughan, ON L4K 4G3

[andre@textbooksuites.com](mailto:andre@textbooksuites.com)  
416-477-7744 ext 236  
[www.textbooksuites.com](http://www.textbooksuites.com)

**From:** Michael Cane [<mailto:michaelcane@rogers.com>]  
**Sent:** September-22-15 3:45 PM  
**To:** John Davies <[johndavies55@rogers.com](mailto: johndavies55@rogers.com)>; Chris Giamou <[chris@textbooksuites.com](mailto:chris@textbooksuites.com)>; Andre Antanaitis <[andre@textbooksuites.com](mailto:andre@textbooksuites.com)>  
**Subject:** 445 Princess Street, Kingston-Appraisal Report

Gentlemen,  
Please see attached  
Please confirm receipt  
Best wishes,

Michael

Michael Cane Consultants  
18976 Kennedy Road  
SHARON, ON  
LOG 1V0  
C-416-312-2263  
[michaelcane@rogers.com](mailto:michaelcane@rogers.com)

---

**From:** John Davies  
**To:** Walter Thompson ;Andre Antanaitis  
**Sent:** 2015/11/20 9:09:04 AM  
**Subject:** Re: \*\* Information on Summerhill / Bronson \*\*

I'd hold off on the rental rate bump. We may not even need to go there. In any event, Michael will push back if he feels we're being excessive. Let's wait and see where we end up this round. Degree at a time. Need to get him to buy in to these changes first.

Sent from my Porsche Design P'9983 smartphone from BlackBerry.

**From:** Walter Thompson  
**Sent:** Thursday, November 19, 2015 10:42 PM  
**To:** Andre Antanaitis; John Davies  
**Subject:** Re: \*\* Information on Summerhill / Bronson \*\*

I'd send him the pro forma of where we expect the Cane appraisal to land.

Is this the time we advise Michael of the rental rates being achieved at Capital Hall? Or do we let him find the answer by telling him we understand there's a competing project on the market, understand they're guaranteeing rents for 3 years, and would be interested if he could find out what those were and use them in his appraisal as representative of market? Would be independent, allow him to arrive at his own rental rates, and add value to his client all at the same time.

Thanks,

Walter

**From:** Andre Antanaitis  
**Sent:** Thursday, November 19, 2015 10:21 PM  
**To:** Walter Thompson  
**Subject:** Re: \*\* Information on Summerhill / Bronson \*\*

Do you want me to just do my best to look into the crystal ball and give my best estimate of what Michael's residual value will be? His most recent preliminary draft only valued it at 13.5 mill. He's pushing back right now, hasn't issued an update, and is dragging his feet saying we have too much value and not enough cost in the pro forma compared to other projects he's working on.

I doubt I'll have anything by the end of the week with Michael's letterhead on it that's above 13.5 million based on the email I forwarded you. Can Raj take that to get started and then upgrade once we get a new report from Michael?

Sent from my iPhone

On Nov 19, 2015, at 10:05 PM, Raj Singh <[rajsingh100@gmail.com](mailto:rajsingh100@gmail.com)> wrote:

Also do you have Michael Cane's revised appraisal? If not, send me your expected appraisal from Cane.

/raj

Raj Singh  
 CEO  
 Tier1 Advisory

My LinkedIn Profile:

<http://ca.linkedin.com/in/rajsingh100>

On Thu, Nov 19, 2015 at 10:04 PM, Raj Singh <[rajsingh100@gmail.com](mailto:rajsingh100@gmail.com)> wrote:  
Hi Andre:

Please also send me the pro forma in Excel please.

thanks

Raj Singh  
CEO  
Tier1 Advisory

My LinkedIn Profile:

<http://ca.linkedin.com/in/rajsingh100>

On Thu, Nov 19, 2015 at 7:44 PM, Andre Antanaitis <[andre@textbooksuites.com](mailto:andre@textbooksuites.com)> wrote:

Hi Raj,

Here is the info package on 774 Bronson detailing the development concept and locational attributes. Please let me know if you need anything else.

Andre

**From:** GXUDC [<mailto:walter@gxude.com>]  
**Sent:** November-19-15 6:12 PM  
**To:** Raj Singh <[rajsingh100@gmail.com](mailto:rajsingh100@gmail.com)>; John Davics <[johndavies55@rogers.com](mailto: johndavies55@rogers.com)>  
**Cc:** Gregory H. Harris <[gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)>; Andre Antanaitis <[andre@textbooksuites.com](mailto:andre@textbooksuites.com)>  
**Subject:** Re: \*\* Information on Summerhill / Bronson \*\*

You'll have a ton of information shortly. Andre, please forward to Raj asap.

Thanks,

Walter

**From:** Raj Singh

**Sent:** Thursday, November 19, 2015 6:02 PM

**To:** Walter Thompson, President; John Davies

**Cc:** Gregory H. Harris

**Subject:** \*\* Information on Summerhill / Bronson \*\*

John / Walter:

Can you provide me with some information on Bronson. I am presenting to 2 groups (total 89) on Tuesday November 24th.

Address, any renderings, size of Building (units, beds sq ft), estimated price ranges. Please also send the draft pro forma/

thanks

Raj

Raj Singh

CEO

[Tier1 Advisory](#)

My LinkedIn Profile:

<http://ca.linkedin.com/in/rajsingh100>

**From:** John Davies  
**To:** 'Gregory Harris'  
**CC:** rajsingh100@gmail.com ;'Chris Giamou'  
**Sent:** 2016/03/16 4:54:56 PM  
**Subject:** RE: Update on Agreement

Hey Greg:

I have ben back and forth with Michael Cane on this for several months looking for an increase in valuation. Michael can't get his head around an increase to the last Kitchener appraisal until we break ground. I'll repay the Mintz \$900K on Kitchener from the Boathaus loan and repay Boathaus over say, 3 advances when we break ground in Kitchener.

The MC JV agreement with Leeswood didn't seem like a big priority until it blew up in our face a year later. I am of the belief that the ROFR is important to Guido, and therefore it's a priority to me. Hopefully we can get something in his hands asap. I know they would like to break ground in the near term.

Thanks,

John.

**From:** Gregory Harris [mailto:GregHarris@harrisandharris.com]  
**Sent:** March 16, 2016 12:18 PM  
**To:** John Davies  
**Cc:** rajsingh100@gmail.com; 'Chris Giamou'  
**Subject:** RE: Update on Agreement

He's not asking for anything further after Raj's response.

Let's not provide a timeline at the moment.

We have many bigger issues to deal with, including but not limited to the Kitchener appraisal from Cane – that's going to end up becoming a very large issue unless we deal with that.

You've been stating for months that Cane was going to get it done; but we still have not seen it.

Let's get our priorities straight please.

Greg

Gregory H. Harris  
 Harris + Harris LLP  
 2355 Skymark Avenue  
 Suite 300  
 Mississauga, Ontario  
 L4W 4Y6  
 Phone 905.629.7800 x240  
 Fax 905.629.4350  
 Cell 416.460.2507  
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 Web [www.harrisandharris.com](http://www.harrisandharris.com)



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**From:** John Davies [<mailto:john@memorycare.ca>]  
**Sent:** March-16-16 12:13 PM  
**To:** Gregory Harris  
**Cc:** [rajsingh100@gmail.com](mailto:rajsingh100@gmail.com); 'Chris Giamou'  
**Subject:** RE: Update on Agreement

Yes, thanks, I did see Raj's note to Guido, but I'd like to give Guido a timeframe, if that's possible.

**From:** Gregory Harris [<mailto:GregHarris@harrisandharris.com>]  
**Sent:** March 16, 2016 12:12 PM  
**To:** John Davies <[john@memorycare.ca](mailto:john@memorycare.ca)>  
**Cc:** [rajsingh100@gmail.com](mailto:rajsingh100@gmail.com); 'Chris Giamou' <[chris@memorycare.ca](mailto:chris@memorycare.ca)>  
**Subject:** RE: Update on Agreement

Raj has already dealt with this.

Gregory H. Harris  
 Harris + Harris LLP  
 2355 Skymark Avenue  
 Suite 300  
 Mississauga, Ontario  
 L4W 4Y6  
 Phone 905.629.7800 x 240  
 Fax 905.629.4350  
 Cell 416.460.2507  
 Email [gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)  
 Web [www.harrisandharris.com](http://www.harrisandharris.com)



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**From:** John Davies [<mailto:john@memorycare.ca>]  
**Sent:** March-16-16 12:10 PM  
**To:** Gregory Harris  
**Cc:** [rajsingh100@gmail.com](mailto:rajsingh100@gmail.com); 'Chris Giamou'  
**Subject:** FW: Update on Agreement

Hey Greg:

Is there a timeframe that I can tell Guido?

John.

**From:** Guido Paniccia [<mailto:GPaniccia@varconconstruction.com>]  
**Sent:** March 15, 2016 4:51 PM  
**To:** John Davies <[john@memorycare.ca](mailto:john@memorycare.ca)>  
**Cc:** 'Chris Giamou (Memory Care)' <[chris@memorycare.ca](mailto:chris@memorycare.ca)>; [raisingsh100@gmail.com](mailto:raisingsh100@gmail.com)  
**Subject:** RE: Update on Agreement

John/Chris

Hope that all is well. Please confirm that I have the correct e mail addresses as I have not heard back from you re e mail below.

**Guido Paniccia Bsc.Eng**  
Senior Vice President



**VARCON CONSTRUCTION CORPORATION**  
250 Doney Crescent  
Concord, Ontario. L4K 3A8

---

**From:** Guido Paniccia  
**Sent:** March-08-16 8:32 AM  
**To:** John Davies <[john@memorycare.ca](mailto:john@memorycare.ca)>  
**Cc:** 'Chris Giamou (Memory Care)' <[chris@memorycare.ca](mailto:chris@memorycare.ca)>; 'raisingsh100@gmail.com' <[raisingsh100@gmail.com](mailto:raisingsh100@gmail.com)>  
**Subject:** Update on Agreement

John

Hope that all is well. Can you please update me on the status of the agreement being drafted?

Regards

**Guido Paniccia Bsc.Eng**  
Senior Vice President



**VARCON CONSTRUCTION CORPORATION**  
250 Doney Crescent  
Concord, Ontario. L4K 3A8



**John Davies**

---

**From:** John Davies <johndavies55@rogers.com>  
**Sent:** February 19, 2015 11:15 AM  
**To:** 'Greg Harris'; 'rajsingh100@gmail.com'  
**Cc:** 'Chris Giamou'; 'Dianna Cassidy'  
**Subject:** Memory Care raises

Gentlemen:

Chris is cleaning up a few details in the Burlington and Oakville pro-forma projections. Should have them to Michael Cane tomorrow. Michael has completed his initial review of these two projects so I think we'll see his appraisals for both by March 1<sup>st</sup>. If we can get them to Peter Tuovi that week and get his work back asap, Tier 1 could be selling mid-March. I'm assuming revised documents and OT sign-off will take a couple weeks. Certainly we could be in the marketplace before the end of March break.

Opposite Kitchener, we could turn Tier 1's guys loose on that raise right away. The first appraisal on Kitchener was for \$6.5 million. Michael's new appraisal is for \$10.6 million. Peter Tuovi and OT have completed their work. The Mintz \$950,000 closed earlier this week and approximately 50% of the net loan amount has been sent back to H+H for the upcoming April 1<sup>st</sup> interest payments. The balance will retire some pressing payables.

A few notable Tier 1 agents (Jeff Watson / Marcus Patton) have clients with cash in hand wanting to invest in Memory Care. RRSP season ends March 5<sup>th</sup>. Let's go to market right away for a \$4 million Tier 1 Kitchener Construction raise. Documents could be revised with this new amount fairly quickly and Raj could have his team out selling in the next week or two.

A \$4 million raise nets us say, \$2.8 million. Less \$950K to Mintz. Call it \$1.850 million net.

I'm going to need a chunk of those proceeds to re-pay Bracebridge investors who want their cash returned at the end of April. Walter would like some cash for deposits on student housing land he's chasing.

I'm assuming Michael Cane's Oakville and Kitchener appraisals will be sufficiently increased over the last round of appraisals for Tier 1 to be able to raise say, \$3.5 million on each deal. I think Tier 1 could probably raise those amounts by say, early May if they get the documents etc. by the week of March 9<sup>th</sup>.

Can we revise the Kitchener documents to permit Tier 1 to be out in the market in a week?

Thanks,

John.

# **TAB E**

**Appendix “E”**

**From:** Dianna Cassidy  
**To:** johndavies55@rogers.com  
**Sent:** 2016/02/09 4:47:05 AM  
**Subject:** Re: Shareholder Dividend Payment on Bronson

Thanks for the update.

Sent from my BlackBerry 10 smartphone on the Bell network.

**From:** johndavies55@rogers.com  
**Sent:** Monday, February 8, 2016 10:41 PM  
**To:** Dianna Cassidy, Operations Manager October 8, 2015  
**Subject:** Fw: Shareholder Dividend Payment on Bronson

April 1st to receive Bronson cash.

Sent from my Porsche Design P'9983 smartphone from BlackBerry.

**From:** Gregory Harris  
**Sent:** Monday, February 8, 2016 5:46 PM  
**To:** johndavies55@rogers.com; Raj Singh, B.Sc., MBA, CEO  
**Cc:** Walter W. Thompson CA CPA Co-President  
**Subject:** Re: Shareholder Dividend Payment on Bronson

We're aiming for April 1st, however it's a matter of all the sales being completed and then the OT funds being rolled over.

Gregory H. Harris  
Harris + Harris LLP  
2355 Skymark Avenue  
Suite 300  
Mississauga, Ontario  
L4W 4Y6  
Phone 905.629.7800 x 240  
Fax 905.629.4350  
Cell 416.460.2507  
Email [gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)  
Web [www.harrisandharris.com](http://www.harrisandharris.com)

**From:** johndavies55@rogers.com  
**Sent:** Monday, February 8, 2016 5:54 PM  
**To:** Gregory Harris; Raj Singh, B.Sc., MBA, CEO  
**Cc:** Walter W. Thompson CA CPA Co-President  
**Subject:** Re: Shareholder Dividend Payment on Bronson

Great. Thanks. When does Raj envision closing?

Sent from my Porsche Design P'9983 smartphone from BlackBerry.

**From:** Gregory Harris  
**Sent:** Monday, February 8, 2016 5:29 PM  
**To:** johndavies55@rogers.com; Raj Singh, B.Sc., MBA, CEO  
**Cc:** Walter W. Thompson CA CPA Co-President  
**Subject:** RE: Shareholder Dividend Payment on Bronson

If Tier 1 raises \$10.875 million, then deducting 30% results in an amount of \$7,612,500 and from this amount you'd deduct the \$1 million shareholder dividend netting \$6,612,500 by my calculations.

I'll have to confirm tomorrow what the contribution amount will be required to top up the net Vector advance to complete the purchase, but assuming its \$3 million or less, then the net proceeds remaining would be approximately \$3.5 million.

I'll get you more detailed numbers on the purchase side tomorrow, once Amy is back.

Gregory H. Harris  
 Harris + Harris LLP  
 2355 Skymark Avenue  
 Suite 300  
 Mississauga, Ontario  
 L4W 4Y6  
 Phone 905.629.7800 x240  
 Fax 905.629.4350  
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 Web [www.harrisandharris.com](http://www.harrisandharris.com)



**HARRIS + HARRIS LLP**  
 SOLICITORS AND ACCOUNTANTS

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**From:** johndavies55@rogers.com [mailto:johndavies55@rogers.com]  
**Sent:** February-08-16 5:20 PM  
**To:** Gregory Harris; Raj Singh, B.Sc., MBA, CEO  
**Cc:** Walter W. Thompson CA CPA Co-President  
**Subject:** Re: Shareholder Dividend Payment on Bronson

Hey Greg: If Raj can raise the \$10.875 in addition to the Vector funds, we should receive (after Vector hold back amounts, balance of the purchase price owing, and the normal T1 30% off the top) around \$4,5 million. Less \$1 million shareholder bonus. Net to Textbook roughly \$3.5 million. Is my math more or less correct? John.

Sent from my Porsche Design P'9983 smartphone from BlackBerry.

**From:** Gregory Harris  
**Sent:** Monday, February 8, 2016 4:57 PM  
**To:** [johndavies55@rogers.com](mailto:johndavies55@rogers.com); Raj Singh, B.Sc., MBA, CEO  
**Cc:** Walter W. Thompson CA CPA Co-President  
**Subject:** RE: Shareholder Dividend Payment on Bronson

John/Walter:

I spoke with Raj and he's talked with Mickey Baratz regarding additional Tier 1 funding below the Vector financing. It appears Mickey has no issue with additional Tier 1 subordinate financing. He advised Raj that I should send the request for the amendment to the Credit Agreement Walter had previously signed. Raj also advised that Mickey didn't have an issue with respect to the \$1 million shareholder dividends on closing.

I will prepare an amendment for Mickey's review, and after Mickey confirms the amendments, I'll forward to Walter for signature.

With respect to the Bronson SMI raise, our documents provide that the maximum raise amount is \$16,575,000. Initially the amount of the SMI raise will be limited to \$10,875,000 (such that the SMI funds plus the Vector financing will not exceed the appraisal amount). The documents will allow, at some time down the road, if necessary, the SMI portion itself to be increased up to a maximum of \$16,575,000 (provided an increased appraisal amount would support this quantum plus the Vector loan).

Raj advises that he is trying to close on the \$10,875,000 amount, and it's expected that the shareholder dividend payment will be disbursed from these proceeds. The SMI documents already contemplate the shareholder dividend and do not need to be amended for this purpose.

Let me know if you have any questions about the SMI documents and the financing amounts that can be raised.

Greg

Gregory H. Harris  
 Harris + Harris LLP  
 2355 Skymark Avenue  
 Suite 300  
 Mississauga, Ontario  
 L4W 4Y6  
 Phone 905.629.7800 x 240  
 Fax 905.629.4350  
 Cell 416.460.2507  
 Email [gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)  
 Web [www.harrisandharris.com](http://www.harrisandharris.com)



**HARRIS + HARRIS LLP**  
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**From:** [johndavies55@rogers.com](mailto: johndavies55@rogers.com) [<mailto: johndavies55@rogers.com>]  
**Sent:** February-08-16 8:41 AM  
**To:** Raj Singh, B.Sc., MBA, CEO; Gregory Harris  
**Cc:** Walter W. Thompson CA CPA Co-President  
**Subject:** Bonus Payment on Bronson

Gentlemen: i'm responding to recent correspondence regarding the bonus payment to shareholders on Bronson.

I think we'd all agree that the payment of bonuses to shareholders from the Tier 1 raises has been gratefully received. It certainly has been in my case. We have a few challenges that we're dealing with that i'd like to present.

If the 1st mortgage lender is prepared to permit another \$1 million behind him that's fine. Good news in fact. Walter was nervous to ask.

We have a larger, more encompassing issue. In the case of McKenzie, the raise was \$10 million, and the amount needed to close was roughly \$4 million. After payment of the \$1 million bonus, there was around \$2 million for staff, consultants, overhead and other operating costs. In the most recent advances for 555 and 525, the amount of the raises after all fees, shareholder bonuses and other deductions netted a relatively small surplus. Textbook repaid \$1.3 million to Scollard and MC from the 555 and 525 advances, and that cash was used to pay \$1 million of December and January interest, which left Textbook little cash to operate with.

The size of the recent Tier 1 raises hasn't been large enough to leave us sufficient cash after payment of all deductions to operate the company. Bronson is the same situation. The quantum of the anticipated net Tier 1 raise on Bronson is close to the closing costs and the bonus, leaving Textbook little additional cash to pay our expenses.

We have the two Ottawa projects, and Ross Park into working drawings. We owe roughly \$1.5 million to the consultants on those projects. We owe consultants for 555 and 525 as well as almost 9 months of work on Shoppers Drug Mart site. The Brock U site is in predevelopment mode. We need cash for consultants to continue work in earnest or work will stop. Add payroll, office expenses etc.

I have mentioned in the past that the issue is the land raises are so large that these is insufficient surplus proceeds to fund operations at the present level. We need to keep our foot on the pedal and advance the projects as quickly as we can or they'll languish. After all deductions from the most recent raises there isn't enough to fund the working drawing, planning, engineering and approvals operations underway. We need a couple of raises with \$2 or \$3 million surplus cash to catch up. Unfortunately, the best sites that are close to schhols or in the downtown core aren't cheap, and the net proceeds from the Tier 1 raises aren't enough to cover ops.

Can we raise more capital on Bronson? Can Tier 1 raise a 2nd tranche and pay the bonus from the back end? The Cane appraisal is greater than the sum to the 1st and 2nd mortgages I believe. Hopefully we can raise additional cash on Bronson and pay the bonus and operating cash too.

The next raise for the Shoppers Drug Mart property will be based on a \$15 million Cane appraisal and I think the 1st mortgage lender will permit a larger 2nd. Hopefully the Tier 1 raise for this site will go well and produce substantial net proceeds to clean-up consultants invoices, pay staff and ops for a few months until the next raise.

Lastly, 2nd year interest payments on Ross Park will be upon us soon. We'll need to start bankrolling surplus cash in order to meet interest obligations. Starting that now would be wise.

I wanted to let you know that the projects underway require more funding than is presently available, or available out of the Bronson raise. Raj, can we raise more? Greg, will the documents allow us to raise more as construction financing and still be within the Cane appraisal amount?

I'm thinking out loud. I'm sure there is a solution. None of us want to see the progress grind to a halt. I'm sure there is a solution.

John.

Sent from my Porsche Design P'9983 smartphone from BlackBerry.

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**TAB F**



**Appendix “F”**





W.P.	Estimated to Complete	Total Forecast	SF/GFA	Units	Notes - Est to complete
<b>COSTS</b>					
<b>LAND</b>					
1	0	2,000,000	163,883	182	Land Incl. Broker fee
2	0	30,000	1,904		% of land purchase
3	0	41,000			2015 Greenbelt Rates inflated 1.4%
4	0	2,432,004	6,726	15,512	2015 Greenbelt Rates inflated 1.4%
5	0	89,490	6,800	14,23	2015 Greenbelt Rates inflated 1.4%
6	0	2,600,000	1,500	155	Allowance for loc. units @ \$1,650 per
7	0	45,000	48,000	2.50	Est annual tax x 2.5 years
8	0	100,000	100,000		Greenbelt tax recovery
9	0	6,865,724	516,000	163,883	Greenbelt tax recovery
10	0				Cost
					24,403,950
					24,583,950
<b>CONSTRUCTION</b>					
20	4	1,105,278	56,751	26,673	Surface Parking
21	0	727,519	37,500	65	numbings and utilities
22	0	451,679	23,000	195	
23	0	91,679	51,000	59,521	Including parking structure
24	0	883,258	383,358	55,043	
25	0	1,228,189	1,229,198	57,500	
26	0	1,278,037	1,278,037	59,000	
27	0	1,443,794	1,443,794	61,250	
28	0	122,230	122,230	30,200	Includes in-unit numbings
29	0	491,679	491,679	53,000	
30	0	3,441,753	3,441,753	573,954	
31	0	860,439	860,439	117,850	
32	0	1,100,000	1,100,000	139,000	Estimate of % hard costs
33	0	24,384,894	150,000	2,500	
34	0				
35	0				
36	0				
37	0				
38	0				
39	0				
40	0				
<b>DESIGN</b>					
41	0	484,679	484,679	195	Units
42	0	98,938	98,938	2.00%	of hard costs
43	0	122,870	122,870	6.40%	
44	0	35,000	35,000	550,000	Allowance
45	0	78,000	78,000	\$26,000	Allowance
46	0	15,000	15,000	\$400	Allow for take off / CM Contract
47	0	73,125	73,125	\$375	Buildout 19
48	0	15,000	15,000	\$25,000	Allowance
49	0	10,000	10,000	\$10,000	Report
50	0	10,000	10,000	\$10,000	Report
51	0	50,000	50,000	\$50,000	Monthly financing
52	0	50,000	50,000	\$50,000	finac.
53	0	1,163,410	1,163,410	\$50,000	Allowance
54	0				
55	0				
56	0				
57	0				
58	0				
59	0				
60	0				
61	0				
62	0				
63	0				
64	0				

200,000 Deposit  
 18R 202,688  
 20R 2,229,406

2,500  
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 7,500  
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**TAB G**

**Appendix "G"**

Receivership Companies  
 Summary of Estimated Unearned Management Fees  
 (unaudited; \$C)

	Scollard	525 Princess	555 Princess	Burlington	Oakville	Kitchener	Legacy Lane	Total
Total Project costs	73,159	33,730	41,878	23,900	27,704	25,579	22,444	248,394
Project costs to date (note 1)	15,946	6,387	7,927	9,553	13,903	11,527	3,478	68,721
Costs to-date as a percentage of total costs	21.8%	18.9%	18.9%	40.0%	50.2%	45.1%	15.5%	27.7%
Total management fees over project	1,803	1,500	2,100	1,500	1,500	1,594	1,122	11,119
Percentage of earned management fees to date	21.8%	18.9%	18.9%	40.0%	50.2%	45.1%	15.5%	29.9%
Expected Management fees to date	393	284	398	600	753	718	174	3,319
Actual management fees paid (note 2)	846	502	801	1,264	1,245	1,201	607	6,466
Estimated unearned management fees	453	218	403	664	492	483	433	3,147

Notes

1. Represents all capital raised on the project, including from 5MIs, third party mortgages and the preference shares in respect of Oakville. Excludes receipts and disbursements from Davies Developers, which would eliminate on consolidation. Assumes all capital raised was spent on the project.
2. Represents management fees paid as per Exhibit "J" to the Davies Affidavit.



**TAB H**

**Appendix "H"**

From: johndavies55@rogers.com [mailto:johndavies55@rogers.com]  
Sent: March 19, 2013 7:35 PM  
To: Raj Singh, President <rajsingh100@gmail.com>  
Cc: Greg Harris <gregharris@harrisandharris.com>; Bruce Stewart <bwstewart@rogers.com>  
Subject: Re: Fwd: Fw: Scollard

Raj:

I think I get where you're coming from and I respond as follows.

The efforts of the development team are extensive and complex. I don't believe your investors fully comprehend the skill, experience and time necessary to achieve a successful outcome on such a complicated development venture.

Feel free to satisfy yourself that our fees are industry standard fees. Believe me Raj, we will earn every penny.

Raj, Bruce and I are not prepared to function as paid consultants on a project that we found, negotiated the purchase agreement, are the borrower, the developer, and the persons most responsible for the successful outcome of the venture.

Each of Bruce, Greg and I will only each earn approximately 12% of the back end and we are accepting that because we think it's a great project; but that is far less than you are earning for yourself.

Every pro-forma projection has shown our 4% development fee since the first iteration back in November. The cash flow shows the monthly fee payments. Neither the quantum of our fee, nor the timing of the payment of our fee has ever been discussed, until now.

Raj, we are prepared to move forward on the basis that our total development fee is paid monthly over the 48 month genesis of the venture. \$3.2 million of development fees will get paid over the full life of the project. That's 48 months to final occupancy and sign over to the condo corp. We anticipate receiving construction financing in approximately 24 months. According to our schedule we will have been paid around \$2 million of the total fee by the time we obtain construction financing.

It strikes me that it's a bit late in our discussions and deliberations to be having a conflict about having faith in us to deliver the project on time and on budget.

If the investors are worried that there isn't going to be construction financing available, they should probably find something less risky (and lucrative) to invest their money in.

To obtain construction financing we're going to be spending millions upon millions of dollars on planners, architects, engineers, marketing, design, sales professionals, lawyers and accountants to get us to the point two years from now where we qualify for construction financing.

Are your investors suggesting we ask the country's finest design and engineering consultants to earn a modest wage until such time as we determine whether we're going to make our projections? Of course not, just as it is inappropriate to ask the development team to work for a wage directing the project.

If your proposal is the only way you're prepared to move forward with us on the project then regrettably we will be withdrawing from participating.

Let's discuss next week.

John.

Sent from my BlackBerry device on the Rogers Wireless Network

---

From: Raj Singh <[raisingsh100@gmail.com](mailto:raisingsh100@gmail.com)>  
 Date: Tue, 19 Mar 2013 18:32:48 -0400  
 To: John Davies<[johndavies55@rogers.com](mailto:johndavies55@rogers.com)>  
 Cc: Greg Harris<[gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)>; Bruce Stewart<[bwstewart@rogers.com](mailto:bwstewart@rogers.com)>  
 Subject: Re: Fwd: Fw: Scollard

John:

This is not the same as Tier 1's fees John. Tier 1 makes about 3.5% to 4% on money raised not on total project cost to share amongst partners and pay staff & expenses. We are all betting on making our large upside when the projects are successfully completed.

Regardless, I am not concerned about the quantum of the development fee (I am assuming this is fair market rates and will take your word for it).

What I am concerned about is my complete reliance on you that construction financing will be successfully raised and the projects will be successful.

The development fee being paid out prior to this is an extreme worry for me and makes me very uncomfortable. This allows \$3.2 M of development fees to be withdrawn ahead of even knowing if construction financing can be arranged at all (a discussion that has come up several times).

What makes sense for investors is that a reasonable draw be taken out (and this can be discussed) with the bulk of it being paid out when the construction financing has been successfully arranged. It is therefore tied to performance of successfully obtaining construction financing. This is your area of expertise. If you are uncomfortable with this we should all know upfront.

I have discussed with Greg on the phone and he can share these thoughts better with you rather than doing via email.

I am back on Saturday and we can meet to discuss.

regards

Raj

On Tue, Mar 19, 2013 at 6:19 PM, <[johndavies55@rogers.com](mailto:johndavies55@rogers.com)> wrote:

The development fees are earned and disbursed monthly starting in month 1. Same as Tier 1's fees.  
 Sent from my BlackBerry device on the Rogers Wireless Network

---

From: Raj Singh <[raisingsingh100@gmail.com](mailto:raisingsingh100@gmail.com)>  
 Date: Tue, 19 Mar 2013 18:17:39 -0400  
 To: John Davies<[johndavies55@rogers.com](mailto:johndavies55@rogers.com)>  
 Cc: Greg Harris<[gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)>; Bruce Stewart<[bwstewart@rogers.com](mailto:bwstewart@rogers.com)>  
 Subject: Re: Fwd: Fw: Scollard

The timing of the payment of the development fees as it relates to successfully obtaining construction financing to know we have a successful project.

/raj

On Tue, Mar 19, 2013 at 5:58 PM, <[johndavies55@rogers.com](mailto:johndavies55@rogers.com)> wrote:

Discuss what?  
 Sent from my BlackBerry device on the Rogers Wireless Network

---

From: [raisingsingh100@gmail.com](mailto:raisingsingh100@gmail.com)  
 Date: Tue, 19 Mar 2013 14:57:43 -0700 (PDT)  
 To: <[johndavies55@rogers.com](mailto:johndavies55@rogers.com)>  
 Cc: Greg Harris<[gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)>  
 Subject: Re: Fwd: Fw: Scollard

John

We can discuss further next week. I have asked Greg to set up a meeting for us.

Raj

Sent from my BlackBerry 10 smartphone.

---

From: [johndavies55@rogers.com](mailto:johndavies55@rogers.com)  
 Sent: Tuesday, March 19, 2013 3:09 PM  
 To: Raj Singh, President; Bruce Stewart  
 Reply To: [johndavies55@rogers.com](mailto:johndavies55@rogers.com)  
 Subject: Re: Fwd: Fw: Scollard

Raj: Regarding Development Fee. We reduced our fee on this project from 5% to 4%. John  
 Sent from my BlackBerry device on the Rogers Wireless Network

---

From: Raj Singh <[raisingsingh100@gmail.com](mailto:raisingsingh100@gmail.com)>  
 Date: Tue, 19 Mar 2013 13:47:51 -0400  
 To: Bruce Stewart<[bwstewart@rogers.com](mailto:bwstewart@rogers.com)>  
 Cc: John Davies<[johndavies55@rogers.com](mailto:johndavies55@rogers.com)>  
 Subject: Re: Fwd: Fw: Scollard

Bruce:

- 1) What is the estimated size of the construction loan?
- 2) The \$3.2 M development fee is to you & John (The developers)?

/raj

On Tue, Mar 19, 2013 at 1:08 PM, Bruce Stewart <[bwstewart@rogers.com](mailto:bwstewart@rogers.com)> wrote:

Raj,

- 1) The construction loan interest may be slightly understated in an effort to yield the targeted profit you were seeking.
- 2) Given that this building is 3 times the size of Bayview we feel this number is attainable. Bayview will be adjusted downward as we develop the budget I believe.
- 3) Development Fee is a fee to the Developers while Development Charges are those charged by the municipality.
- 4) Development Contingency is a typical 3% and may need to be adjusted upward given the site constraints.

Hope this helps.

Bruce

Bruce Stewart

The Traditions Development Company  
75 Dufflaw Rd. Suite 205  
Toronto, ON M6A 2W4  
Tel: [416.477.7744](tel:416.477.7744) Cell: [416.471.0155](tel:416.471.0155)

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**From:** Raj Singh <[raisingsh100@gmail.com](mailto:raisingsh100@gmail.com)>  
**To:** Bruce Stewart <[bwstewart@rogers.com](mailto:bwstewart@rogers.com)>  
**Sent:** Tuesday, March 19, 2013 9:07:23 AM  
**Subject:** Fwd: Fw: Scollard

Bruce:

A few questions in from some of the equity folks. Please assist me with this. I also have to answer a number of questions for the folks on our team.

- 1) Construction Loan - What Amount and length of time it will be taken for? It is shown as interest charges at \$3M.
- 2) Construction cost @\$190 / sq ft. Everyone seems to think this is low. Any comments. I noticed in John's last email on Bayview he is using a number of \$200 for Bayview, Would Yorkville not be more giving type of facility?
- 3) What is development fee for \$#+M and Development Charges for the \$4M? What is the difference in these 2 line items (maybe best to give a high level of categories).
- 4) Development contingency for such a large project seems quite small at less than \$1M.

There are some other questions but I did not get all of them down. These are some of the bigger questions. Can you please respond and let me know.

thanks

Raj

----- Forwarded message -----

From: <[raisingsh100@gmail.com](mailto:raisingsh100@gmail.com)>

Date: Sat, Mar 16, 2013 at 10:33 AM

Subject: Fw: Scollard

To: Kris Parthiban <[kris.parthiban@tier1advisory.com](mailto:kris.parthiban@tier1advisory.com)>

Proforma.

Confidential.

Kris, we can discuss to do exec summary.

Raj

Sent from my BlackBerry 10 smartphone.

From: [johndavies55@rogers.com](mailto: johndavies55@rogers.com)

Sent: Friday, March 15, 2013 2:25 PM

To: Raj Singh, President

Reply To: [johndavies55@rogers.com](mailto: johndavies55@rogers.com)

Cc: Greg Harris; Bruce Stewart

Subject: Fw: Scollard

Raj: As requested. John

Sent from my BlackBerry device on the Rogers Wireless Network

---

From: Bruce Stewart <[bwstewart@rogers.com](mailto: bwstewart@rogers.com)>

Date: Fri, 15 Mar 2013 11:23:37 -0700 (PDT)

To: John Davies <[johndavies55@rogers.com](mailto: johndavies55@rogers.com)>

ReplyTo: Bruce Stewart <[bwstewart@rogers.com](mailto: bwstewart@rogers.com)>

Subject: Scollard

Here you go.

Bruce Stewart

The Traditions Development Company

75 Dufflaw Rd. Suite 205

Toronto, ON M6A 2W4

Tel: 416.477.7744 Cell: 416.471.0155

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Raj Singh

My LinkedIn Profile:

<http://ca.linkedin.com/in/raislngh100>

--  
Raj Singh

My LinkedIn Profile:

<http://ca.linkedin.com/in/raislngh100>

--  
Raj Singh

My LinkedIn Profile:

<http://ca.linkedin.com/in/raislngh100>

--  
Raj Singh

My LinkedIn Profile:

<http://ca.linkedin.com/in/raislngh100>



# TAB I

**Appendix "I"**

**John Davies**

---

**From:** John Davies <Johndavies55@rogers.com>  
**Sent:** June 17, 2016 1:51 PM  
**To:** 'Raj Singh'; 'Gregory Harris'  
**Subject:** FW: \$2.4 million SMI Increase on Boathaus

Should we get going on these documents?

**From:** John Davies [mailto:Johndavies55@rogers.com]  
**Sent:** June 1, 2016 11:25 AM  
**To:** 'Gregory Harris' <GregHarris@harrisandharris.com>  
**Cc:** 'Raj Singh' <rajsingh100@gmail.com>  
**Subject:** RE: \$2.4 million SMI Increase on Boathaus

Hello Greg:

I met with Raj last week and we discussed the pref. share option and raising equity for the Memory Care facilities per your suggested course of action below. It appears that Raj sees the pref. share opportunity as a better option for Textbook. Raj is looking at the pro-forma information we sent and we'll be getting together to review the various project projections and answer Raj's questions. We'll let you know when we're meeting.

But opposite Memory Care, I'm of the belief that the pref. share option is a longshot for these projects. In that we don't have any other options to fund interest on October 1<sup>st</sup> without the Boathaus \$2.4 million raise, I think we should start the documents and the raise. Boathaus is a good story. Lots of sales. Investors will want this loan. The net \$1.7 million from a \$2.4 million Boathaus raise will fund 6 months of interest on all the projects.

I don't see an alternative and time will soon become a factor given the summer slowdown.

John.

**From:** Gregory Harris [mailto:GregHarris@harrisandharris.com]  
**Sent:** May 24, 2016 10:46 AM  
**To:** John Davies <Johndavies55@rogers.com>  
**Cc:** 'Raj Singh' <rajsingh100@gmail.com>  
**Subject:** RE: \$2.4 million SMI Increase on Boathaus

John:

I think the better alternative is the pref share equity that Raj would work to raise. You don't want to be obtaining financing from Boathaus and then using it to further fund interest payments for other projects.

However, he can't even get this started, unless Walter gets him the information he's been looking for with respect to the pro formas and then discusses the applicable percentage interests that will be granted in the projects.

I've been suggesting this for weeks now, I'm not sure why Walter is not getting in touch with Raj.

there some sort of issue?

Greg

Gregory H. Harris  
 Harris + Harris LLP  
 2355 Skymark Avenue  
 Suite 300  
 Mississauga, Ontario  
 L4W 4Y6  
 Phone 905.629.7800 x 240  
 Fax 905.629.4350  
 Cell 416.460.2507  
 Email [gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)  
 Web [www.harrisandharris.com](http://www.harrisandharris.com)



**HARRIS + HARRIS** LLP  
 ATTORNEYS AND SOLICITORS

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---

**From:** John Davies [<mailto: johndavies55@rogers.com>]  
**Sent:** May-24-16 10:39 AM  
**To:** Gregory Harris  
**Cc:** 'Raj Singh'  
**Subject:** \$2.4 million SMI Increase on Boathaus

Good morning Greg:

Based on my conversation with Micky on Friday, it appears we have arranged financing to cover the next round of interest payments at the end of June. We need a strategy for the end of September interest. I am hoping we can use the Cane \$16 million appraisal to raise a further \$2.4 million of SMI cash. Can you please look at the Tier 1 Boathaus documents and determine whether that's an option? Hopefully there is no impediment because I'm not sure where I can get the next \$900K if this isn't available. Four months will go by fast.

Thanks,

John.

---

**TAB J**

**Appendix “J”**

**DELEGATION AGREEMENT**

THIS AGREEMENT is made as of the 28<sup>th</sup> day of September, 2012

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

**HARRIS + HARRIS LLP**, a law firm limited liability partnership  
established under the laws of the Province of Ontario

(hereinafter referred to as "HH")

**AND**

**NANCY ELLIOTT**, Barrister and Solicitor, a lawyer licensed to  
practice law in the Province of Ontario

(hereinafter referred to as "Elliott")

WHEREAS HH and Elliott act as counsel to Memory Care Investments (Oakville) Ltd, and 2223947 Ontario Limited, respectively, pursuant to a loan agreement dated of even date herewith (the "Loan Agreement").

AND WHEREAS Elliott has arranged with HH that any Interest Reserve (as defined in the Loan Agreement) pursuant to the Loan Agreement shall be retained by HH in the trust account of HH and dealt with and paid out according to the terms of the Loan Agreement and the syndicated mortgage participation agreement (the "SMPA") in connection therewith;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants, agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

1.01 Elliott and HH, pursuant to the provisions of the Loan Agreement, agree that any interest reserve shall be held by HH, in trust and for the benefit of the syndicated mortgage lenders and paid by HH from its trust account in accordance with the terms of the Loan Agreement and SMPA.

1.02 HH agrees and covenants to disburse the Interest Reserve proceeds held by HH to syndicated mortgage lenders from its trust account and shall be entitled to take no deduction therefrom for any fees, charges or costs of HH or any other person.

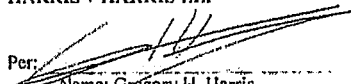
1.03 HH covenants and undertakes to provide to Elliott any information reasonably requested by Elliott to verify that the Interest Reserve proceeds held in trust by HH have been used solely to pay amounts owing to syndicated mortgage lenders on their respective due dates.

1.04 By execution hereof HH and Elliott on behalf of themselves and their respective clients, pursuant to Section 4.05 of the Loan Agreement, hereby agree to the delegation of certain mortgage administration and facilitation responsibilities as provided for herein, and HH hereby accepts such responsibilities with respect to the Interest Reserve and payments to syndicated mortgage investors therefrom; notwithstanding the provisions of the Loan Agreement and SMPA.

- 2 -

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written on the first page hereof.

HARRIS + HARRIS LLP

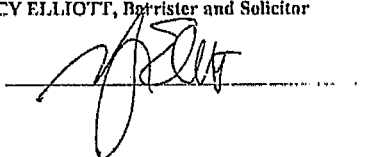
Per: 

Name: Gregory H. Harris

Title: Partner

*I have authority to bind the partnership*

NANCY ELLIOTT, Barrister and Solicitor





**DELEGATION AGREEMENT**

THIS AGREEMENT is made as of the 2<sup>nd</sup> day of January, 2013

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

**HARRIS + HARRIS LLP**, a law firm limited liability partnership  
established under the laws of the Province of Ontario

(hereinafter referred to as "HH")

**AND**

**NANCY ELLIOTT**, Barrister and Solicitor, a lawyer licensed to  
practice law in the Province of Ontario

(hereinafter referred to as "Elliott")

WHEREAS HH and Elliott act as counsel to Legacy Lane Investments Ltd. and 2223947 Ontario Limited, respectively, pursuant to a loan agreement dated of even date herewith (the "Loan Agreement").

AND WHEREAS Elliott has arranged with HH that any Interest Reserve (as defined in the Loan Agreement) pursuant to the Loan Agreement shall be retained by HH in the trust account of HH and dealt with and paid out according to the terms of the Loan Agreement and the syndicated mortgage participation agreement (the "SMPA") in connection therewith;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants, agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

1.01 Elliott and HH, pursuant to the provisions of the Loan Agreement, agree that any interest reserve shall be held by HH, in trust and for the benefit of the syndicated mortgage lenders and paid by HH from its trust account in accordance with the terms of the Loan Agreement and SMPA.

1.02 HH agrees and covenants to disburse the Interest Reserve proceeds held by HH to syndicated mortgage lenders from its trust account and shall be entitled to take no deduction therefrom for any fees, charges or costs of HH or any other person.


1.03 HH covenants and undertakes to provide to Elliott any information reasonably requested by Elliott to verify that the Interest Reserve proceeds held in trust by HH have been used solely to pay amounts owing to syndicated mortgage lenders on their respective due dates.

1.04 By execution hereof HH and Elliott on behalf of themselves and their respective clients, pursuant to Section 4.05 of the Loan Agreement, hereby agree to the delegation of certain mortgage administration and facilitation responsibilities as provided for herein, and HH hereby accepts such responsibilities with respect to the Interest Reserve and payments to syndicated mortgage investors therefrom; notwithstanding the provisions of the Loan Agreement and SMPA.

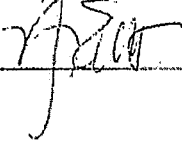
- 2 -

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written on the first page hereof.

HARRIS + HARRIS LLP

Per:   
Name: Gregory H. Harris  
Title: Partner  
*I have authority to bind the partnership*

NANCY ELLIOTT, Barrister and Solicitor

  
\_\_\_\_\_

**DELEGATION AGREEMENT**

THIS AGREEMENT is made as of the 1<sup>st</sup> day of May, 2013

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

**HARRIS + HARRIS LLP**, a law firm limited liability partnership  
established under the laws of the Province of Ontario

(hereinafter referred to as "HH")

**AND**

**NANCY ELLIOTT**, Barrister and Solicitor, a lawyer licensed to  
practice law in the Province of Ontario

(hereinafter referred to as "Elliott")

WHEREAS HH and Elliott act as counsel to 1703858 Ontario Ltd. and 2223947 Ontario Limited, respectively, pursuant to a loan agreement dated of even date herewith (the "Loan Agreement").

AND WHEREAS Elliott has arranged with HH that any Interest Reserve (as defined in the Loan Agreement) pursuant to the Loan Agreement shall be retained by HH in the trust account of HH and dealt with and paid out according to the terms of the Loan Agreement and the syndicated mortgage participation agreement (the "SMPA") in connection therewith;

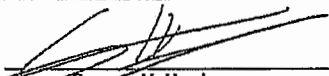
NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants, agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

- 1.01 Elliott and HH, pursuant to the provisions of the Loan Agreement, agree that any interest reserve shall be held by HH, in trust and for the benefit of the syndicated mortgage lenders and paid by HH from its trust account in accordance with the terms of the Loan Agreement and SMPA.
- 1.02 HH agrees and covenants to disburse the Interest Reserve proceeds held by HH to syndicated mortgage lenders from its trust account and shall be entitled to take no deduction therefrom for any fees, charges or costs of HH or any other person.
- 1.03 HH covenants and undertakes to provide to Elliott any information reasonably requested by Elliott to verify that the Interest Reserve proceeds held in trust by HH have been used solely to pay amounts owing to syndicated mortgage lenders on their respective due dates.
- 1.04 By execution hereof HH and Elliott on behalf of themselves and their respective clients, pursuant to Section 4.05 of the Loan Agreement, hereby agree to the delegation of certain mortgage administration and facilitation responsibilities as provided for herein, and HH hereby accepts such responsibilities with respect to the Interest Reserve and payments to syndicated mortgage investors therefrom; notwithstanding the provisions of the Loan Agreement and SMPA.

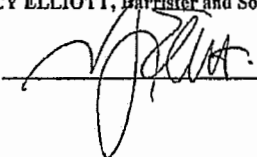
- 2 -

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written on the first page hereof.

**HARRIS + HARRIS LLP**

Per:   
Name: Gregory H. Harris  
Title: Partner  
*I have authority to bind the partnership*

**NANCY ELLIOTT, ~~Barrister~~ and Solicitor**



**DELEGATION AGREEMENT**

THIS AGREEMENT is made as of the 1<sup>st</sup> day of October, 2013

**BETWEEN:**

**HARRIS + HARRIS LLP**, a law firm limited liability partnership  
established under the laws of the Province of Ontario

(hereinafter referred to as "HH")

**AND**

**NANCY ELLIOTT**, Barrister and Solicitor, a lawyer licensed to  
practice law in the Province of Ontario

(hereinafter referred to as "Elliott")

WHEREAS HH and Elliott act as counsel to Memory Care Investments (Kitchener) Ltd. and MC Trustee (Kitchener) Ltd., respectively, pursuant to a loan agreement dated of even date herewith (the "Loan Agreement").

AND WHEREAS Elliott has arranged with HH that any Interest Reserve (as defined in the Loan Agreement) pursuant to the Loan Agreement shall be retained by HH in the trust account of HH and dealt with and paid out according to the terms of the Loan Agreement and the syndicated mortgage participation agreement (the "SMPA") in connection therewith:

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants, agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

1.01 Elliott and HH, pursuant to the provisions of the Loan Agreement, agree that any interest reserve shall be held by HH, in trust and for the benefit of the syndicated mortgage lenders and paid by HH from its trust account in accordance with the terms of the Loan Agreement and SMPA.

1.02 HH agrees and covenants to disburse the Interest Reserve proceeds held by HH to syndicated mortgage lenders from its trust account and shall be entitled to take no deduction therefrom for any fees, charges or costs of HH or any other person.

1.03 HH covenants and undertakes to provide to Elliott any information reasonably requested by Elliott to verify that the Interest Reserve proceeds held in trust by HH have been used solely to pay amounts owing to syndicated mortgage lenders on their respective due dates.

1.04 By execution hereof HH and Elliott on behalf of themselves and their respective clients, pursuant to Section 4.05 of the Loan Agreement, hereby agree to the delegation of certain mortgage administration and facilitation responsibilities as provided for herein, and HH hereby accepts such responsibilities with respect to the Interest Reserve and payments to syndicated mortgage investors therefrom; notwithstanding the provisions of the Loan Agreement and SMPA.

- 2 -

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written on the first page hereof.

HARRIS + HARRIS LLP

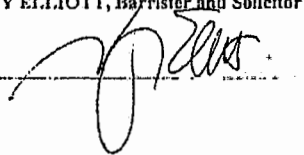
Per: 

Name: Gregory H. Harris

Title: Partner

*I have authority to bind the partnership*

NANCY ELLIOTT, Barrister and Solicitor



**DELEGATION AGREEMENT**

THIS AGREEMENT is made as of the 17<sup>th</sup> day of April, 2015

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

**HARRIS + HARRIS LLP**, a law firm limited liability partnership  
established under the laws of the Province of Ontario

(hereinafter referred to as "HH")

**AND**

**NANCY ELLIOTT**, Barrister and Solicitor, a lawyer licensed to  
practice law in the Province of Ontario

(hereinafter referred to as "Elliott")

WHEREAS HH and Elliott act as counsel to Textbook (555 Princess Street) Inc. and Textbook Student Suites (555 Princess Street) Trustee Corporation, respectively, pursuant to a loan agreement dated of even date herewith (the "Loan Agreement").

AND WHEREAS Elliott has arranged with HH that any Interest Reserve (as defined in the Loan Agreement) pursuant to the Loan Agreement shall be retained by HH in the trust account of HH and dealt with and paid out according to the terms of the Loan Agreement and the syndicated mortgage participation agreement (the "SMPA") in connection therewith;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants, agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

1.01 Elliott and HH, pursuant to the provisions of the Loan Agreement, agree that any interest reserve shall be held by HH, in trust and for the benefit of the syndicated mortgage lenders and paid by HH from its trust account in accordance with the terms of the Loan Agreement and SMPA.

1.02 HH agrees and covenants to disburse the Interest Reserve proceeds held by HH to syndicated mortgage lenders from its trust account and shall be entitled to take no deduction therefrom for any fees, charges or costs of HH or any other person.

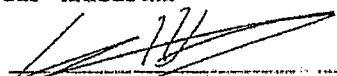
1.03 HH covenants and undertakes to provide to Elliott any information reasonably requested by Elliott to verify that the Interest Reserve proceeds held in trust by HH have been used solely to pay amounts owing to syndicated mortgage lenders on their respective due dates.

1.04 By execution hereof HH and Elliott on behalf of themselves and their respective clients, pursuant to Section 4.05 of the Loan Agreement, hereby agree to the delegation of certain mortgage administration and facilitation responsibilities as provided for herein, and HH hereby accepts such responsibilities with respect to the Interest Reserve and payments to syndicated mortgage investors therefrom; notwithstanding the provisions of the Loan Agreement and SMPA.

- 2 -

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written on the first page hereof.

HARRIS + HARRIS LLP

Per:   
Name: Gregory H. Harris  
Title: Partner  
*I have authority to bind the partnership*

NANCY ELLIOTT, Barrister and Solicitor





**DELEGATION AGREEMENT**

THIS AGREEMENT is made as of the 5<sup>th</sup> day of October, 2015

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

**HARRIS + HARRIS LLP**, a law firm limited liability partnership  
established under the laws of the Province of Ontario

(hereinafter referred to as "HH")

**AND**

**NANCY ELLIOTT, Barrister and Solicitor**, a lawyer licensed to  
practice law in the Province of Ontario

(hereinafter referred to as "Elliott")

WHEREAS HH and Elliott act as counsel to Textbook (525 Princess Street) Inc. and Textbook Student Suites (525 Princess Street) Trustee Corporation, respectively, pursuant to a loan agreement dated of even date herewith (the "Loan Agreement").

AND WHEREAS Elliott has arranged with HH that any Interest Reserve (as defined in the Loan Agreement) pursuant to the Loan Agreement shall be retained by HH in the trust account of HH and dealt with and paid out according to the terms of the Loan Agreement and the syndicated mortgage participation agreement (the "SMPA") in connection therewith;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants, agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

1.01 Elliott and HH, pursuant to the provisions of the Loan Agreement, agree that any interest reserve shall be held by HH, in trust and for the benefit of the syndicated mortgage lenders and paid by HH from its trust account in accordance with the terms of the Loan Agreement and SMPA.

1.02 HH agrees and covenants to disburse the Interest Reserve proceeds held by HH to syndicated mortgage lenders from its trust account and shall be entitled to take no deduction therefrom for any fees, charges or costs of HH or any other person.

1.03 HH covenants and undertakes to provide to Elliott any information reasonably requested by Elliott to verify that the Interest Reserve proceeds held in trust by HH have been used solely to pay amounts owing to syndicated mortgage lenders on their respective due dates.

1.04 By execution hereof HH and Elliott on behalf of themselves and their respective clients, pursuant to Section 4.05 of the Loan Agreement, hereby agree to the delegation of certain mortgage administration and facilitation responsibilities as provided for herein, and HH hereby accepts such responsibilities with respect to the Interest Reserve and payments to syndicated mortgage investors therefrom; notwithstanding the provisions of the Loan Agreement and SMPA.

- 2 -

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written on the first page hereof.

HARRIS + HARRIS LLP

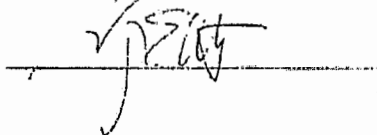
Per: 

Name: Gregory H. Harris

Title: Partner

*I have authority to bind the partnership*

NANCY ELLIOTT, Barrister and Solicitor



**DELEGATION AGREEMENT**

THIS AGREEMENT is made as of the 8<sup>th</sup> day of April, 2014

BETWEEN:

HARRIS + HARRIS LLP, a law firm limited liability partnership  
established under the laws of the Province of Ontario

(hereinafter referred to as "HH")

AND

NANCY ELLIOTT, Barrister and Solicitor, a lawyer licensed to  
practice law in the Province of Ontario

(hereinafter referred to as "Elliott")

WHEREAS HH and Elliott act as counsel to Scollard Development Corporation and Scollard Trustee Corporation, respectively, pursuant to a loan agreement dated of even date herewith (the "Loan Agreement").

AND WHEREAS Elliott has arranged with HH that any Interest Reserve (as defined in the Loan Agreement) pursuant to the Loan Agreement shall be retained by HH in the trust account of HH and dealt with and paid out according to the terms of the Loan Agreement and the syndicated mortgage participation agreement (the "SMPA") in connection therewith;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants, agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

1.01 Elliott and HH, pursuant to the provisions of the Loan Agreement, agree that any interest reserve shall be held by HH, in trust and for the benefit of the syndicated mortgage lenders and paid by HH from its trust account in accordance with the terms of the Loan Agreement and SMPA.

1.02 HH agrees and covenants to disburse the Interest Reserve proceeds held by HH to syndicated mortgage lenders from its trust account and shall be entitled to take no deduction therefrom for any fees, charges or costs of HH or any other person.

1.03 HH covenants and undertakes to provide to Elliott any information reasonably requested by Elliott to verify that the Interest Reserve proceeds held in trust by HH have been used solely to pay amounts owing to syndicated mortgage lenders on their respective due dates.

1.04 By execution hereof HH and Elliott on behalf of themselves and their respective clients, pursuant to Section 4.05 of the Loan Agreement, hereby agree to the delegation of certain mortgage administration and facilitation responsibilities as provided for herein, and HH hereby accepts such responsibilities with respect to the Interest Reserve and payments to syndicated mortgage investors therefrom; notwithstanding the provisions of the Loan Agreement and SMPA.

- 2 -

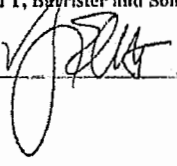
IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written on the first page hereof.

HARRIS + HARRIS LLP

Per: 

Name: Gregory H. Harris  
Title: Partner

*I have authority to bind the partnership*

NANCY ELLIOTT, *By*  *Attorney and Solicitor*

**TAB K**

**Appendix “K”**

From: Gregory Harris [mailto:GregHarris@harrisandharris.com]  
Sent: October-15-13 2:58 PM  
To: John Davies <JohnDavies55@rogers.com>; Peter Matukas <PeterMatukas@harrisandharris.com>  
Cc: 'Bruce W Stewart' <bwstewart@rogers.com>; Nicole Cristiano <NicoleCristiano@harrisandharris.com>  
Subject: RE: Postponement of McMurray Street Investments Inc. first mortgage to B2B Bank - Our File No. 12882

John:

It is important that you are aware (which I'm sure you are), that if the McMurray investors do not receive their interest when due, it becomes an Event of Default requiring McMurray to notify each investor as to the Default and it triggers a whole host of remedies that become available to the investors.

Peter can advise as to on what date the investors are to receive their interest. In my discussions with Raj, he advises he's going to need at least two to three weeks to get all the investors signed up (assuming they're even accessible); the construction financing is going to be delayed at least that long.

I think that notwithstanding you have people clamoring for payables, it makes more sense to have the funds available for payment, at least partially (on a pro rata basis to investors). The negative goodwill that will be associated with investors not receiving their interest and receiving an Event of Default notice could be dramatic, especially since many of these investors (and possibly more importantly, their agents) are in other transactions or might be solicited for other transactions. I suspect Kitchener will be a complete "no go" once it becomes known that McMurray has defaulted -- as well as any further fundings through Tier 1.

Greg

Gregory H. Harris  
Harris + Harris LLP  
2355 Skymark Avenue  
Suite 300  
Mississauga, Ontario  
L4W 4Y6  
Phone 905.629.7600 x 240  
75.629.4350  
16.460.2607  
Email [gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)  
Web [www.harrisandharris.com](http://www.harrisandharris.com)



HARRIS + HARRIS  
BARRISTERS AND SOLICITORS

*This e-mail (and its attachments) is privileged and may contain confidential information intended only for the person(s) named above. If you receive this e-mail in error, please notify the addressee immediately by e-mail, phone or fax and permanently delete the e-mail and any attachments.*

From: John Davies [mailto: johndavles55@rogers.com]  
 Sent: Tuesday, October 15, 2013 2:32 PM  
 To: Peter Matukas  
 Cc: Gregory Harris; 'Bruce W Stewart'  
 Subject: RE: Postponement of McMurray Street Investments Inc. first mortgage to B2B Bank - Our File No. 12882

Hey Peter:

It appears, based on Greg's last e-mail that we're going to be delayed getting this loan closed. I realize that the McMurray investors are expecting their interest cheques today, but it doesn't look like that is going to happen because the B2B mortgage clerk charged with this is fundamentally obtuse.

We have payables that can't wait, so I'm going to use the Memory Care Investments Ltd. refund from the Victoria deal for those and fulfill the interest obligations to the McMurray investors once this financing closes, hopefully later this week.

Can I trouble you to leave me the refund cheque at reception, please. I'll swing by and pick it up later.

Thanks,

John.

From: Peter Matukas [mailto: PeterMatukas@harrisandharris.com]  
 Sent: October 15, 2013 2:09 PM  
 To: Gregory Harris; John Davies; raisingh100@gmail.com  
 Cc: Nicole Cristiano; 'Bruce W Stewart'  
 Subject: RE: Postponement of McMurray Street Investments Inc. first mortgage to B2B Bank - Our File No. 12882

Greg,

There were 26 B2B investors and 2 Olympia Trust investors – please note that these were the RRSP investors only.

Peter

Peter V. Matukas  
 Harris + Harris LLP  
 Barristers and Solicitors  
 2355 Skymark Avenue, Suite 300  
 Mississauga, Ontario L4W 4Y6  
 t No. 905.629.7800  
 x No. 905.629.4350  
 Email: [petermatukas@harrisandharris.com](mailto:petermatukas@harrisandharris.com)  
[www.harrisandharris.com](http://www.harrisandharris.com)





**HARRIS + HARRIS LLP**  
BARRISTERS AND SOLICITORS

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---

**From:** Gregory Harris  
**Sent:** Tuesday, October 15, 2013 1:37 PM  
**To:** John Davies; [raisingsh100@gmail.com](mailto:raisingsh100@gmail.com)  
**Cc:** Nicole Cristiano; 'Bruce W Stewart'; Peter Matukas  
**Subject:** RE: Postponement of McMurray Street Investments Inc. first mortgage to B2B Bank - Our File No. 12882

John:

I don't recall, probably about 30 or 40 (only two of the investors were Olympa clients).

Peter:

Can you let us know how many B2B investors there were.

Greg

Gregory H. Harris  
 Harris + Harris LLP  
 2355 Skymark Avenue  
 Suite 300  
 Mississauga, Ontario  
 L4W 4Y6  
 Phone 905.629.7800 x 240  
 Fax 905.629.4350  
 Cell 416.460.2507  
 Email [gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)  
 Web [www.harrisandharris.com](http://www.harrisandharris.com)



**HARRIS + HARRIS LLP**  
BARRISTERS AND SOLICITORS

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---

**From:** John Davies [<mailto:johndavies55@rogers.com>]  
**Sent:** Tuesday, October 15, 2013 1:33 PM  
**To:** Gregory Harris; [raisingsh100@gmail.com](mailto:raisingsh100@gmail.com)

Cc: Nicole Cristiano; 'Bruce W Stewart'

Subject: RE: Postponement of McMurray Street Investments Inc. first mortgage to B2B Bank - Our File No. 12882

How many B2B Investors are there?

From: Gregory Harris (<mailto:GregHarris@harrisandharris.com>)

Sent: October 15, 2013 1:14 PM

To: [raislngh100@gmail.com](mailto:raislngh100@gmail.com)

Cc: John Davies; Nicole Cristiano

Subject: FW: Postponement of McMurray Street Investments Inc. first mortgage to B2B Bank - Our File No. 12882

Raj:

The email string below shows some of the emails between H+H and B2B. I've also had a number of phone discussions with Elizabeth.

It would appear that we're going to have to get all of the B2B Investors to acknowledge the postponement for the \$500,000 advance.

We'll need to get each and every one - I'm not sure how long this will take, but hopefully it can be completed in relatively short order.

Elizabeth refers to original copies, I'm going to see if at least they'll take fax/electronic copies. I will also try to see if we can amend the document such that we'd only have to have it signed once and not for every advance thereafter.

Our only other alternative would be to move all the clients from B2B to Olympia; however this probably only makes sense after we've dealt with this issue; since transfers would take many weeks to get completed and would also require payment of closing/transfer fees to B2B.

I'm still going to try for the balance of today to convince B2B that they don't need postponements for each and every advance; but giving the time it will take to get the B2B investors to sign the postponements, we don't have too much time to waste.

Greg

Gregory H. Harris  
Harris + Harris LLP  
2355 Skymark Avenue  
Suite 300  
Mississauga, Ontario  
L4V 4Y6  
Phone 905.629.7800 x 240  
Fax 905.629.4350  
Cell 416.460.2507  
Email [gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)  
Web [www.harrisandharris.com](http://www.harrisandharris.com)



**HARRIS + HARRIS**  
REALTORS AND BROKERS

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---

**From:** Gregory Harris  
**Sent:** Tuesday, October 15, 2013 12:22 PM  
**To:** 'Andaya Elizabeth'; Candace Tashos  
**Cc:** Maria Da Silva  
**Subject:** RE: Postponement of McMurray Street Investments Inc. first mortgage to B2B Bank - Our File No. 12882

Elizabeth:

B2B had already approved the form of Memorandum of Understanding and this is why we used it with every investor advance.

It does not make sense that we're now going back to investors and asking them to confirm/acknowledge the postponement/subordination that they had already agreed to previously. The investors are going to be upset at having to acknowledge again what they had already agreed to.

On the conference call we never discussed the postponement issue as requiring a second approval by all investors. The letter and conference call were referring to future documents that might be required that had not previously been contemplated.

Are you seriously suggesting that every time the borrower gets a construction advance of any amount they have to go back to all of the investors and ask for a postponement each time – the investors have agreed to postpone and subordinate to all construction financing; it doesn't make sense asking them to yet again postpone in each and every case from now on.

Please provide me with the phone contact information for Renata or whatever manager or senior officer I can speak with at B2B about this matter.

Greg

Gregory H. Harris  
 Harris + Harris LLP  
 2355 Skymark Avenue  
 Suite 300  
 Mississauga, Ontario  
 L4Y6  
 Phone 905.629.7800 x 240  
 Fax 905.629.4350

Cell 416.460.2507  
 Email [gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)  
 Web [www.harrisandharris.com](http://www.harrisandharris.com)



**HARRIS + HARRIS** LLP  
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**From:** Andaya Elizabeth [<mailto:Elizabeth.Andaya@b2bbank.com>]  
**Sent:** Tuesday, October 15, 2013 12:09 PM  
**To:** Gregory Harris; Candace Tashos  
**Cc:** Maria Da Silva  
**Subject:** RE: Postponement of McMurray Street Investments Inc. first mortgage to B2B Bank - Our File No. 12882

Hi Mr. Harris,

Our letter of June 2011 and the conference call by Renata Dzuba with you and Mr. Singh, clearly indicates that we will only consider the B2B Trust/B2B Bank forms for any transaction(s) that may transpire on McMurray Street Investments. I am therefore attaching a copy of the Postponement for completion and signature of the B2B Trust Investors.

Based on the information above, B2B Trust/B2B Bank is not in a position to execute the Postponement document until such time that we are in receipt of the original signed copy of the Direction and Indemnity for execution of Postponement.

Regards,

Elizabeth Andaya  
 Administration Coordinator, Self-Directed Mortgages  
 777 Bay Street, Suite #2100  
 Toronto, Ontario M5G 2N4  
 Phone: 416.865.5632  
 Fax: 416-941-7709 or 1-866-941-7711  
 E-mail: [elizabeth.andaya@b2bbank.com](mailto:elizabeth.andaya@b2bbank.com)

---

**From:** Gregory Harris [<mailto:GregHarris@harrisandharris.com>]  
**Sent:** Tuesday, October 15, 2013 11:12 AM  
**To:** Andaya Elizabeth; Candace Tashos  
**Cc:** Maria Da Silva  
**Subject:** RE: Postponement of McMurray Street Investments Inc. first mortgage to B2B Bank - Our File No. 12882

Elizabeth:

I'm still waiting to hear from you or someone else at B2B about this.

There is a construction funding advance of \$500,000 pending and we need to get this resolved.

Greg

Gregory H. Harris  
 Harris + Harris LLP  
 55 Skymark Avenue  
 Suite 300  
 Mississauga, Ontario  
 L4W 4Y6  
 Phone 905.629.7800 x 240  
 Fax 905.629.4350  
 Cell 416.460.2507  
 Email [gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)  
 Web [www.harrisandharris.com](http://www.harrisandharris.com)



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**From:** Gregory Harris  
**Sent:** Friday, October 11, 2013 3:37 PM  
**To:** 'Andaya Elizabeth'; Candace Tashos  
**Cc:** Maria Da Silva  
**Subject:** RE: Postponement of McMurray Street Investments Inc. first mortgage to B2B Bank - Our File No. 12882

Andaya:

The investors, by executing the Memorandum of Understanding that was originally signed by all of them, already granted their permission to postponements for construction financing. If we were to have to do this every time there was a construction financing advance it would not have made sense to have that document in the first place.

The Memorandum of Understanding was prepared in accordance with my discussions with your senior management at B2B. A copy of the Memorandum of Understanding was delivered to you and Janet with each investor closing package.

If you never had the agreement of the clients to the postponement originally then I could see B2B requiring a new postponement agreement now; but each and every one of the clients already agreed to postpone to construction financing.

In syndicated mortgage transactions, it is just too cumbersome to get every investor to sign a postponement for every financing – that's why we solve the construction financing postponement matter in advance, as we did with the Memorandum of Understanding.

This is going to take far too long to track down each client for a signature – especially when they already agreed to the postponement in the first place.

Please let me know if there is someone else I have to speak to at B2B about this.

Greg

Gregory H. Harris  
 Harris + Harris LLP  
 2355 Skymark Avenue  
 Suite 300  
 Mississauga, Ontario  
 L4W 4Y6  
 Phone 905.629.7800 x 240  
 Fax 905.629.4350  
 Cell 416.460.2607  
 Email [gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com)  
 Web [www.harrisandharris.com](http://www.harrisandharris.com)



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---

**From:** Andaya Elizabeth [<mailto:Elizabeth.Andaya@b2bbank.com>]  
**Sent:** Friday, October 11, 2013 2:58 PM  
**To:** Candace Tashos  
**Cc:** Gregory Harris; Marla Da Silva  
**Subject:** RE: Postponement of McMurray Street Investments Inc. first mortgage to B2B Bank - Our File No. 12882

Hi Candace,

I did receive your e-mail and sorry for the delay of my response.

We refer to the letter addressed to Mr. Harris dated June 11, 2012 in which a copy was also sent to Mr. Raj Singh, the president of Tier 1. The letter refers to, "Only B2B Trust forms and documentation as specified in our "B2B Trust Arms-Length Mortgage" package will be considered. The agreements are only between our client, "the lender or mortgagor", B2B Trust as Bare Trustee and McMurray Street Investment Inc., as "the mortgagee".

Enclosed is the Indemnity for Postponement that we require each investor to complete and signed. The original signed copy must be submitted to us before we can execute the Postponement Agreement. Note that I have briefly mentioned the form to Mr. Harris when we had a telephone conversation on October 8th.

Upon receipt of the original signed copy of the above form, we will be in a position to execute the Postponement Agreement.

Regards,

Elizabeth Andaya  
 Administration Coordinator, Self-Directed Mortgages  
 777 Bay Street, Suite #2100  
 Toronto, Ontario M5G 2N4  
 Phone: 416.865.5632  
 Fax: 416-941-7709 or 1-866-941-7711  
 Email: [elizabeth.andaya@b2bbank.com](mailto:elizabeth.andaya@b2bbank.com)

**From:** Candace Tashos [<mailto:candacetashos@harrisandharris.com>]  
**Sent:** Friday, October 11, 2013 8:28 AM  
**To:** Andaya Elizabeth  
**Cc:** Gregory Harris; Maria Da Silva  
**Subject:** RE: Postponement of McMurray Street Investments Inc. first mortgage to B2B Bank - Our File No. 12882

Good morning Elizabeth,

I am just following up to confirm that you received my email from yesterday where I enclosed documents for review and execution in relation to the above-noted transaction.

As our construction financing is set to close today or Tuesday, please confirm when you anticipate we can expect to receive a signed copy of the Acknowledgment and Direction from you?

Thank you,

Candace Tashos  
Harris + Harris LLP  
Barristers and Solicitors  
2355 Skymark Avenue, Suite 300  
Mississauga, Ontario L4W 4Y6  
Tel No. (905) 629-7800 ext. 227  
Fax No. (905) 629-4350  
Email: [candacetashos@harrisandharris.com](mailto:candacetashos@harrisandharris.com)  
[www.harrisandharris.com](http://www.harrisandharris.com)



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**From:** Candace Tashos  
**Sent:** October-10-13 9:14 AM  
**To:** 'elizabeth.andaya@b2bbank.com'  
**Cc:** Gregory Harris; Maria Da Silva  
**Subject:** Postponement of McMurray Street Investments Inc. first mortgage to B2B Bank - Our File No. 12882  
**Importance:** High

Good morning Elizabeth,

Further to your conversation with Greg Harris of our office, please find attached the following documents in relation to the Postponement of the above-noted mortgage for your review and approval:

1. Officer's Certificate of McMurray Street Investments Inc.;
2. Draft Postponement of Interest; and
3. Acknowledgement and Direction re electronic documents.

Kindly review the attached, and subject to your approval, please arrange to have the Acknowledgement and Direction signed on behalf of B2B Bank and return same to me by email at your earliest convenience.

Please note that our construction financing transaction is set to close late this week or early next week so your prompt attention and cooperation is greatly appreciated so we may close without delay.

Should you have any questions or concerns in this regard, please feel free to contact myself or Greg Harris.

Sincerely,

Candace Tashos  
Harris + Harris LLP  
Barristers and Solicitors  
2355 Skymark Avenue, Suite 300  
Mississauga, Ontario L4W 4Y6  
Tel No. (905) 629-7800 ext. 227  
Fax No. (905) 629-4350  
Email: [candacetashos@harrisandharris.com](mailto:candacetashos@harrisandharris.com)  
[www.harrisandharris.com](http://www.harrisandharris.com)



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John Davies

---

**From:** John Davies <Johndavies55@rogers.com>  
**Sent:** March 27, 2014 12:39 PM  
**To:** 'Raj Singh, B.Sc., MBA, CEO'  
**Cc:** 'Gregory Harris'  
**Subject:** McMurray and Whitby Raises.

Hey Raj:

As you know, you'll be starting an aggressive sales campaign to raise \$13 million to fund the Whitby \$9 million land purchase in July, as per our agreement with the vendor.

The \$13 million raise will net us the \$9 million purchase price of the land and nothing else. Over the next 4 months, starting in late month, we are going to spend about \$1.5 million getting Whitby to market. (Use your costs to date on Gullwood and replicate those for Whitby). We already have architect and P+B Whitby invoices for over \$100,000. If we want to have a sales trailer on site this summer we'll be spending a considerable amount of cash (including the land deposit of between \$250,000 - \$500,000) very quickly. Call it \$2 million. In addition, we're racing forward on the 3 Memory Care projects and Huntsville. We do not have cash resources to fund Whitby (\$2 million) and all of our other commitments.

We have an \$8.4 million CanE appraisal on McMurray already. If you can raise \$5.0 million for McMurray, we'll net \$3.5 million, or so from that. We'll repay Pillar's \$1.5 million, get back most of the 2 years of interest we paid Pillar upfront and net around \$1.9 million to fund Whitby and other commitments.

I've mentioned McMurray a couple of times recently and I wanted to bring to your attention that without receiving both Oakville and McMurray raises, we can't afford to fund the \$1.5 million (plus the land deposit) to take Whitby forward over the next 4 months. Like Scollard last year, now that we're incurring huge interest costs because of the \$13 million raise, we need new funding. Raising McMurray AFTER Whitby doesn't help us. We need the McMurray raise proceeds as soon as you can get them.

See you at 3:30 this afternoon.

John.

John Davies

---

From: John Davies <Johndavies55@rogers.com>  
 Sent: June 2, 2014 8:24 PM  
 To: 'rajsingh100@gmail.com'  
 Cc: 'Gregory Harris'  
 Subject: Tranche 1 Whitby

Raj:

Was I correct in hearing the 1<sup>st</sup> Tranche in Whitby for a Labour Day closing is \$11.5 million? If that's the case, we have a problem.

After deduction of T1 fees, interest etc. we'll net \$8.1 million. That means we don't get our \$1 million Whitby deposit returned out of that end of the 1<sup>st</sup> advance, nor any of the costs we've already disbursed on Whitby, let alone all of the costs we're about to incur. We MUST take advantage of this summer selling season and the favourable zoning we have in place, so slowing this down isn't a good solution.

Here is why:

I have spent approximately \$250,000 on Whitby so far. The sales centre, model, sales materials, TV's and renderings are scheduled to cost another \$500,000. This will be spent by early July. Architects, P+B, landscape architect, Civil Engineering etc. will cost \$250,000 by July. Rental of the sales centre property, building of the sales centre parking lot, entry stairs etc. will cost \$150,000. P+B estimates the full marketing budget at \$890,000.

If we sell 70 condo suites this summer to investors (as we've set out in our pro-forma) we'll owe \$250,000 in commissions.

All-in, this summer, we'll spend say, \$1.5 million on Whitby alone.

We're receiving \$1.9 million from the Oakville raise.

We have several hundred thousand dollars of interest payments (for various projects) to fund between now and end of the summer. We need to pay our office and staffing expenses and I need to re-launch McMurray, launch Huntsville and pay the Memory Care consultants for the technical and construction drawings necessary to get started on construction in August / September and October. I have fixed fee contracts from the Architect and Engineers of \$150,000 per project plus disbursements. Call Memory Care design and construction drawings \$500,000 by September. Call the other projects \$200,000.

*So, in total, we'll need \$1.6 million for Whitby. We need \$500,000 for the 3 Memory Care projects. We'll need \$250,000 for interest on various projects, plus \$200,000 for McMurray and Huntsville and another \$200,000 for office expenses and outside consultants. Add \$150,000 for the Oakville settlement with our neighbour. All in, we'll require approximately \$3 million between now and the end of September.*

We need the \$800,000 we discussed for Bracebridge asap.

I do not want to put Whitby on a slow boat to China because the market is hot and I think we can hit this out of the park by driving it forward right away. If we lose the summer we'll be sitting in limbo all winter.

Would you consider not raising the 2<sup>nd</sup> tranche in Whitby? I'll get a Cane "development" appraisal for say, \$15.6 million. With \$11.6 million of Tier 1 cash registered against the Whitby project, we'll have room to fund a further \$4 million of 1<sup>st</sup> mortgage construction debt in front of it. I can easily raise that amount and we'll have the receipts and invoices from sales centre construction, architects and engineers to justify the \$4 million of Construction funding if OT wants to see it. We'll have a 4<sup>th</sup> Memory Care site by September and your guys can start that raise and the Memory Care Construction financing earlier by wrapping Whitby up after 1 tranche.

The 1<sup>st</sup> Tranche is a huge raise all on its own. I will be dead in the water if I have to wait until November to get repaid the \$1.6 million we're spending on Whitby. Memory Care will grind to a full stop without the funds this summer to pay for the Construction documents and arrange our building permits. We'll be out of business with no new cash until November.

*It's really the only thing way I can see to fund all our commitments by end of summer.*

John.

John Davies

---

**From:** John Davies <JohnDavies55@rogers.com>  
**Sent:** July 29, 2014 3:56 PM  
**To:** 'Raj Singh'  
**Cc:** 'dlanna@memorycare.ca'  
**Subject:** Memory Care and other Payables

Hey Raj:

I'm following up on our status opposite funding. We touched on this briefly yesterday when we discussed the status of the \$3.5 million investor for Boathaus.

Dianna advised me today that we have approximately \$545,000 in current payables. Roughly divided equally between the three Memory Care projects and Boathaus. To date we have spent approximately \$1.5 million on Boathaus. Another \$150,000 current (30 days) and a further \$250,000 in August related to consultants, sales trailer rental and interior fit-out, sales trailer site prep., and Boathaus marketing brochures. All due on or before September 1<sup>st</sup>.

In addition to the \$545,000 (current) and the \$250,000 in August payables listed above, we have Tier 1 interest payments due in mid-September.

We'll either need Tier 1 to raise the full \$13.6 million for the September Boathaus closing (in order for us to net \$1.6 million) or we'll need the \$3.5 million equity investor contribution.

Without a repayment of the almost \$2 million we have out of pocket (and owing) on Boathaus, we won't be able to meet any ongoing commitments after September 1<sup>st</sup>.

FYI.

John.

From: John Davies [mailto: johndavies55@rogers.com]  
 Sent: August 25, 2014 4:27 PM  
 To: 'Raj Singh' <rajsingh100@gmail.com>  
 Cc: 'Peter Matukas, LL.B., Associate' <petermatukas@harrisandharris.com>; 'Chris Giamou, CMA' <chris@memorycare.ca>; 'Gregory H. Harris, LL.B., Partner' <gregharris@harrisandharris.com>; 'Brenda Schultz' <BrendaSchultz@harrisandharris.com>; 'Dianna Cassidy, Operations Manager' <dianna@memorycare.ca>  
 Subject: RE: Documents from Tier 1 (12968)

All:

Not to split hairs but the original closing date was August 18<sup>th</sup> I believe. We negotiated a closing extension to September 15<sup>th</sup>. Someone needs to impress upon someone at OT in the strongest possible terms that we need the full \$13.6 million on September 15<sup>th</sup>. It's a major issue (for all of us) if there isn't sufficient capital to repay the \$1.6 million Memory Care has invested. Raj, please do whatever you can.

J, we acknowledge the great job done by Tier 1 on this large raise but we've been working every day advancing this project with a full team of consultants since our first project management meeting on April 2<sup>nd</sup>. In order to meet our sales opening deadline of mid-September and capitalize on the Fall selling season we need to pay our consultants, some of whom have already stopped working. We don't want to come this far and delay opening the sales centre until the dead of winter when the market is so hot now.

Greg / Peter, is there anything that can be done to ensure these transfers are completed on time in order to permit the full funding on September 15th?

John.

From: Raj Singh [mailto:rajsingh100@gmail.com]  
 Sent: August 25, 2014 3:39 PM  
 To: John Davies  
 Cc: Peter Matukas, LL.B., Associate; Chris Giamou, CMA; Gregory H. Harris, LL.B., Partner; Brenda Schultz; Dianna Cassidy, Operations Manager  
 Subject: Re: Documents from Tier 1 (12968)

John:

We have raised the full \$13.6 million as indicated and that is totally accurate.

We are waiting on transfers from OT. As you know, and I have always indicated this to everyone, I have no control over when the funds get transferred into OT by relinquishing institutions.

I can predict but cant control the transfers. I am hopeful that it will all be in but cannot under any circumstances tell you for sure that it will be in.

The \$13.6M was a large raise which started 5 weeks late from the date we expected to commence to be able to close on March 15th. Given when we started and the fact that we got it done (i.e. sold) was an incredible challenge.

/raj

Raj Singh  
CEO  
Tier1 Advisory

My LinkedIn Profile:

<http://ca.linkedin.com/in/raisingh100>

On Mon, Aug 25, 2014 at 2:31 PM, <[johndavies55@rogers.com](mailto: johndavies55@rogers.com)> wrote:

Raj;

You said 10 days ago the full \$13.6 had been raised?

A \$12 million advance closes the land but doesn't give Memory Care one dollar of the \$1.6 million we have spent to date on Boathaus. We have a further \$350,000 of payables plus payroll and the sales centre is being erected on the 21st of September with \$50K owing on that day.

We are completely tapped out of cash and we were expecting a \$13.6 million close on the 15th.

There are around \$300,000 of interest payments due October 1st on a number of projects and the money to fund that was coming out of the \$13.6 raise. Peter wants that money out of the closing funds on the 15th so he can distribute it on time.

We have zero flexibility on this, Raj.

We have spent or incurred nearly \$2 million in land deposits, consultants fees, municipal applications, sales

centre costs, marketing etc on Boathaus since we green lighted this project back in March and we MUST get it back on the 15th of September.

John.

We have no flexibility whatsoever. We have to close the full \$13.6 million on the 15th or we're seriously fucked.

Sent from my BlackBerry device on the Rogers Wireless Network

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From: Raj Singh <[rajsingh100@gmail.com](mailto:rajsingh100@gmail.com)>  
 Date: Mon, 25 Aug 2014 14:09:22 -0400  
 To: John Davies <[johndavies55@rogers.com](mailto: johndavies55@rogers.com)>  
 Cc: Peter Matukas, L.L.B., Associate <[petermatukas@harrisandharris.com](mailto:petermatukas@harrisandharris.com)>; Chris Giamou, CMA <[chris@memorycare.ca](mailto:chris@memorycare.ca)>; Gregory H. Harris, L.L.B., Partner <[greggharris@harrisandharris.com](mailto:greggharris@harrisandharris.com)>; Brenda Schultz <[BrendaSchultz@harrisandharris.com](mailto:BrendaSchultz@harrisandharris.com)>  
 Subject: Re: Documents from Tier 1 (12968)

John:

It is my expectation that you will have the \$12M to close in a first tranche within time to close the land deal. The boxes that are sent to Peter is for files completed where the cash or OT money has been received. I had a brief discussion on this with Greg last week. Depending on the speed of roll overs from the registered funds there could be more. We are monitoring daily.

/raj

Raj Singh  
 CEO  
 Tier1 Advisory

My LinkedIn Profile:

<http://ca.linkedin.com/in/rajsingh100>

On Mon, Aug 25, 2014 at 2:03 PM, <[johndavies55@rogers.com](mailto:johndavies55@rogers.com)> wrote:

Peter.

I understand from Raj that two additional boxes are coming this afternoon to you. Seems like you're averaging around \$1.1 million in deals per box. Let's assume you'll have around \$10 million of deals by end of the day. Still \$3.6 million or so to go.

JD

Sent from my BlackBerry device on the Rogers Wireless Network

-----Original Message-----

From: Peter Matukas <[PeterMatukas@harrisandharris.com](mailto:PeterMatukas@harrisandharris.com)>

Date: Mon, 25 Aug 2014 17:33:50

To: [johndavies55@rogers.com](mailto: johndavies55@rogers.com) <[johndavies55@rogers.com](mailto: johndavies55@rogers.com)>

Cc: Chris Giamou, CMA <[chris@memorycare.ca](mailto:chris@memorycare.ca)>; Raj Singh, B.Sc., MBA, CEO <[raisingh100@gmail.com](mailto:raisingh100@gmail.com)>;

Gregory Harris <[GregHarris@harrisandharris.com](mailto:GregHarris@harrisandharris.com)>; Brenda Schultz <[BrendaSchultz@harrisandharris.com](mailto:BrendaSchultz@harrisandharris.com)>

Subject: RE: Documents from Tier 1 (12968)

John,

I have gone through 7 boxes to date, which has raised just shy of 7.7 million. I have been advised by Tier 1 that additional materials will be provided today. I have already warned OT about the materials coming so they are in the loop and waiting for materials, but I can't provide them until I have had a chance to review them, and then I need you and Nancy to sign the materials.

Thank you,

Peter

Peter V. Matukas

Harris + Harris LLP

Barristers and Solicitors

2355 Skymark Avenue, Suite 300

Mississauga, Ontario L4W 4Y6

Tel No. [905.629.7800](tel:905.629.7800)

Fax No. [905.629.4350](tel:905.629.4350)

Email: [petermatukas@harrisandharris.com](mailto:petermatukas@harrisandharris.com)

[www.harrisandharris.com](http://www.harrisandharris.com)

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-----Original Message-----

From: [johndavies55@rogers.com](mailto: johndavies55@rogers.com) [<mailto: johndavies55@rogers.com>]

Sent: August-25-14 1:31 PM

To: Peter Matukas

Cc: Chris Giamou, CMA; Raj Singh, B.Sc., MBA, CEO; Gregory Harris

Subject: Documents from Tier 1

Hey Peter.

I believe as of last Wednesday you had received 3 of 7 bankers boxes of documents from Jude.

Our Whitby closing is 3 weeks today. Have you received the remaining documents and reviewed them sufficient for me to sign so that we aren't backing OT into a timing corner?

If you are not in receipt of the documents have arrangements been made for their delivery? Thanks. Can you



give me an update please.

John  
Sent from my BlackBerry device on the Rogers Wireless Network

From: Raj Singh [mailto:rajsingh100@gmail.com]  
Sent: April 29, 2016 4:36 PM  
To: John Davies <johndavies55@rogers.com>  
Cc: Gregory H. Harris <greharris@harrisandharris.com>  
Subject: Re: McMurray (12140) - April 30, 2016 Interest Distribution

god is looking out for us!

Raj Singh  
CEO  
Tier1 Advisory

My LinkedIn Profile:

<http://ca.linkedin.com/in/rajsingh100>

On Fri, Apr 29, 2016 at 4:33 PM, <johndavies55@rogers.com> wrote:

You will not believe this but Dianna just checked the mailbox and there is a Scollard HST rebate cheque for \$55,000. I'll give her the difference. She'll go to the bank and wire the \$68,000 to H+H now. JD.

Sent from my Porsche Design P'9983 smartphone from BlackBerry.

---

From: Raj Singh  
Sent: Friday, April 29, 2016 4:13 PM  
To: Gregory H. Harris  
Cc: johndavies55@rogers.com  
Subject: Re: McMurray (12140) - April 30, 2016 Interest Distribution

John:

You don't want to miss this payment. We are obligated now to disclose this on all FSCO forms as we have to assess a developer's financial position and indicate risks. This will most certainly affect Shoppers Deal as we are putting it together right now.

Apart from the above, this will send ripples through the agent's channel that is also very weary of deals with Textbook, Memory care etc.

kindest regards

Raj

Raj Singh  
CEO  
Tier1 Advisory

My LinkedIn Profile:

<http://ca.linkedin.com/in/rajsingh100>

On Fri, Apr 29, 2016 at 3:48 PM, Peter Matukas <[PeterMatukas@harrisandharris.com](mailto:PeterMatukas@harrisandharris.com)> wrote:

Greg,

We held back \$35,000 upon the Bronson file due its large size as a single tranche closing for the need to create closing books. There are no other funds heldback for legal fees.

Thank you,

Peter

Peter V. Matukas  
Harris + Harris LLP  
Barristers and Solicitors  
2355 Skymark Avenue, Suite 300  
Mississauga, Ontario L4W 4Y6  
Tel No. 905.629.7800  
Fax No. 905.629.4350  
Email: [petermatukas@harrisandharris.com](mailto:petermatukas@harrisandharris.com)  
[www.harrisandharris.com](http://www.harrisandharris.com)



**HARRIS + HARRIS LLP**  
 ATTORNEYS AND SOLICITORS

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---

**From:** Gregory Harris  
**Sent:** April-29-16 3:31 PM  
**To:** [john.davies55@rogers.com](mailto:john.davies55@rogers.com)  
**Cc:** Dianna Cassidy, Operations Manager October 8, 2015; Peter Matukas; Raj Singh

**Subject:** RE: McMurray (12140) - April 30, 2016 Interest Distribution

I can tell you we would not have held back \$160k for future fees. I suspect the amount is around \$30k – but Peter Matukas would know exactly what amount was held back on Bronson.

Let me find out.

Also, the reputational damage to you, Tier 1 and by association Textbook, on not paying interest will be significant; notwithstanding some or many of the investors were solicited by persons who are no longer involved with first Commonwealth or Tier 1.

Moreover, the present ongoing FSCO Tier 1/First Commonwealth audit will likely be detrimentally impacted by any issues arising from a project where interest is not being paid.

Perhaps you Raj and I should have a call to discuss. I've copied Raj on this email.

Peter:

Let me know what we've held back from the Bronson financing for future legal fees.

Greg

Gregory H. Harris

Harris + Harris LLP

2355 Skymark Avenue

Suite 300

Mississauga, Ontario

L4W 4Y6

Phone [905.629.7800](tel:905.629.7800) x 240

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Web [www.harrisandharris.com](http://www.harrisandharris.com)



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---

From: [johndavies55@rogers.com](mailto: johndavies55@rogers.com) [<mailto: johndavies55@rogers.com>]

Sent: April-29-16 3:16 PM

To: Gregory Harris

Cc: Dianna Cassidy, Operations Manager October 8, 2015; Peter Matukas

Subject: Re: McMurray (12140) - April 30, 2016 Interest Distribution

Greg: We have enough cash available for payroll, rent and utilities. No consultants have been paid. As I mentioned in our last meeting, the issues around the delays obtaining the Whitby refinancing have had huge ripple effects. We used a large portion of the Bronson raise for the last round of Memory Care interest payments. Perhaps the Memory Care cash on hand could be deployed to pay the McMurray interest and repaid from the Boathaus loan in a few weeks. We note from the last breakdown on legal fees that H-H has heldback monies for potential future legal fees. I think these were around \$160K. Given the ongoing legal business, perhaps some of those contingency holdback fees could be released and used to pay McMurray interest. The only good thing about owing money to McMurray investors is the bulk of the investors were those found by the original T1 crew and they are no longer with Tier 1. Perhaps we could send a letter to investors advising we have an offer for the purchase of the property and an interest adjustment will be made upon closing. John.

Sent from my Porsche Design P'9983 smartphone from BlackBerry.

---

From: Gregory Harris

Sent: Friday, April 29, 2016 2:31 PM

To: Peter Matukas; [johndavies55@rogers.com](mailto: johndavies55@rogers.com)

Cc: Dianna Cassidy; Heather Miller; Dianna Wartnaby

Subject: RE: McMurray (12140) - April 30, 2016 Interest Distribution

John/Dianna:

Please ensure you deal with this today.

As it is we're already going to be late which will be bad enough. Tier 1 will be inundated with calls from investors, if interest isn't received for May 1<sup>st</sup>.

We don't need any hiccups, at this time, with respect to payment of interest; especially if there is a light at the end of the tunnel with respect to a sale transaction.

Gregory H. Harris

Harris + Harris LLP

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Suite 300

Mississauga, Ontario

L4W 4Y6

Phone 905.629.7800 x 240

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---

**From:** Peter Matukas  
**Sent:** April-29-16 2:29 PM  
**To:** john.davies55@rogers.com  
**Cc:** Gregory Harris; Dianna Cassidy; Heather Miller; Dianna Wartnaby  
**Subject:** McMurray (12140) - April 30, 2016 Interest Distribution  
**Importance:** High

Good afternoon John,

This is an e-mail reminder follow-up upon the March 4, March 22, 2016, April 7, 18, 25 and 28, 2016 e-mails pertaining to the April 30, 2016 interest distribution for McMurray St.- being additional interest for investors who have not received their principal back (presuming it is not repaid in prior to the interest distribution date) as well as those investors who have chosen to continue with the project. Please note that we will require funds to be placed on deposit with us (and made payable to Harris + Harris LLP, In Trust) to pay the next interest distribution, namely \$68,273.91 (please note this is an estimated amount based upon a 89 day quarter and for all of the investors). As there are no funds held in trust from the most recent distribution we will require \$68,273.91 on or before April 11, 2016 if in uncertified format; by April 15, 2016 if the funds are either in bank draft or certified format.

**John – we are perilously close to not being able to get the interest distribution cheques out on time if we do not receive the money today (April 28, 2016). Kindly please advise as to when we will be in receipt of the interest distribution monies.**

**John – we have now (April 29, 2016) been receiving calls from investors as to their interest distributions. We are not able to create cheques to mail out to them without the funds being in our trust account. Kindly please wire the money to HH today so that we may proceed to do so. Absent provision of the monies and payment of the interest, the project will go into a Default position.**

Accordingly, please advise when funds will be provided so we may make the interest distributions and repayment of the investors investment amounts.

John – this interest distribution is particularly salient given that we are still awaiting an election from one of the investors, and thus all of the investors are stuck and entitled to interest until repayment of their principal regardless of whether they have elected to continue with the project or receive a return of their capital. It is salient to keep investor confidence in the project and not just that they receive the payment but to demonstrate that the delay really is upon that election rather than any other reason. Please forward these monies upon the timelines noted above as we require time to prepare the cheques and mail them out to investors, which monies are due to them for April 30, 2016.

Thank you,

Peter

Peter V. Matukas  
Harris + Harris LLP



Barristers and Solicitors  
2355 Skymark Avenue, Suite 300  
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---

**From:** Peter Matukas  
**Sent:** December-01-14 10:31 AM  
**To:** 'johndavies55@rogers.com'  
**Cc:** [gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com); Brenda Schultz; 'Dianna Cassidy'  
**Subject:** RE: McMurray (12140) - January 31, 2015 Interest Distribution

Good morning John,

This is a reminder e-mail upon my November 3, 2014 e-mail regarding the January 31, 2015 Interest distribution for McMurray St. Please note that we will require funds to be placed on deposit with us (and made payable to Harris + Harris LLP, In Trust) to pay the next interest distribution, namely \$70,575.37. As there are no funds held in trust from the most recent distribution we will require \$70,575.37 on or before **JANUARY 12, 2015** if in uncertified format; by **JANUARY 16, 2015** if the funds are either in bank draft or certified format. We are requesting the funds by this time to permit us sufficient opportunity to create the cheque's in advance and be in a position to distribute same prior to the distribution date.

Accordingly, please advise when funds will be provided so we may make the interest distributions.

Thank you,

Peter

Peter V. Matukas  
 Harris + Harris LLP  
 Barristers and Solicitors  
 2355 Skymark Avenue, Suite 300  
 Mississauga, Ontario L4W 4Y6  
 Tel No. 905.629.7800  
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[www.harrisandharris.com](http://www.harrisandharris.com)



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---

**From:** Peter Matukas  
**Sent:** November-03-14 10:22 AM  
**To:** 'johndavies55@rogers.com'  
**Cc:** [gregharris@harrisandharris.com](mailto:gregharris@harrisandharris.com); Brenda Schultz; 'Dianna Cassidy'  
**Subject:** McMurray (12140) - January 31, 2015 Interest Distribution  
**Importance:** High

Good morning John,

This is a reminder e-mail regarding the January 31, 2015 Interest distribution for McMurray St. Please note that we will require funds to be placed on deposit with us (and made payable to Harris + Harris LLP, In Trust) to pay the next interest distribution, namely \$70,575.37. As there are no funds held in trust from the most recent distribution we will require \$70,575.37 on or before JANUARY 12, 2015 if in uncertified format; by JANUARY 16, 2015 if the funds are either in bank draft or certified format. We are requesting the funds by this time to permit us sufficient opportunity to create the cheque's in advance and be in a position to distribute same prior to the distribution date.

Accordingly, please advise when funds will be provided so we may make the interest distributions.

Thank you,

Peter

Peter V. Matukas  
Harris + Harris LLP  
Barristers and Solicitors  
2355 Skymark Avenue, Suite 300  
Mississauga, Ontario L4W 4Y6  
Tel No. 905.629.7800  
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[www.harrisandharris.com](http://www.harrisandharris.com)



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---

John Davies

---

From: John Davies <johndavles55@rogers.com>  
 Sent: February 19, 2015 11:15 AM  
 To: 'Greg Harris'; 'rajsingh100@gmail.com'  
 Cc: 'Chris Giamou'; 'Dianna Cassidy'  
 Subject: Memory Care raises

Gentlemen:

Chris is cleaning up a few details in the Burlington and Oakville pro-forma projections. Should have them to Michael Cane tomorrow. Michael has completed his initial review of these two projects so I think we'll see his appraisals for both by March 1<sup>st</sup>. If we can get them to Peter Tuovi that week and get his work back asap, Tier 1 could be selling mid-March. I'm assuming revised documents and OT sign-off will take a couple weeks. Certainly we could be in the marketplace before the end of March break.

Opposite Kitchener, we could turn Tier 1's guys loose on that raise right away. The first appraisal on Kitchener was for \$6.5 million. Michael's new appraisal is for \$10.6 million. Peter Tuovi and OT have completed their work. The Mintz \$950,000 closed earlier this week and approximately 50% of the net loan amount has been sent back to H+H for the upcoming April 1<sup>st</sup> interest payments. The balance will retire some pressing payables.

A few notable Tier 1 agents (Jeff Watson / Marcus Patton) have clients with cash in hand wanting to invest in Memory Care. RRSP season ends March 5<sup>th</sup>. Let's go to market right away for a \$4 million Tier 1 Kitchener Construction raise. Documents could be revised with this new amount fairly quickly and Raj could have his team out selling in the next week or two.

A \$4 million raise nets us say, \$2.8 million. Less \$950K to Mintz. Call it \$1.850 million net.

I'm going to need a chunk of those proceeds to re-pay Bracebridge Investors who want their cash returned at the end of April. Walter would like some cash for deposits on student housing land he's chasing.

I'm assuming Michael Cane's Oakville and Kitchener appraisals will be sufficiently increased over the last round of appraisals for Tier 1 to be able to raise say, \$3.5 million on each deal. I think Tier 1 could probably raise those amounts by say, early May if they get the documents etc. by the week of March 9<sup>th</sup>.

Can we revise the Kitchener documents to permit Tier 1 to be out in the market in a week?

Thanks,

John.

**John Davies**

**From:** John Davies <johndavies55@rogers.com>  
**Sent:** February 6, 2017 5:50 PM  
**To:** 'dianna@memorycare.ca'  
**Cc:** 'stephen.beaumont1 stephen.beaumont1'  
**Subject:** FW: \$200,000 loan

---

**From:** John Davies [mailto:johndavies55@rogers.com]  
**Sent:** February 23, 2015 6:58 PM  
**To:** 'rajsingh100@gmail.com' <rajsingh100@gmail.com>  
**Subject:** \$200,000 loan

Hey Raj:

Would your relatives still be interested in doing a \$200,000 loan if we repaid them on April 30<sup>th</sup> with a \$50,000 bonus once Aurora closes?

I netted \$820,000 from the Mintz Kitchener loan and after I paid the contractors invoices for the sales centre in Whitby, other regular payables since December, transferred the \$350,000 interest payment to Harris + Harris for the April 1<sup>st</sup> distribution we're essentially tapped out. Payroll Friday.

John.

John Davies

---

From: Raj Singh <rajsingh100@gmail.com>  
 Sent: January 4, 2016 10:01 PM  
 To: Chris Giamou; John Davies  
 Subject: Fwd: # 12066 Memory Care: Burlington sets of drawings

Chris:

Please remember to send me the details on Boathaus to let me see if I can raise the \$6M to take out Firm's \$4M and give the additional \$2M.

/raj

Raj Singh  
 CEO  
 Tier1 Advisory

My LinkedIn Profile:

<http://ca.linkedin.com/in/rajsingh100>

----- Forwarded message -----

From: <rajsingh100@gmail.com>  
 Date: Wed, Dec 23, 2015 at 12:04 PM  
 Subject: Re: # 12066 Memory Care: Burlington sets of drawings  
 To: johndavies55@rogers.com  
 Cc: Chris Giamou <chris@memorycare.ca>, "Gregory H. Harris" <gregharris@harrisandharris.com>

OK, send me all of the Boathaus Information and let me see if I can take out forms \$4m with \$6m first Mtg.

Raj

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: johndavies55@rogers.com  
 Sent: Wednesday, December 23, 2015 11:22 AM  
 To: Raj Singh  
 Cc: Chris Giamou; Gregory H. Harris  
 Subject: Re: # 12066 Memory Care: Burlington sets of drawings

Raj:

MC and Scollard received \$1.3 million in loan repayments from the last two T-1 raises. Used \$900K for the December quarterly interest payments sent to H+H, used \$250K for costs for Boathaus launch, the rest for overhead and a few consulting invoices past 60 days. We have \$700K available in Textbook various accounts until Fengate can fund Ross Park in February.

This cash shortage is a result of closing large raises on expensive sites with very little surplus proceeds being retained to fund operations. Need a couple of smaller raises back to back that put a couple million in the coffers.

There are Project Mgt fees that will start to flow on Ross Park

I spoke to you and Greg about raising some new financing (\$2 million) on Boathaus. We'll use some of those proceeds and the Oakville 20% equity cash to reinstate Burlington SPA and pull the site alteration and foundation permits.

I certainly would have preferred to give the City \$250K in November, but the looming interest payments needed to be secured ahead of that.

I am not worried about reinstating SPA in Burlington. It's a matter of giving them a cheque and re-filing. It's a civic cash grab.

Can we go to market in January and raise \$2 million cash on the back of our successful September Boathaus launch? An increase of \$2 million to the Tier 1 loan is \$2 million below the \$16 million Cane Whitby appraisal. I'm guessing that investors would be impressed with the progress made on Boathaus and that \$2 million would be fairly straightforward and quick. I assume we would need new loan documents but I imagine the Cane appraisal is still usable as it's less than 24 months old.

JD

Sent from my Porsche Design P'9983 smartphone from BlackBerry.

From: Raj Singh  
 Sent: Wednesday, December 23, 2015 8:32 AM  
 To: John Davies  
 Cc: Chris Glamou; Gregory H. Harris  
 Subject: Re: # 12066 Memory Care: Burlington sets of drawings

Hi John:

I am working on the equity but no firm timeline when I can complete it.

You indicated that you were going to have \$750K paid back to Memory Care from Textbook from the Kingston closing. Can you use that now to get it started?

I am sure we will need the equity raised to start paying Varcon for their work and keep raising money in the meantime.

/raj

Raj Singh  
CEO  
Tier1 Advisory

My LinkedIn Profile:

<http://ca.linkedin.com/in/rajsingh100>

On Wed, Dec 23, 2015 at 10:21 AM, <[johndavies55@rogers.com](mailto: johndavies55@rogers.com)> wrote:

To keep the SPA current will require a \$250,000 payment. We held off making the payment to the City in November because of the nearly \$1 million of interest payments owing in December. We can re-instate our SPA status (City likes everything) with the \$250,000 payment. Raj is raising \$3 million equity for Oakville and additional equity for Burlington. As soon as we recapitalize, we can give the City their DC's and move forward in earnest. I understand the Oakville equity is imminent. JD

Sent from my Porsche Design P'9983 smartphone from BlackBerry.

**From:** Chris Glamou  
**Sent:** Wednesday, December 23, 2015 7:53 AM  
**To:** [johndavies55@rogers.com](mailto: johndavies55@rogers.com); 'Raj Singh'  
**Cc:** 'Gregory H. Harris'  
**Subject:** RE: # 12066 Memory Care: Burlington sets of drawings

I was surprised by Fernando's email. I had no idea that the SP Approval had lapsed.

I have emailed him and left him a vm message, asking if we can get a meeting with Burlington staff to fast track this.

He must be on vacation. We will make this a priority once he is back in the office.

-Chris

**From:** [johndavies55@rogers.com](mailto: johndavies55@rogers.com) [mailto:[johndavies55@rogers.com](mailto: johndavies55@rogers.com)]  
**Sent:** December 22, 2015 6:31 PM  
**To:** Raj Singh <[rajsingh100@gmail.com](mailto: rajsingh100@gmail.com)>; Chris Glamou <[chris@memorycare.ca](mailto: chris@memorycare.ca)>  
**Cc:** Gregory H. Harris <[gregharris@harrisandharris.com](mailto: gregharris@harrisandharris.com)>  
**Subject:** Re: # 12066 Memory Care: Burlington sets of drawings



**TAB 2**

Court File No. CV-17-11822-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

Plaintiffs

- and -

JOHN DAVIES and AEOLIAN INVESTMENTS LTD.

Defendants

-----  
This is the Cross-Examination of JOHN  
DAVIES, on his Affidavits sworn July 14th, 2017 and July  
27th, 2017, taken at the offices of Network Reporting &  
Mediation, Suite 3600, 100 King Street West, Toronto,  
Ontario, on the 9th day of August, 2017.  
-----

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

JONATHAN G. BELL} Solicitors for the Plaintiffs  
SEAN H. ZWEIG }

MICHAEL BEEFORTH Solicitor for the Defendants

ALSO PRESENT:

NOAH GOLDSTEIN Observing

August 9th, 2017

J. DAVIES - 2

## I N D E X   O F   E X H I B I T S

---	EXHIBIT NO. 1:	Reprinted Pro Forma Summary .....	7
---	EXHIBIT NO. 2:	Email dated October 15th, 2013 .....	44
---	EXHIBIT NO. 3:	Email dated March 27th, 2014 .....	45
---	EXHIBIT NO. 4:	Email dated June 2nd, 2014 .....	50
---	EXHIBIT NO. 5:	Email dated July 29th, 2015 .....	52
---	EXHIBIT NO. 6:	Email dated August 25th, 2014 .....	57
---	EXHIBIT NO. 7:	Email dated April 29th, 2016 .....	59
---	EXHIBIT NO. 8:	Email Chain ending with a February 9th, 2016 Email .....	68
---	EXHIBIT NO. 9:	Email dated November 3rd, 2014 .....	84
---	EXHIBIT NO. 10:	Email dated November 14th, 2015 ...	86
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August 9th, 2017

J. DAVIES - 3

## I N D E X   O F   U N D E R T A K I N G S

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August 9th, 2017

J. DAVIES - 4

1 --- UPON COMMENCING AT 10:08 A.M.

2 JOHN DAVIES, SWORN

3 CROSS-EXAMINATION BY MR. BELL:

4 1. Q. Good morning, Mr. Davies.

5 A. Good morning.

6 2. Q. As a preliminary matter, you swore an  
7 affidavit dated July 14, 2017 and another one July 27,  
8 2017, correct?

9 A. I believe so.

10 3. Q. And have you reviewed those affidavits  
11 before attending today?

12 A. Yes.

13 4. Q. And is there any corrections you want  
14 to make?

15 A. Not to my knowledge.

16 5. Q. And I had understood from your counsel  
17 before we got on the record that some of the pro  
18 formas that were attached had printing errors; are you  
19 aware of that issue?

20 A. Vaguely. Not specific issues, but I  
21 knew there were some numbers signs or X's or  
22 something.

23 6. Q. And I'm happy to have your counsel  
24 answer for you on this, Mr. Davies.

25 MR. BELL: Mr. Beeforth, are there updated

August 9th, 2017

J. DAVIES - 5

1 pro formas that you want to provide that would replace  
2 exhibit B to Mr. Davies' July 27th, 2017 affidavit?

3 MR. BEEWORTH: Well, it's not an updated,  
4 it's simply a correctly printed version, but yes, I've  
5 got copies here which I can hand over. I've got one  
6 for Mr. Davies.

7 MR. BELL: Thank you.

8 MR. BEEWORTH: And I guess one for marking  
9 as an exhibit.

10 MR. BELL: I'm just trying to figure out  
11 what these are. These are in relation to 555  
12 Princess?

13 MR. BEEWORTH: 555 Princess, yes. It's the  
14 fifth bullet in section 4.0 of KSV's supplement to the  
15 sixth report and I understand this is the only one  
16 that there was a printing error. If we subsequently  
17 determine that there were others we'll get you proper  
18 copies.

19 MR. BELL: All right. Well, let's mark --  
20 Mr. Davies, have you seen this document before?

21 THE DEPONENT: The pro forma?

22 BY MR. BELL:

23 7. Q. Yes.

24 A. Yes.

25 8. Q. The revised pro forma with -- not

August 9th, 2017

J. DAVIES - 6

1 revised, the properly printed pro forma without the  
2 number signs?

3 A. I don't believe it had the number sign  
4 on our copy, in our office copy. I think that might  
5 have happened when our counsel photocopied it. I  
6 don't recall having X'ed out pieces.

7 9. Q. Right. Okay. But have you seen this  
8 document that is now before you before?

9 A. I'm going to say yes because if it's  
10 the 555 pro forma that we've included in our materials  
11 then, yes, I'm familiar with the 555 pro forma.

12 10. Q. And, sir, did you provide this pro  
13 forma to your counsel in preparation for your July  
14 27th affidavit electronically or on paper?

15 A. Both, I believe, both paper and  
16 electronic.

17 11. Q. And do you recall how you provided it  
18 to them electronically?

19 A. I didn't provide it, someone in our  
20 office did, so I couldn't answer that.

21 MR. BELL: Counsel, I would like a copy of  
22 the electronic production of this pro forma from  
23 whoever in Mr. Davies' office provided it to you on  
24 the date, obviously redacted for privilege, if need  
25 be.

August 9th, 2017

J. DAVIES - 7

1 MR. BEEWORTH: The ---

2 MR. BELL: Electronic copy of this ---

3 MR. BEEWORTH: You just want the pro forma  
4 itself?

5 MR. BELL: And whatever correspondence it  
6 was attached to or however it was attached. If, for  
7 example -- if it helps, if I was attached to an email  
8 I want the email, if need be redacted for privilege,  
9 but date stamped and with the attachment. If it was  
10 provided on a USB key I want an explanation it was  
11 provided on a USB key and what date it was provided  
12 and an electronic copy of the version provided on that  
13 date.

14 MR. BEEWORTH: Okay. I will get you those.

15 --- UNDERTAKING NO. 1

16 MR. BELL: Excellent. Thanks.

17 BY MR. BELL:

18 12. Q. So we'll come back to that pro fomra,  
19 sir, but that will be exhibit 1.

20 --- EXHIBIT NO. 1: Reprinted Pro Forma Summary

21 BY MR. BELL:

22 13. Q. And then just before we get into your  
23 affidavits, I was just examining your wife, sir, and  
24 she was making reference to the Generx American  
25 Express card, you're aware of that?



August 9th, 2017

J. DAVIES - 8

1 A. Mm-hmm.

2 14. Q. And she told me that she still uses  
3 that Generx American Express card; were you aware of  
4 that?

5 A. Yes.

6 15. Q. And do you still use your Generx  
7 American Express card?

8 A. Yes.

9 16. Q. And who is paying the bills on the  
10 Generx American Express card?

11 A. I am.

12 17. Q. And what funds are you using to pay  
13 those?

14 A. The last bill was paid with borrowed  
15 funds from a friend.

16 18. Q. Borrowed from whom?

17 A. Edward Thomas.

18 19. Q. And when you say you're paying it do  
19 you mean that you're having him pay it or is he giving  
20 you ---

21 A. He wrote a cheque to American Express.

22 20. Q. And how long has that been going on  
23 for?

24 A. Perhaps the last two months.

25 21. Q. And you said it was Edward Thomas; is

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1           that right?

2                   A.    Yes.

3       22.           Q.    And does Mr. Thomas have any  
4           involvement in any of the Textbook or Memory Care  
5           entities?

6                   A.    He's the architect.

7       23.           Q.    And other than as the architect for the  
8           Textbook and Memory Care entities do you have any  
9           other business relationships with Mr. Thomas?

10                  A.    No.

11       24.           Q.    Do you have any ongoing business  
12           relationship with Mr. Thomas?

13                  A.    Not at the moment.

14       25.           Q.    How much do you currently owe Mr.  
15           Thomas?

16                  A.    In fees?

17       26.           Q.    No, in personal loans.

18                  A.    Sixty-four thousand dollars.

19       27.           Q.    And is it you that's personally  
20           incurring that liability?

21                  A.    Yes.

22       28.           Q.    And you said in fees, does that  
23           reference the fact that the Textbook and Memory Care  
24           entities owe Mr. Thomas fees for the architectural  
25           services he provided?

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- 1 A. Yes.
- 2 29. Q. How much do they owe him?
- 3 A. I don't know.
- 4 30. Q. So turning to your July 27, 2017  
5 affidavit I just want to establish a few preliminary  
6 things, sir, and I don't think there's any dispute  
7 between us but I just want to make sure that I have it  
8 right. You acknowledge that there was no equity  
9 contribution in any of the Davies developers, correct?
- 10 A. Are you referring to cash?
- 11 31. Q. Any sort of equity contribution.
- 12 A. I would disagree with that.
- 13 32. Q. How so?
- 14 A. Equity in the form of work that had  
15 been done to advance the development readiness of the  
16 project.
- 17 33. Q. I see. By that you mean that the  
18 shareholders contributed sweat equity, for lack of a  
19 better word, to the projects?
- 20 A. Yes.
- 21 34. Q. But you agree with me that they didn't  
22 contribute anything financially in the form of equity;  
23 no capital contributions, for example?
- 24 A. Cash? No.
- 25 35. Q. Cash or any other form of capital

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1 contribution.

2 A. Well, I would say that given our  
3 relationship with our consultants our consultants'  
4 work that had been helping us advance the projects was  
5 equity as well.

6 36. Q. So you mean introducing them to the  
7 consultants?

8 A. No, I would say that if one of our  
9 consultants, let's use the architect as an example,  
10 prepared concept sketches and worked with us to  
11 develop development parameters to aid us in preparing  
12 a budget that would have been an equity contribution  
13 that would have increased the value of the project.

14 37. Q. And how do you see it being the  
15 shareholders making an equity contribution if an  
16 architect does the drawing?

17 A. Well, if the project hadn't proceeded  
18 the architect wouldn't have been paid, so we were ---

19 38. Q. Was that a liability you were  
20 personally incurring?

21 A. No, the architect wouldn't have been  
22 paid.

23 39. Q. So the architect was making an  
24 equitable contribution?

25 A. On our behalf.

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1 40. Q. I see. And you personally never  
2 invested any funds in any of the Davies developers,  
3 correct?

4 A. Correct.

5 41. Q. And Mr. Singh never personally invested  
6 any money in the Davies developers, correct?

7 A. Correct.

8 42. Q. And Mr. Thompson never invested any  
9 money in any of the Davies developers, correct?

10 A. Correct.

11 43. Q. Mr. Stewart never invested any money in  
12 any of the Davies developers, correct?

13 A. Correct.

14 44. Q. Mr. Harris never invested any money in  
15 any Davies developers, correct?

16 A. Correct.

17 45. Q. And no family member of either you, Mr.  
18 Thompson, Mr. Singh or Mr. Davies invested any money  
19 that you're aware of in the Davies developers,  
20 correct?

21 A. Correct.

22 46. Q. And then in your affidavit, I'm happy  
23 to turn it up, I don't think -- you say it multiple  
24 times, I don't think there will be any controversy  
25 between us -- you claim that the projects would have

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1           been successfully developed if Grant Thornton had not  
2           been appointed to replace Tier 1 as the trustee; is  
3           that fair?

4                     A.    Yes, fair.

5       47.            Q.    And is that still your evidence, you  
6           believe that these all would have succeeded if Grant  
7           Thornton hadn't replaced Tier 1?

8                     A.    Yes.

9       48.            Q.    Every single one of them?

10                    A.    Yes.

11       49.            Q.    And I assume you'll agree with me that  
12           due to the SMI structure that these entities -- or  
13           pursuant to the SMI structure by which these entities  
14           were financed and there being no cash equitable  
15           contribution that they basically faced cash flow  
16           problems from the very beginning; is that fair?

17                    A.    No.

18       50.            Q.    And the fact that they took 30 percent  
19           right off the top in brokerage, legal and other  
20           professional fees didn't create a cash flow problem  
21           for these entities?

22                    A.    No.

23       51.            Q.    And then if I get you to turn up -- I  
24           don't know if you have it, Counsel.

25                    MR. BELL:  You said you didn't have a clean

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1 copy, let me see if I do. It's clean-ish. If there's  
2 exclamation marks please ignore them, I tend to take  
3 notes emotively. At paragraph 5 -- page 5, paragraph  
4 9 of the supplement to the sixth report. I don't know  
5 if you caught that, Madam Reporter, I spoke rather  
6 quickly. This is the supplement to the sixth report  
7 of the receiver, dated August 8, 2017. And I'm at  
8 page 5, paragraph 9.

9 BY MR. BELL:

10 52. Q. Do you see that, sir?

11 A. I do.

12 53. Q. And as I understand what the receiver  
13 is saying here it's that as of the date that Grant  
14 Thornton was appointed these are the various cash bank  
15 balances for the seven receivership entities. Do you  
16 agree with that?

17 A. I don't have the ability to agree or  
18 not agree; I don't have anything to suggest otherwise.

19 54. Q. So you have no evidence otherwise?

20 A. No.

21 55. Q. And does it generally fit with your  
22 recollection that in and around the time Grant  
23 Thornton was appointed these seven companies  
24 collectively had \$18,000,.00 in cash in their bank  
25 account?

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1 A. I wouldn't know.

2 56. Q. Would that be surprising to you?

3 A. No.

4 57. Q. It wouldn't be surprising to you? Do  
5 you think they had cash flow problems as of the date  
6 Grant Thornton was appointed?

7 A. No.

8 58. Q. You don't see that as a cash flow  
9 problem?

10 A. Not at all.

11 59. Q. They were going to be able to keep  
12 financing going forward, these seven entities?

13 A. Yes.

14 60. Q. How?

15 A. Refinancing. New rounds of financing.

16 61. Q. And did you have new financing in the  
17 pipeline to come down in the days that followed the  
18 appointment of Grant Thornton?

19 A. Not in the days that followed Grant  
20 Thornton, no.

21 62. Q. You were just going to survive off the  
22 \$18,000.00 until the new financing came?

23 A. And the ongoing work of our consultants  
24 until sufficient value -- additional value had been  
25 created in the projects to warrant new financing.



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1           63.           Q.    And it didn't worry you that Legacy  
2                   Lane had \$25.00 in its bank account?

3                   A.    Not at all.

4           64.           Q.    Or that Burlington had \$83.00?

5                   A.    Not at all.

6           65.           Q.    And I think you've already said this,  
7                   but you agree with me that the only way that these  
8                   entities could have gotten more money was through  
9                   another round of financing through the SMI structure;  
10                  is that fair?

11                  A.    Correct.

12          66.           Q.    And that was your plan to do so?

13                  A.    Yes.

14          67.           Q.    Because as I understand it that's  
15                  basically how these entities exclusively got their  
16                  financing, right, it was through these SMI structures?

17                  A.    Every development project, whether it's  
18                  SMI financing or otherwise, gets subsequent rounds of  
19                  financing.

20          68.           Q.    Right.  But since there wasn't any  
21                  equitable cash contribution the only way that these  
22                  companies got cash was either through first lien  
23                  lending, SMI -- sorry, first lien borrowing, SMI  
24                  borrowing or intercompany loans from other companies  
25                  inside what you call the umbrella of companies,

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1 correct?

2 A. Or other outside lenders.

3 69. Q. Right. But there was never an equity  
4 cash contribution into any of these projects, right?

5 A. Not at this point in time.

6 70. Q. And this point in time being from day  
7 one right through to the day Grant Thornton was  
8 appointed, correct?

9 A. That's correct.

10 71. Q. Then switching around, I'll take that  
11 back from you and I'll get you to turn up exhibit Q of  
12 your July 27th affidavit. And I just want to  
13 understand what this is, sir. First off, who drafted  
14 this document?

15 A. I did.

16 72. Q. Okay. And did you draft this  
17 subsequent to the commencement of the receivership?

18 A. Yes.

19 73. Q. And did you draft it for the purpose of  
20 explaining to the court what was going on in the  
21 various Davies developers?

22 A. I think I drafted it for my lawyers to  
23 understand what was going on in the Davies developers.

24 74. Q. Fair enough, and I assume your counsel  
25 waived privilege when they attached it to your

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1 affidavit. But, okay, and everything in here is  
2 accurate?

3 A. Yes.

4 75. Q. And I just want to walk through it a  
5 bit with you. You start by saying under "Summary",  
6 "The directing minds of Memory Care and Textbook".

7 A. Mm-hmm.

8 76. Q. When you refer to the directing minds  
9 who are you referring to?

10 A. Myself, Walter Thompson and our senior  
11 staff.

12 77. Q. And when you say senior staff who do  
13 you mean?

14 A. Well, for portions of the entities  
15 Chris Giamou, who was the CFO of Memory Care. For the  
16 Textbook projects more specifically, Andre Antonaidis  
17 and -- mostly Andre.

18 78. Q. Do you think of Mr. Harris as a  
19 directing mind of any of these entities?

20 A. He was -- I wouldn't say a day-to-day  
21 directing mind but he certainly was providing insight  
22 and advice on a more than weekly basis.

23 79. Q. And so he was providing ongoing legal  
24 advice to all these entities; was he not?

25 A. Well, I wouldn't say -- some legal

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1 advice but mostly business management related.

2 80. Q. I see. So he functioned both as an  
3 external counsel but also as someone who provided  
4 business and management advice to the companies on an  
5 ongoing basis?

6 A. I really characterize Harris's  
7 involvement as Tier 1's lawyer and Singh's lawyer.  
8 And because of our involvement with Tier 1 and Singh  
9 Harris was along for that.

10 81. Q. Not to jump around on this, but you  
11 told me that previously as well and I just want to  
12 make sure I understand that, because as I -- and just  
13 so you have it, sir, I'm going to show you the  
14 receiver's fourth report, and it's exhibit A to the  
15 receiver's fourth report, which, for the record, I  
16 have it as tab 2 of the Motion Record of the Plaintiff  
17 dated July 12th, 2017.

18 Sir, I'm going to show it to you but  
19 appendix A is all the loan agreements between the  
20 various entities and the trustee. And if I look at  
21 the definition in each and every one of the loan  
22 agreements -- and I'll show it to you so you have it --  
23 -- borrower's solicitors, which I understand to be the  
24 Davies entity, is defined as Harris & Harris LLP.

25 And then, "Lender's solicitor shall mean

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1 Elliott Law Professional Corporation or someone they  
2 may ultimately designate". And I understand that on  
3 occasion the lenders would designate Harris & Harris  
4 LLP to also be their counsel. But did you understand  
5 that for all of these transactions the borrower's  
6 solicitor was Harris & Harris LLP?

7 A. I understood that we were paying Harris  
8 but Harris was never consulting with us on any of  
9 these matters.

10 82. Q. Who was?

11 A. Nobody.

12 83. Q. You didn't have lawyers?

13 A. No.

14 84. Q. And who drafted these agreements?

15 A. Harris.

16 85. Q. So Harris drafted the agreement that  
17 said he was the borrower's solicitor but he didn't  
18 provide you any legal advice?

19 A. No. He also drafted the documents that  
20 said that Nancy Elliott was a solicitor too and she  
21 didn't draft them.

22 86. Q. Okay. And so Nancy Elliott really had  
23 no involvement in this?

24 A. Not in terms of drafting. I wouldn't  
25 know what Nancy Elliott's involvement was but she

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1 didn't draft any of the documents.

2 87. Q. And you never had any legal advice  
3 other than Harris & Harris LLP in relation to these  
4 borrowings?

5 A. We never had any legal advice at all.

6 88. Q. But Mr. Harris was involved in  
7 providing these companies with legal advice in other  
8 matters?

9 A. No, I think your statement was that I  
10 didn't have any legal advice from anybody other than  
11 Harris & Harris on these and I didn't -- and I'm  
12 saying I did not have advice from Harris on any of  
13 those loan documents.

14 89. Q. Right. And I apologize, I was actually  
15 going back to what you had said earlier when I had  
16 asked you if Mr. Harris was a directing mind. I  
17 thought you had told me that he provided advice on  
18 more than a weekly basis and you said it was sometimes  
19 legal and sometimes business and management; do I have  
20 that correct?

21 A. Correct, but it wasn't about the loan  
22 agreements.

23 90. Q. I understand. So when he provided you  
24 legal advice it was on something other than the loan  
25 agreements?

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1 A. Correct.

2 91. Q. And to the extent these companies had a  
3 corporate solicitor was it Mr. Harris?

4 A. The companies didn't have a corporate  
5 solicitor.

6 92. Q. Never?

7 A. No.

8 93. Q. And when we're talking about Mr. Harris  
9 I'm referring to Greg Harris.

10 A. Correct.

11 94. Q. And was Mr. Harris's father ever  
12 involved in any of these companies, the second Harris  
13 in Harris & Harris LLP?

14 A. Harris & Harris?

15 95. Q. Yes.

16 A. He had no involvement at all, other  
17 than I believe he was a shareholder in one of them.

18 96. Q. And did you understand that Mr. Greg  
19 Harris's mother was also a shareholder in certain of  
20 the entities?

21 A. Yes.

22 97. Q. And was she involved in any of the  
23 entities other than as a shareholder?

24 A. No.

25 98. Q. But Greg Harris was?

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1                   A.    Yes.  Well, let me clarify, I don't  
2                   know what her involvement was to any extent but she  
3                   had no involvement with me.

4    99.            Q.    And do you have any legal training?

5                   A.    No.

6    100.           Q.    And did anyone who worked at any of the  
7                   Davies developers have legal training?

8                   A.    No.

9    101.           Q.    So how did you be comfortable when  
10                  signing these agreements that your legal rights were  
11                  protected if Harris & Harris LLP were not your  
12                  lawyers?

13                  A.    I'm not sure how to answer that  
14                  question.

15   102.           Q.    Did you understand that Greg Harris  
16                  and/or Harris & Harris LLP were protecting your  
17                  interests in these transactions?

18                  A.    No.

19   103.           Q.    You just didn't know if you had a  
20                  lawyer that was?

21                  A.    No, I didn't have a lawyer that was  
22                  reviewing the documents on my behalf.

23   104.           Q.    And so whenever we see legal fees  
24                  listed in the pro formas what are those referring to?

25                  A.    Fees related to the loan -- the raises.



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1 105. Q. And your counsel's fees in relation to  
2 the raises?

3 A. Well, it is customary in every real  
4 estate transaction for the borrower to pay the  
5 lender's fees, including legal fees.

6 106. Q. And I understand that but it's  
7 customary for the borrower to pay both the borrower's  
8 and the lender's legal fees and what I'm asking you is  
9 when I see legal fees in these pro formas did you  
10 understand those to be both the borrower's and the  
11 lender's legal fees or only the lender's legal fees?

12 A. I never really thought about it. It  
13 just -- we never received any advice from Harris or  
14 anybody from his firm on the financings.

15 107. Q. And so what was the nature of the  
16 advice that you did receive from Mr. Harris?

17 MR. BELL: He said it's not legal.

18 MR. BEEWORTH: Well, you're asking about  
19 legal advice.

20 --- REFUSAL NO. 1

21 BY MR. BELL:

22 108. Q. What's the nature of the non-legal  
23 advice you received from Mr. Harris?

24 A. Oh, his thoughts on, for example, Raj  
25 Singh -- Tier 1 was looking to raise new equity and

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1 Harris's advice on that was that that was a  
2 particularly worthwhile process, that raising equity,  
3 rather than more debt, was something we should  
4 consider, and that each of the shareholders should  
5 look favourably on reducing their equity to new  
6 investors.

7 109. Q. And when he was giving you that advice  
8 did you understand he was doing that in his capacity  
9 as a shareholder of a Davies developer, business  
10 manager/advisor of a Davies developer or Raj Singh's  
11 personal lawyer or all of the above?

12 A. I would say first and foremost as a  
13 shareholder.

14 110. Q. And then going back to exhibit Q of  
15 your July 27th affidavit, you talk about, in the third  
16 line, "umbrella organization". This is throughout  
17 your affidavit. Do you see that, sir?

18 A. Yes.

19 111. Q. And I just want to understand, what do  
20 you mean when you talk about an umbrella organization?

21 A. Well, notwithstanding there were a  
22 number of individual projects we treated the day-to-  
23 day management and evolution of those projects rather  
24 than as individual projects but as an umbrella  
25 organization that looked after 11 projects, or ten

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1 projects, as the case may be.

2 112. Q. And who was inside the umbrella?

3 A. Myself ---

4 113. Q. Sorry, let me -- I'll get to that, sir,  
5 when I say who was inside, which companies were  
6 included inside the umbrella organization?

7 A. All of our development companies.

8 114. Q. When you say "all of our development  
9 companies", sir, whose development companies are you  
10 referring to?

11 A. The Textbook projects, the condominium  
12 projects and the Memory Care projects.

13 115. Q. Were TSI, TSSI and MCIL included in  
14 that umbrella?

15 A. I would say so, yes.

16 116. Q. What about Rideau?

17 A. I would say so, yes.

18 117. Q. And other than the seven receivership  
19 companies the four non-receivership Davies developer  
20 companies -- you know what I mean by those --

21 A. The condominium projects?

22 118. Q. -- yes --

23 A. Yes.

24 119. Q. -- the TSI, TSSI, MCIL and Rideau were  
25 there any other companies that would have been

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1 included under this umbrella organization?

2 A. No.

3 120. Q. So you didn't include Aeolian, for  
4 example?

5 A. No.

6 121. Q. And who did you see being the owners  
7 and operators of this umbrella organization?

8 A. Walter Thompson and myself.

9 122. Q. It was just the two of you?

10 A. Yes.

11 123. Q. And was this concept of an umbrella  
12 organization ever disclosed to investors, to the best  
13 of your knowledge?

14 A. It was disclosed to Raj Singh.

15 124. Q. You actually used the word 'umbrella  
16 organization' with Mr. Singh?

17 A. I don't recall if I used that exact  
18 word or not.

19 125. Q. But you certainly expressed the concept  
20 to him?

21 A. Yes.

22 126. Q. And he approved of it?

23 A. Yes.

24 127. Q. Do you have anything of him approving  
25 of that concept in writing?

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1 A. I would have to check my emails.

2 128. Q. I would ask that you do so. Your  
3 counsel has to give that answer.

4 MR. BEEWORTH: Let me just get that  
5 straight. What are you looking for, specifically?

6 MR. BELL: Any email communication or any  
7 written communication by which Mr. Singh approved the  
8 concept of an umbrella organization or a term similar.  
9 Mr. Davies said he wasn't sure he used that express  
10 term with Mr. Singh.

11 MR. BEEWORTH: Through which Mr. Singh  
12 approved the concept?

13 MR. BELL: Yes.

14 MR. BEEFORTH: Okay.

15 --- UNDERTAKING NO. 2

16 BY MR. BELL:

17 129. Q. And certainly, sir, throughout this  
18 period you understood that despite this umbrella  
19 organization concept that each of these companies was  
20 a separate corporation, right?

21 A. Yes.

22 130. Q. And you understood that each of them  
23 had its own assets and own liabilities?

24 A. Yes.

25 131. Q. And you understood that, at least in

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1 relation to the seven Davies developers and the four  
2 condominium projects, each of them had their own SMI  
3 financing facility, correct?

4 A. Yes.

5 132. Q. And you understood that each of them  
6 owed their respective SMI financing instrument monies  
7 separate and apart from the others, correct?

8 A. Yes.

9 133. Q. Was Mr. Harris aware of this umbrella  
10 organization?

11 A. Yes.

12 134. Q. And did he ever advise you against it?

13 A. No.

14 135. Q. Did he ever warn you of any problems  
15 with it?

16 A. Not to my knowledge.

17 136. Q. And then if you go down to the bottom  
18 of page 1 of exhibit Q you have "Rationale for  
19 Intercompany Loans", and I just want to make sure I  
20 understand this. All of the intercompany loans within  
21 this, quote/unquote, 'umbrella organization' were all  
22 unsecured, correct?

23 A. Yes.

24 137. Q. So through the SMI facility investors  
25 would have a secured interest in a specific project

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1 but then that project could take the funds and advance  
2 them unsecured to other projects; is that fair?

3 A. I think that's fair.

4 138. Q. That was your understanding of how  
5 things worked?

6 A. There was not collateral offered for  
7 the loan.

8 139. Q. And so is it fair to say that due to  
9 all these intercompany loans it came to a point where  
10 each of the projects was then interdependent upon each  
11 of the other projects?

12 A. No.

13 140. Q. How would it be then if one of the  
14 projects failed that happened to owe funds to another  
15 project? Wouldn't that naturally cause a cascading  
16 effect?

17 A. I suppose theoretically if one of those  
18 projects had failed that would be true.

19 141. Q. Didn't they all ultimately fail?

20 A. Not through actions by the directing  
21 minds of the companies.

22 142. Q. And that's because you blame when Grant  
23 Thornton was appointed for the failure of all these  
24 companies, correct?

25 A. Yes.

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1 143. Q. And then if you go to page 2 of your  
2 exhibit Q the first sentence there talks about,  
3 "Tremendous pressure was placed on the Davies  
4 developers every three months to make certain the  
5 obligation to pay investor interest was met", do you  
6 see that?

7 A. Yes, I do.

8 144. Q. And at the beginning of your  
9 examination you and I talked about what I said was  
10 cash flow difficulties for the developers and you  
11 disagreed that those existed at the beginning. Do you  
12 agree that at least at some point the Davies  
13 developers ultimately experienced cash flow  
14 difficulties?

15 A. From time to time.

16 145. Q. Such that there was tremendous pressure  
17 placed upon them every three months to make certain  
18 the obligation to pay investor interest was met,  
19 right?

20 A. No, I wouldn't say that, I would ---

21 146. Q. Well, you did say that.

22 A. Well, I think we're dealing with two  
23 separate subjects. I think this subject relates to  
24 tremendous pressure being placed on the Davies  
25 developers to ensure that interest was paid. I don't



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1 think it relates to intercompany loans. This relates  
2 to ensuring -- Singh calling us and Harris's people  
3 writing us letters, making certain that the interest  
4 was going to be paid on such and such a date.

5 147. Q. I see. And I apologize, I had moved on  
6 with intercompany loans but I hadn't taken you with  
7 me. So my point is simply that on the basis -- there  
8 was tremendous pressure on each of the developers to  
9 make interest payments every three months, fair?

10 A. That's correct.

11 148. Q. And that -- I'm going to take you to a  
12 bunch of emails subsequently but I don't think there's  
13 a dispute between us -- that was a real pressure for  
14 you and the directing minds of these Davies  
15 developers; was it not?

16 A. Yes, it was.

17 149. Q. Because there were times when it was  
18 going to be incredibly difficult to make those  
19 interest payments, right?

20 A. Yes.

21 150. Q. And in fact right at the end it was  
22 becoming almost impossible; is that fair?

23 A. I would say that the circumstances by  
24 which we had been operating had changed.

25 151. Q. How so?

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1           A.    Up until 2016 Tier 1 was working  
2 diligently to continue to raise money for the various  
3 Davies developer entities. At some point Singh  
4 decided to, for whatever reason, start raising money  
5 for non-Davies developer projects.

6           The activities of Singh not being  
7 specifically directed to advancing these projects  
8 caused the Davies developers to look elsewhere for  
9 alternate sources of capital because we could no  
10 longer rely on the timely raising of money by Tier 1.

11   152.       Q.    So it wasn't simply the Grant Thornton  
12 replacing Tier 1, it was actually before that that  
13 Tier 1 started raising funds for other entities; is  
14 that fair?

15           A.    True.

16   153.       Q.    And when you say you started looking  
17 for sources of funding outside of Tier 1, were any of  
18 the Davies developers ever successful in finding  
19 sources of funding other than Tier 1?

20           A.    We raised money though private  
21 investors from time to time.

22   154.       Q.    Who?

23           A.    Don Mintz.

24   155.       Q.    Anyone else?

25           A.    Not that I can think of off the top of

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1 my head.

2 156. Q. And so I take it then that when Tier 1  
3 stopped or at least tightened the financing for the  
4 Davies developers that is when they started to  
5 experience cash flow problems; is that fair?

6 A. No, I think there was tremendous  
7 pressure placed on the Davies developers to meet the  
8 interest payments from the beginning. I don't think  
9 it was a -- it was not something that just happened at  
10 the end of these projects. It was from, really -- as  
11 soon as the first year of interest had been expensed  
12 there was pressure placed on us to make sure that the  
13 interest continued to be paid.

14 157. Q. And the way you would alleviate that  
15 pressure was by raising more money through new  
16 financings, correct?

17 A. Correct.

18 158. Q. And not necessarily for the same  
19 project that had to make the interest payments but  
20 some other project within the umbrella organization?

21 A. Yeah, we certainly advised Singh that  
22 we had the following requirements coming up, that  
23 might be some of it related to interest, some of it  
24 related to architecture fees, things like that, and  
25 that we were intending to -- we would advise Tier 1

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1 and Singh and Harris that we intended to use some of  
2 those upcoming raise proceeds to pay the obligations  
3 of a number of the Davies developer projects.

4 159. Q. And I'm going to take you to some  
5 emails later but I don't think there's any dispute  
6 between you and me, given this umbrella organization,  
7 as you have described it, you weren't concerned if the  
8 next fundraising that was upcoming related to the  
9 project in which the liabilities were being incurred;  
10 is that fair?

11 A. I don't think any of the people related  
12 to the projects. I don't think I was concerned, I  
13 don't think Harris or Singh were concerned.

14 160. Q. Sorry, when I said you I meant the  
15 global you. That's a good point. So you didn't care  
16 whether or not the liabilities that were being  
17 incurred by a project were being financed by a  
18 fundraising from another project, for example, right?

19 A. No, as I say, I think the umbrella  
20 concept was that each project would support each  
21 other.

22 161. Q. Right. And as you explained it to me,  
23 I think, just before, you weren't concerned, Mr. Singh  
24 wasn't concerned, Mr. Harris wasn't concerned, Mr.  
25 Stewart wasn't concerned and Mr. Thompson wasn't

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1 concerned, right?

2 A. No.

3 162. Q. That's right?

4 A. That's correct.

5 163. Q. And as I understand it the tremendous  
6 pressure that you faced to make these interest  
7 payments was because if you missed even one interest  
8 payment on even one project that could have  
9 devastating effects, right?

10 A. Yes. Singh told us that if we missed  
11 an interest payment -- and Harris told us too -- it  
12 was unlikely that we would ever be able to receive  
13 another SMI loan.

14 164. Q. Because failure or default on an  
15 interest payment would cause a rippling effect  
16 throughout the SMI market, I assume?

17 A. That's correct.

18 165. Q. So it was critically important to you  
19 that these interest payments be made on a regular  
20 basis, almost ahead of anything else, right?

21 A. I would say that's true.

22 166. Q. And despite this tremendous pressure  
23 that you've referred to in exhibit Q to make these  
24 quarterly interest payments did you ever think that it  
25 might be inappropriate to pay dividends at a time when

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1 the companies were facing these tremendous pressures?

2 A. The dividends were paid in recognition  
3 of work that had been done upfront prior to closing.

4 167. Q. And I understand that that's your  
5 evidence, my question is slightly different. My  
6 question is: did you ever turn your mind to the fact  
7 of whether or not it was appropriate to pay those  
8 dividends in light of the tremendous financial  
9 pressures faced by the project companies to make  
10 quarterly interest payments?

11 A. No, because I didn't feel that there  
12 weren't solutions to continue to be able to make the  
13 interest payments.

14 168. Q. And those solutions would be new  
15 financings?

16 A. New sources of funding, correct.

17 169. Q. And once Tier 1 stopped providing new  
18 financing did you turn your mind to whether or not you  
19 were going to be able to find a replacement for the  
20 Tier 1 financing?

21 A. I don't think my evidence is that Tier  
22 1 stopped raising financing; I think my evidence is  
23 that the flow of funds from Tier 1 directed to our  
24 projects slowed down as a result of Tier 1 working on  
25 other projects and other financings.

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1 170. Q. And were you concerned that you would  
2 not be able to find a replacement for the funds that  
3 had slowed down from Tier 1?

4 A. Not really, because the nature of our  
5 business is that as the projects get closer to a state  
6 of construction readiness there are more and more  
7 sources of financing available. Our desire was to  
8 advance the projects as rapidly as we possibly could.

9 171. Q. And yet I have it right that none of  
10 the projects were ever completed, right?

11 A. That's correct.

12 172. Q. And in fact only one of the projects  
13 ever even got to a shovel in the ground stage; is that  
14 fair?

15 A. That's true.

16 173. Q. And even that project barely got under  
17 way; is that fair?

18 A. I don't know what barely under way  
19 means but ---

20 174. Q. If I go see it there's no building  
21 there, is there?

22 A. There is no building there.

23 175. Q. And as of the date Grant Thornton was  
24 appointed all of these entities that have no buildings  
25 had \$18,000.00 in the bank, right?

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1 A. If you say so.

2 176. Q. And then I did promise I would take you  
3 to some emails, so let's just do that. And so I've  
4 already spoken to your counsel about this, sir, but  
5 the emails I'm taking you to are all in the supplement  
6 to the receiver's sixth report and I'll give you the  
7 reference to them. I'm going to hand them to you  
8 individually, because I think that will just make them  
9 easier to find. These are all emails, I believe, that  
10 you have provided to the receiver.

11 The first one I want to give you is an email  
12 from Mr. Harris to yourself, dated October 15, 2013,  
13 and it's also to Peter Matukas of Harris & Harris LLP  
14 -- and for the record, that's M-A-T-U-K-A-S -- copying  
15 Bruce Stewart and Nicole Christiano of Harris & Harris  
16 LLP as well. Was Mr. Matukas involved in the Davies  
17 developers?

18 A. Only on the closing, closing -- on  
19 closing funds.

20 177. Q. And in what capacity did you understand  
21 that he served -- whose counsel was he serving as when  
22 he was involved?

23 A. I never thought about it, to be honest  
24 with you. He was doing the -- he was working with  
25 Tier 1 and their pool of investors.



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1 178. Q. Did you understand that when you were  
2 borrowing from Tier 1 that there was an adverse  
3 interest between the two of you in negotiating the  
4 terms and that any win for the Davies developers was a  
5 loss for the Tier 1 developers and vice versa?

6 A. I don't understand the question.

7 179. Q. When you were negotiating the terms of  
8 these loan agreements with Tier 1 -- well, let's do it  
9 a different way: when you were negotiating these terms  
10 with Tier 1 of the loan agreements who was negotiating  
11 on behalf of Tier 1?

12 A. Raj Singh.

13 180. Q. And who was negotiating on behalf of  
14 the Davies developers?

15 A. Me.

16 181. Q. And was Mr. Harris involved in those  
17 negotiations?

18 A. Well, there weren't really any  
19 negotiations. Singh told us what his fees were. We  
20 provided Singh with copies of the appraisals, which  
21 set out the amount of the loan proceeds, and Singh  
22 agreed to raise the funds based on that basis and the  
23 pro formas that we provided him.

24 From time to time he would ask for other  
25 background studies. But it was never a negotiation,

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1           it was, 'These are the terms of the loan. Please  
2           provide me with the following information', which we  
3           would do, and the documents would be prepared.

4       182.           Q.   And did you ever look for competitive  
5           financing to Tier 1 to see if you could get better  
6           financing from anyone else?

7                    A.   Not early on.

8       183.           Q.   Did you ever do that?

9                    A.   Later.

10      184.           Q.   And you found that you could not?

11                   A.   No, we found that KingSett was  
12           interested, KingSett Capital.

13      185.           Q.   And that's in the first lien mortgage  
14           in the Rideau property?

15                   A.   Yes.

16      186.           Q.   But otherwise in relation to the SMI  
17           financings did you look for anyone other than Tier 1?

18                   A.   Yeah, Vector Financial provided  
19           financing for us on 774 Bronson, together with some  
20           SMI financing.

21      187.           Q.   I see. Other than -- in relation to  
22           the SMI financing it was always Tier 1?

23                   A.   Yes.

24      188.           Q.   And it was always Mr. Singh that  
25           imposed the terms?

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1 A. Yes.

2 189. Q. Or I guess sometimes Mr. Harris would  
3 be his representative?

4 A. No, Singh.

5 190. Q. It was always Singh? So looking at the  
6 email I just sent you -- and, sorry, I think we talked  
7 about this but Mr. Matukas would just get involved in  
8 the closing then; is that right?

9 A. Yes.

10 191. Q. And did he have any ownership interest  
11 in any of the Davies developers?

12 A. Matukas?

13 192. Q. Yes.

14 A. No.

15 193. Q. And you'll see as -- you can read the  
16 email. I just want to direct you to the last sentence  
17 of Mr. Harris's email to you.

18 MR. BEEWORTH: Read the whole thing.

19 BY MR. BELL:

20 194. Q. Certainly. And while you're reading it  
21 I'll just talk about Mr. Harris's last two sentences  
22 here. First, "The negative goodwill that would be  
23 associated with the investors not receiving their  
24 interest", and it says, "That could be dramatic,  
25 especially since many of these investors are in other

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1 transactions or might be solicited for other  
2 transactions." He says he suspects Kitchener will be  
3 a complete no-go once it becomes known that McMurray  
4 has defaulted, as well as any other fundings through  
5 Tier 1.

6 And so that's consistent with what you and I  
7 talked about, that not defaulting on an interest  
8 payment -- or, sorry, let me rephrase my question to  
9 avoid the negative -- defaulting on an interest  
10 payment would be devastating, not just for that  
11 project but for other projects going forward, right?

12 A. Yes.

13 195. Q. And when Mr. Harris sent you this email  
14 or gave you this kind of advice did you understand he  
15 was acting as your counsel, as a shareholder or as Mr.  
16 Singh's counsel, or did you turn your mind to that?

17 A. I can't honestly say that I  
18 specifically thought about that.

19 196. Q. But it was certainly advice that Mr.  
20 Harris had given you previously?

21 A. It was the kind of business advice that  
22 one would expect that Greg would offer from time to  
23 time.

24 197. Q. Okay. If you give me that back we'll  
25 mark that as exhibit 2 to your examination.

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1 --- EXHIBIT NO. 2: Email dated October 15th, 2013

2 BY MR. BELL:

3 198. Q. There's another email I want to give  
4 you, sir, that's from you to Mr. Singh, dated March  
5 27, 2014. And the subject is "McMurray and Whitby  
6 raises". Have a read through that email as well, but  
7 I think this is another example that we talked about  
8 where it seems to me in reading this email,  
9 specifically the last two paragraphs, that you're not  
10 concerned about where the fundraising comes from,  
11 simply that you need funds for all of the above  
12 projects. I just want to ask you about that.

13 A. I wouldn't characterize it I wasn't  
14 concerned. I don't think that's accurate. I think  
15 what I was stating here is that in order to be able to  
16 meet the obligations that are upon us this is where  
17 the money is coming from. This is what I -- this is  
18 where I am deriving the funds to be able to make the  
19 commitments.

20 199. Q. Okay. And so specifically if you look  
21 at the second-last paragraph before the "See you at  
22 3:30 this afternoon", you say, "I have mentioned  
23 McMurray a couple of times recently and I want to  
24 bring to your attention that without receiving both  
25 Oakville and McMurray raises we can't afford to fund

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1 the 1.5 million to take Whitby forward over the next  
2 four months." Do you see that?

3 A. Yes.

4 A. And so certainly as of this time, when  
5 you're contemplating additional fundraising for  
6 Oakville and McMurray, you're contemplating the usage  
7 of those funds will be -- that those funds would be  
8 used to take Whitby forward over the next four months,  
9 right?

10 A. Some of the funds, yes.

11 200. Q. And you're advising Mr. Singh of that?

12 A. Yes.

13 201. Q. And Mr. Harris?

14 A. Yes.

15 202. Q. And as far as you know neither of them  
16 expressed any concern about that process?

17 A. No concern at all.

18 203. Q. Let me grab that. We'll mark that as  
19 exhibit 3.

20 --- EXHIBIT NO. 3: Email dated March 27th, 2014

21 BY MR. BELL:

22 204. Q. And just while we're there, I know in  
23 your affidavit you talk about Mr. Singh and Mr.  
24 Harris, most importantly Mr. Singh, consenting to  
25 these intercompany loans. Did you ever get written

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1 consent, formal written consent, from Mr. Singh or  
2 when you say he consented do you just mean that you  
3 would advise him by email and he would not raise any  
4 concerns?

5 A. I believe some of the emails from Mr.  
6 Singh on the subject made recommendations about where  
7 the money could come from or the timing of upcoming  
8 loans, things like that. I mean -- does that answer  
9 your question?

10 205. Q. It does. But there was never actually  
11 a formal consent, right?

12 A. No, there was no document that was  
13 prepared, 'I hereby consent to', et cetera, et cetera.

14 206. Q. I just wanted to make sure I hadn't  
15 missed anything. And, sir, I'm going to take you to  
16 another email, which is an email from yourself to Mr.  
17 Singh, again copying Mr. Harris, dated June 2nd, 2014.  
18 And the subject is "Tranche 1, Whitby". And again,  
19 have a read through the email to the extent you want  
20 to but where I want to take you is the last -- there's  
21 a bolded paragraph that talks about "So in total we'll  
22 need 1.6 million for Whitby", do you see that?

23 A. Yes.

24 207. Q. And then you set out that you need  
25 500,000 for the three Memory Care projects, 250,000

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1 for interest on various projects, 200,000 for  
2 McMurray, certain fees for offices, consultants,  
3 150,000 for the Oakville settlement. So as I  
4 understood it you're basically setting out the  
5 financial needs of all the various projects; is that  
6 fair?

7 A. Yes.

8 208. Q. And then ---

9 A. Perhaps I can clarify, I wouldn't say  
10 necessarily all of the projects but a number of the  
11 projects.

12 209. Q. A number of the projects? That's fair.  
13 If you go over to page 2 of your affidavit --

14 MR. BEEWORTH: Email.

15 BY MR. BELL:

16 210. Q. -- email -- thank you -- it says,  
17 "Would you consider not raising the second tranche in  
18 Whitby? I'll get a Cane development appraisal for,  
19 say, 15.6 million. The 11.6 million of Tier 1 cash  
20 registered against the Whitby project will have room  
21 to fund a further 4,000,000 of first mortgage  
22 construction debt in front of it. I can easily raise  
23 the amount and will have the receipts and invoices  
24 from the sales centre, construction, architects and  
25 engineers to justify the 4,000,000 of construction



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1 funding if OT wants to see it." Do you see that?

2 A. I do, yes.

3 211. Q. And then at the very end of the email -  
4 - or, sorry, the next paragraph, second sentence, you  
5 say, "Memory Care will grind to a full stop without  
6 the funds this summer to pay for the construction  
7 documents and arrange our building permits"; do you  
8 see that?

9 A. I do.

10 212. Q. And then in bold and italicized at the  
11 end you say, "It's really the only way I can see to  
12 fund all our commitments by end of summer"; do you see  
13 that?

14 A. Yes.

15 213. Q. And as I understand what you're telling  
16 Mr. Singh, copying Mr. Harris, in this email is that  
17 you need to do a significant second tranche on Whitby  
18 to finance your obligations for these other various  
19 projects; is that fair?

20 A. That was one option, yes.

21 214. Q. Well, as I read it in your last  
22 sentence it's really the only way that you could see  
23 to fund all of your commitments; isn't that fair?

24 A. Yes.

25 215. Q. And so if it wasn't for raising the

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1 funds off Whitby then I assume all of these other  
2 projects would have ultimately gone into default on  
3 their obligations, right?

4 A. Quite possibly. I think it's fair to  
5 state though that the money that was being raised --  
6 contemplated to be raised on Whitby was basically  
7 paying for things that had already been expensed on  
8 Whitby.

9 We from time to time found ourselves where  
10 there was no Tier 1 additional financing available.  
11 We would continue to press on with commitments, being  
12 the architects, engineers, and in this case the  
13 building of the sales centre in Whitby.

14 So the 4,000,000 that was being discussed,  
15 which actually ended up being 2,350,000, most of it  
16 went to paying for the out of pockets that had already  
17 been disbursed.

18 216. Q. But as I read your email that's not  
19 what's motivating you. What's motivating you, and I  
20 think we've talked about this, is the need to keep all  
21 of the projects under the umbrella organization  
22 current with their liabilities so you don't default on  
23 any of them because that would have catastrophic  
24 consequences for all of them, right?

25 A. Yes. I think the purpose of the email

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1 is to state that we have these global cash  
2 requirements and this is the only way that I can see  
3 to be able to keep those current.

4 217. Q. Right. Whitby is the solution for the  
5 global cash requirements?

6 A. Right.

7 MR. BELL: Can we mark that as exhibit 4 to  
8 Mr. Davies' examination?

9 --- EXHIBIT NO. 4: Email dated June 2nd, 2014

10 BY MR. BELL:

11 218. Q. Sir, I'm going to show you another  
12 email which is an email from you to Raj Singh, copying  
13 Diana at Memory Care. And it's dated, for the record,  
14 July 29, 2014. And first of all, can you just tell me  
15 who Diana is?

16 A. She's our bookkeeper/officer manager.

17 219. Q. And you'll see in the second paragraph  
18 you talk about how she advised you that you have  
19 approximately 545,000 in current payables, roughly  
20 divided equally between the three Memory Care projects  
21 and Boathaus.

22 A. I see that.

23 220. Q. And am I right that Boathaus -- I don't  
24 know how I'm pronouncing that correctly. For the  
25 record it's B-O-A-T-H-A-U-S. Am I right that that's

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1 Scollard?

2 A. No.

3 221. Q. Isn't it?

4 A. There's two Scollards, to be clear.

5 The first Scollard in 2012 was a proposed 40-storey  
6 condominium tower in Yorkville. Because the company  
7 had been formed and the project never went ahead we  
8 used Scollard Development Corp. to do the Whitby  
9 Boathaus project. So there are two Scollard projects.

10 222. Q. All right. And so when I see Boathaus  
11 that's referring to the second Scollard project?

12 A. Yes, that's right, Boathaus refers to  
13 the second Scollard project.

14 223. Q. Thank you. Which is Whitby?

15 A. Which is Whitby, yes.

16 224. Q. And if you see at the end you'll see  
17 you set out the various amounts owing and then the  
18 next paragraph you say, "In addition to that 545,000  
19 and the 250,000 in August payables listed above we  
20 have Tier 1 interest payments due in mid-September";  
21 do you see that?

22 A. I do.

23 225. Q. And so then you say that you'll need  
24 Tier 1 to raise the full 13.6 million for the  
25 September Boathaus closing or you'll need the 3.5

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1 million equity investor contribution, right?

2 A. Yes.

3 226. Q. And then you say about the payment of  
4 the almost 2,000,000 you have out of pocket and owing  
5 on Boathaus you won't be able to meet any ongoing  
6 commitments after September 1st, right?

7 A. Right.

8 227. Q. And so as I understand what you're  
9 saying here is that you needed the Boathaus financing  
10 to make good on the interest payments owing on the  
11 other projects; is that fair?

12 A. That's fair.

13 MR. BELL: All right. Mark that as exhibit  
14 5.

15 --- EXHIBIT NO. 5: Email dated July 29th, 2015

16 BY MR. BELL:

17 228. Q. And then, Mr. Davies, I want to take  
18 you to another email, which is from you to Mr. Singh,  
19 copying a number of individuals at Harris & Harris  
20 LLP, dated August 25th, 2014. And again, feel free to  
21 have a look at this email but I just want to refer you  
22 to the first paragraph where -- and you can have a  
23 look through the email but what strikes me as what's  
24 going on is there's a concern about the fundraising we  
25 just talked about from Boathaus on the timing. Do you

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1 recall that issue?

2 A. Yes.

3 229. Q. So Tier 1 was able to raise the 13.6  
4 million but there was an issue about when the Davies  
5 developers were actually going to get the funds that  
6 had been raised; is that right?

7 A. Yes. The 13.6 was supposed to be  
8 16,000,000. That was what Tier 1 had gone to the  
9 marketplace to raise. The time it was taking to raise  
10 that much money was becoming longer and longer. I  
11 don't know why, perhaps there were other things going  
12 on with Tier 1, but it seemed to be taking forever to  
13 get the 16,000,000.

14 As a result what I suggested to Singh was,  
15 'Cut the raise off at wherever you're at right now',  
16 which was I believe about 13.2. And between the time  
17 that he stopped the raise at 13.2 another couple of  
18 hundred thousand dollars came in to make it 13.6.

19 230. Q. I see. All right. And there was also  
20 a timing concern about when you were actually going to  
21 get access to the funds, right?

22 A. That's why we cut the -- yes, that's  
23 why we cut the raise back from 16,000,000 to,  
24 ultimately, 13.6.

25 231. Q. I see. And at the third sentence of

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1 your email you say, "Someone needs to impress upon  
2 someone at OT in the strongest possible terms that we  
3 need the full 13.6 on September 15." Who was OT?

4 A. Olympia Trust is the organization in  
5 Calgary that administered the RRSP portion of the  
6 loans.

7 232. Q. And then you say at the last sentence  
8 there, or the next sentence, "It's a major issue for  
9 all of us if there isn't sufficient capital to repay  
10 the 1.6 million Memory Care has invested. Raj, please  
11 do whatever you can." What did you mean by "It's a  
12 major issue for all of us"?

13 A. We needed the 1.6 million that the  
14 various Memory Care projects had invested into other  
15 projects repaid to keep the Memory Care projects  
16 moving forward.

17 233. Q. And to finance the interest charges  
18 that were coming due on their SMIs?

19 A. Yeah, I believe they were all coming  
20 due, by what this says right here, in September.

21 234. Q. Right. And so what was my point,  
22 that's the concern about the timing, right, is at the  
23 time of this email if you don't receive those funds by  
24 September 15 then you're not going to be able to repay  
25 the other projects in time to allow them to finance

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1           their SMIs, right?

2                   A.   That and it appears in the first line  
3           that we had negotiated an extension to the closing on  
4           Whitby. I believe there was three extensions that we  
5           had to negotiate for delays in receipt of the closing  
6           funds.

7   235.           Q.   I'm going to suggest to you that at  
8           least as of this time, which is August 25th, 2014, all  
9           of the projects collectively are facing a cash flow  
10          crisis such that if OT can't get the funds to you by  
11          September 15th you're then going to be in default of  
12          at least some of the SMI interest payments, right?

13                   A.   I wouldn't say a cash flow crisis, and  
14          let me explain why. I think it's fair to say every  
15          development project that I've been involved on has a  
16          constant appetite for cash to keep the projects moving  
17          forward. As long as the cash is flowing the  
18          architects keep working, the consultants keep  
19          consulting, the interest keeps getting interested and  
20          the project moves forward through the logical  
21          development process.

22                   If there are interruptions to ongoing  
23          receipt of new capital to keep the projects moving  
24          projects stall and die, consultants go and move on to  
25          other projects, et cetera. Bad things happen to the



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1 project.

2 It was always contemplated from the get-go  
3 that no matter how much the first raise was it wasn't  
4 going to be the last raise. The first raise was the  
5 beginning of the process of moving the project through  
6 to completion. So these emails, I think it's fair to  
7 say, is impressing on everybody on the Tier 1 side and  
8 the legal side that -- for example, the reference to  
9 Olympia Trust, Olympia Trust would take weeks and  
10 weeks to process documents.

11 Tier 1 would promise a closing date by a  
12 certain date and wouldn't be there with the funds on  
13 the date that it said. So I just want to be clear  
14 that everybody understands that the need for servicing  
15 these projects was a constant need, from -- and has  
16 been a constant, you know, on every project I've ever  
17 been involved in.

18 236. Q. And I see these emails -- and we can go  
19 through more of them, and we will -- at times you come  
20 perilously close to defaulting on the interest  
21 payments to some of the SMIs and that you're relying  
22 upon the financing for other projects within weeks, if  
23 not days, of coming through so that you don't default  
24 on the interest, which Mr. Harris has already advised  
25 would have catastrophic effects.

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1           A. Well, I think you can see by the dates  
2 of the -- I would agree with that in certain cases.  
3 And I think you would agree -- be able to see that by  
4 the dates when I'm addressing this it's 60 or 90 or 80  
5 days in advance of the money being required, so we  
6 were constantly putting it on everybody's radar that  
7 three months is coming and whatever raises you're  
8 making giddy-up.

9       237.           Q. Have a look at this -- and we'll mark  
10 it as exhibit 6 -- but in this case we're actually 20  
11 days before, right, because this is an email as of  
12 August 25th talking about the need for funds by  
13 September 15th?

14           A. Yeah, the funds would be due on the  
15 30th but Matukas wanted them in two weeks early to be  
16 able to process them. So there -- I would imagine  
17 there's probably an email before that dealing with the  
18 timing.

19           MR. BELL: And so just for the record,  
20 because there was a long discussion between when we  
21 brought this email up and when we marked it, exhibit 6  
22 is the email from Mr. Davies to Raj Singh, and copying  
23 a number of people, dated August 25th, 2014.

24 --- EXHIBIT NO. 6: Email dated August 25th, 2014

25 BY MR. BELL:

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1       238.           Q.    I just want to show you another email.  
2                    And this is an email chain between yourself and Mr.  
3                    Singh from April of 2016.  Have a look through it, but  
4                    it talks about financing difficulties again, it's a  
5                    theme, and the third-last email, so third from the  
6                    top, is an email from Mr. Singh to Mr. Harris, copying  
7                    you, although it's addressed to you, saying that, "You  
8                    don't want to miss this payment.  We're obligated now  
9                    to disclose this in all FSCO forms, as we have to  
10                    assess a developer's financial position and indicate  
11                    risks."

12                                And then if you scroll down to the next  
13                    paragraph he says, "Apart from the above this will  
14                    send ripples through the agents' channels that are  
15                    also very wary of deals with Textbook and Memory  
16                    Care."  And do you recall there being an issue about  
17                    this and not wanting to miss fees as of April 2016  
18                    because there was a concern that FSCO would be put on  
19                    notice?

20                                A.    The FSCO issue was news to me, it  
21                    wasn't anything I knew about, I only was aware of the  
22                    interest coming due.

23       239.           Q.    All right.  And then you see that the  
24                    next email is an email, I believe, from you -- it's  
25                    always hard to tell with printed emails -- that says,

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1 "You will not believe this but Diana just checked the  
2 mailbox and there's a Scollard HST rebate cheque for  
3 \$55,000.00. I'll give her the difference and she'll  
4 go to the bank and wire the 68,000 to Harris and  
5 Harris now"; do you see that?

6 A. Yes.

7 240. Q. And Mr. Singh responds, "God is looking  
8 out for us", with an exclamation mark.

9 A. Yes.

10 241. Q. And do you recall in April of 2016 the  
11 projects being in such dire financial straits that a  
12 \$55,000.00 HST rebate cheque coming in to save the  
13 parties?

14 A. That wouldn't have been the normal  
15 case, I don't think we were cutting it that fine, but  
16 from time to time, obviously, based on this  
17 correspondence, that is the case.

18 MR. BELL: All right. And we'll mark that  
19 as exhibit 7.

20 --- EXHIBIT NO. 7: Email dated April 29th, 2016

21 BY MR. BELL:

22 242. Q. Just a second, sir, I just want to see  
23 if there's any other emails I want to take you to in  
24 this bundle. Then switching gears slightly, we've  
25 talked briefly about the dividends but you're aware

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1           that both 525 Princess and 555 Princess paid dividends  
2           out to the shareholders?

3                     A.    Yes.

4    243.            Q.    And do you agree with me that they did  
5           so at times where they were facing cash constraints?

6                     A.    Yes.

7    244.            Q.    And did you ever turn your mind to the  
8           fact that it was inappropriate for them to be paying  
9           out dividends at the time they were facing cash  
10          constraints?

11                    MR. BEEWORTH:  I think you've asked that  
12          question already.

13    --- REFUSAL NO. 2

14                    MR. BEEWORTH:  I think I asked generally  
15          about the developers, but that's fair, I'll take Mr.  
16          Davies' first answer on that.  That's fair.

17    BY MR. BELL:

18    245.            Q.    And I want to take you to a different  
19          email, a different batch, about this issue.  I'm  
20          showing you an email chain from February of 2016.  The  
21          last email is an email from Diana Cassidy to you,  
22          dated February 9th, 2016, but that's not the email I'm  
23          going to direct you to, but just so we have it.

24                    You can have a look through it, sir, but I  
25          want to direct your attention to the third page of the

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1 email. There's an email from you to Raj Singh,  
2 copying Walter Thompson, dated February 8th, 2016; do  
3 you see that?

4 A. To Raj Singh and Greg Harris? Yes.

5 246. Q. Yes, sorry, to Raj Singh and Greg  
6 Harris, copying Walter Thompson.

7 A. I see it.

8 247. Q. And then do you see in the second  
9 paragraph you say, "You would think we would all agree  
10 that the payment of bonuses to shareholders through  
11 the Tier 1 raises has been gratefully received"?

12 A. I see that.

13 248. Q. And is that -- with reference to the  
14 bonuses to shareholders, is that the dividend payment?

15 A. Yes.

16 249. Q. And then you say it had certainly been  
17 in your case; do you see that?

18 A. Yes.

19 250. Q. And then you say you're going to set  
20 out the challenges. And if you go down to the fourth  
21 paragraph you say -- or two paragraphs down, you say,  
22 "There's a larger, more encompassing issue", and if  
23 you go forward two or three sentences you say, "In the  
24 most recent advances for 555 and 525 the amount of the  
25 raises after all fees, shareholder bonuses and other

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1           deductions netted a relatively small surplus.  
2           Textbook paid 1.3 million to Scollard and MC from the  
3           555 and 525 advances and that cash was used to pay  
4           1,000,000 of December and January interest, which left  
5           Textbook little cash to operate with." Do you see  
6           that?

7                           A.    Yes.

8   251.           Q.    And do you recall that situation  
9           whereby after 525 and 555 raise money you make these  
10          dividends or shareholder bonuses up the chain, then  
11          lend money to the other entities such that neither 525  
12          nor 555 had -- or had little cash to operate?

13                          A.    I do.

14   252.           Q.    And did either Mr. Singh or Mr. Harris  
15          raise any concerns about that?

16                          A.    No, quite the opposite, in fact on the  
17          -- I'll need to ask for clarification but my  
18          recollection is that 525 closed a couple of months  
19          after 555.

20   253.           Q.    I'm told that's right.

21                          A.    Yeah. We were concerned about the  
22          second dividend on 525 and Harris and Singh insisted  
23          that it be paid. And I believe you have  
24          correspondence related to 445 where I told Harris and  
25          Singh that we were no longer going to be paying any

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1 more dividends. Harris took exception to it, Singh  
2 took exception to it, and we said if we don't close,  
3 so be it, we don't close, but we're not taking any  
4 more dividends.

5 I think the only thing that was fortunate in  
6 the case of 555 and 525 had been that there had been  
7 an extensive amount of work between Walter initially  
8 identifying the sites and negotiating long-term  
9 closing opportunities and our in-house staff advancing  
10 all of those projects in the months leading up to  
11 having to close.

12 I think that the inference from your  
13 question is that we left 555 and 525 perilously unable  
14 to move forward. I would say the only -- the thing  
15 that would perhaps weigh against that would be the  
16 extensive amount of work that had been done prior to  
17 closing on the projects, not only in terms of the  
18 acquisition but also of advancing the development.

19 254. Q. And if you just scroll down to the  
20 third paragraph on the fourth page of this email, so  
21 the last page, you say, "I have mentioned in the past  
22 that the issue is the land raises are so large that  
23 there is insufficient surplus proceeds to fund  
24 operations at the present level." And the last  
25 sentence of that paragraph you say, "Unfortunately the



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1 best sites that are close to schools or in the  
2 downtown core aren't cheap and the net proceeds in the  
3 Tier 1 raises aren't enough to cover ops"; do you see  
4 that?

5 A. Yes.

6 255. Q. And then you propose that the solution  
7 is to raise money through Bronson, right?

8 A. Yes.

9 256. Q. All right. And my understanding of the  
10 525 Princess property, which you say Mr. Thompson did  
11 extensive work on, is that the plans for the building  
12 actually exceeded the size of the lot purchased; does  
13 that fit with your understanding?

14 A. I don't understand the question.

15 257. Q. Fair enough. I understand that the  
16 building plans -- so the building actually wouldn't  
17 fit on the lot purchased; does that fit with your  
18 understanding?

19 A. You may be referring to a scenario  
20 where we were going buy the 50- or 60-year-old church  
21 that was immediately to the north up Alfred Street.  
22 One of our options involved -- I think we were able to  
23 acquire that property for about \$400,000.00. So we  
24 were studying the impacts on development density, et  
25 cetera, by adding another site.

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1 258. Q. So when you bought the lot you knew  
2 that the building that you were purporting to put on  
3 that property was actually too big to go on the lot  
4 that you were buying?

5 A. No, we had other options that would fit  
6 perfectly on the size of site that we purchased, but  
7 one of the options, as I've just said, was looking at  
8 adding increasing lot area too.

9 259. Q. And as I understand with relation to  
10 the Princess properties as well there was an issue  
11 where the proposed building you were going to put in  
12 was 11 storeys but the property was only zoned for  
13 four storeys; do you recall that issue?

14 A. The property wasn't zoned for four, the  
15 property I think was zoned for less than that. There  
16 was a secondary plan study that had been undertaken by  
17 consultants for the city that recommended what they  
18 call midrise density, which would have been between  
19 six and eight storeys.

20 But a rival developer on another Princess  
21 Street had been recently given approval for 11 storeys  
22 and we felt fairly confident, based on the increases  
23 that they had been able to obtain with the city, that  
24 11 storeys was going to be achievable.

25 260. Q. Sorry, do you recall the name of that

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1 rival developer?

2 A. Podium. Podium Developments or Podium  
3 Investments.

4 261. Q. And since we're talking about 525, sir,  
5 I'll take you to the supplement to the receiver's  
6 sixth report again.

7 MR. BEEWORTH: Once you're done we'll ---

8 MR. BELL: Yes. Why don't we just finish  
9 this and then we'll take a break?

10 BY MR. BELL:

11 262. Q. So just going back to the question  
12 about the property size issue and the storeys issue,  
13 my understanding is that the Cane appraisal was done  
14 upon the idea that the building would be the larger  
15 size and it would be 11 storeys. Does that fit with  
16 your understanding?

17 A. Yes.

18 263. Q. Even though the property was too small  
19 and you didn't yet have the zoning for 11 storeys,  
20 right?

21 A. Well, it wasn't that the property was  
22 too small, the property was the property, we just did  
23 not have the zoning for the height and density that we  
24 wanted.

25 264. Q. But the property that was actually

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1 purchased was too small for that building. You had  
2 told me you were hoping to buy the property that a  
3 church was on as well, right?

4 A. No, to be clear, the property that we  
5 purchased was adequate to build a building that we  
6 were prepared to move forward on. We studied the  
7 opportunity of adding more land to see what that would  
8 do opposite additional density and additional profit.  
9 But we could have been quite happy to proceed with the  
10 site that we purchased.

11 265. Q. I see. And the Cane appraisal that was  
12 used to raise the funds for 525 Princess was based  
13 upon the larger building, right?

14 A. But not the extra site.

15 266. Q. Not the extra site but just the larger  
16 building?

17 A. It was based on 11 storeys. We felt  
18 very confident, based on our discussions with the  
19 city, that we were going to be able to achieve the  
20 density bonuses that we were hoping to achieve.

21 267. Q. And in addition to the 11 storeys,  
22 which I understand the Cane appraisal was based upon,  
23 my understanding is it was also based upon the premise  
24 that the building would be larger than the plot of  
25 land that was ultimately purchased. Does that fit

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1 with your understanding?

2 A. No.

3 268. Q. And then turning to the supplement to  
4 the receiver's sixth report I'll show you -- it's at  
5 page 5 of the report, sir, and I'm going to take you  
6 to paragraph 9.

7 A. Do you want this back?

8 269. Q. Yes, please. We should mark that as  
9 exhibit -- before we go on we'll mark as exhibit 8 the  
10 email chain that ends with Diana Cassidy to John  
11 Davies dated February 9th, 2016.

12 --- EXHIBIT NO. 8: Email Chain ending with a February  
13 9th, 2016 Email

14 BY MR. BELL:

15 270. Q. And I think I misdirected you, sir,  
16 that's where we went last time. Let's go to page 6 of  
17 the monitor's supplemental report.

18 MR. ZWEIG: Receiver.

19 MR. BELL: Receiver, thank you. Keep  
20 correcting me on that.

21 BY MR. BELL:

22 271. Q.

23 BY LAWYER2:

24 272. Q. And, sir, if you look at paragraph 12  
25 on page 6 this is a Summarized Statement of Receipts

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1 and Disbursements for 525 Princess for the period; do  
2 you see that?

3 A. I do.

4 273. Q. And then you'll see at the top that the  
5 main receipt is from the syndicated mortgage  
6 investment, which is approximately 6.4 million?

7 A. Yes.

8 274. Q. And then 2.1 of that was spent on land,  
9 right?

10 A. Mm-hmm.

11 275. Q. And then over a million was spent on  
12 brokers' commissions?

13 A. Mm-hmm.

14 276. Q. And then 500 grand for interest  
15 holdback? Yes?

16 A. Yes.

17 277. Q. And 225,000 for professional fees?

18 A. Yes.

19 278. Q. And then there was the payment to the  
20 shareholders or the dividends of a million dollars?

21 A. Yes.

22 279. Q. And then other payments that we'll get  
23 to, but those are, I assume, intercompany loans and  
24 other related things for 1.3 million, see that?

25 A. Yes.

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1 280. Q. And then that's a total of 6.3 million  
2 such that there's \$111,000.00 left by January 28,  
3 2016, right?

4 A. Yes.

5 281. Q. And you were generally aware that that  
6 was the financial position of 525 Princess at that  
7 time?

8 A. Generally.

9 282. Q. So within six weeks of raising the  
10 funds they purchased land for 2,000,0000 and then the  
11 rest of the funds were dissipated, right?

12 A. Yes.

13 MR. BELL: We'll take a break now?

14 MR. BEEWORTH: Sure.

15 MR. BELL: Is that what you asked for?

16 MR. BEEWORTH: Sure.

17 MR. BELL: We can take a break now, it's a  
18 good place.

19 --- A BRIEF RECESS AT 11:18 A.M. ---

20 --- UPON RESUMING AT 11:28 A.M. ---

21 THE DEPONENT: Can I say that I think the  
22 inference in the last question with the bank balances  
23 --

24 MR. BELL: Sorry, are we on the record?

25 THE REPORTER: We are, yeah.

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1 BY MR. BELL:

2 283. Q. Go ahead, sir.

3 A. -- is not entirely unusual in the  
4 development world. I think you race forward with work  
5 and then catch up with new financings as the projects  
6 move forward. I think perhaps your -- I'm not putting  
7 words in your mouth, I hope, but I think by the nature  
8 of your question it was perhaps expressing concern  
9 that there weren't sufficient funds to advance the  
10 project at that point.

11 All I would like to say is that there was a  
12 significant amount of work that had been done to get  
13 to that point and the next round of financing would be  
14 predicated on having moved the project sufficiently  
15 down the road to qualify for new financing, new  
16 equity.

17 284. Q. So my understanding is that no funds  
18 had been spent on developments costs for 525 Princess;  
19 is that your understanding?

20 A. Well, there had been six or seven  
21 months of my time on both of them, same with our  
22 office staff and several months of architects' and  
23 engineers' time. I can't say with certainty about  
24 traffic engineers but I can certainly talk about urban  
25 design consultants, architects and that type of thing.



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1           Those projects had advanced quite a long way by the  
2           time we reached closing.

3       285.           Q.   And yet still -- and I think we've  
4           agreed upon this, I don't want to retread soil, but  
5           they still were at the point where they didn't have  
6           the zoning to be 11 storeys and you still hadn't  
7           decided whether or not you were going to need to buy a  
8           second lot, right?

9           A.   That's correct, but well under way.

10       286.           Q.   I understand your evidence. So then  
11           switching to Rideau, and we've talked about it a bit,  
12           I just want to -- I don't think there's any dispute  
13           between us that the Davies developers advanced  
14           approximately \$3.7 million to the Rideau project.  
15           Does that fit with your understanding?

16           A.   I believe so. My recollection is  
17           2,750,000 to close and then the rest in out of pocket  
18           costs.

19       287.           Q.   And 555 Princess, which you and I were  
20           discussing before the break, it advanced 1.39 million  
21           to Rideau, correct, roughly?

22           A.   Roughly.

23       288.           Q.   I can make that representation to you?

24           A.   Well, yeah, I don't recall which one it  
25           was that ---

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1 289. Q. And with Rideau all the funds that were  
2 advanced by Davies developers were advanced unsecured,  
3 correct?

4 A. Correct.

5 290. Q. And was there a reason why you didn't  
6 grant security?

7 A. It had not been our practice up until  
8 that time to grant security and this was standard  
9 operating procedure in our world.

10 291. Q. All right. And if you go to paragraph  
11 43 of your affidavit dated July 27th, 2017 -- and I  
12 wasn't trying to do a memory test but I should have  
13 brought you here first, because there is the number  
14 for 1.39 million for 555 Princess; do you see that?

15 A. I do.

16 292. Q. And then you say that, "These amounts  
17 were never intended to be equity contributions but",  
18 and you say here, "rather they were unsecured loans",  
19 right?

20 A. Yes.

21 293. Q. And then you say, "The anticipated  
22 financing would also be used to pay Generx the  
23 development management fees it would earn over the  
24 intervening period"; do you see that at the end of  
25 paragraph 43?

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1 A. Yes.

2 294. Q. And did Generx receive any management  
3 fees from the Rideau property?

4 A. No.

5 295. Q. That was just the intention?

6 A. Yes.

7 296. Q. And why was it that Rideau wasn't  
8 financed through an SMI but was financed this way  
9 instead?

10 A. It was going to be financed through an  
11 SMI. The appraisal had been done, Cane's work had  
12 been done, I believe the tax opinion had been  
13 completed. All of those materials, to the best of my  
14 recollection, were in Singh's hands prior to the 25th  
15 of October.

16 297. Q. I see. So this was going to be the  
17 next financing that was going to be done?

18 A. That's right. I believe the Cane  
19 appraisal was about \$18,000,000.00.

20 298. Q. And you see at paragraph 47 of your  
21 affidavit you talk about the significant work that  
22 Generx did to advance the Ottawa property to  
23 construction readiness; do you see that?

24 A. Yes.

25 299. Q. And you see that you say in the second

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1 sentence that, "I believe that this work has  
2 substantially increased the value of the Ottawa  
3 property"; do you see that?

4 A. Yes.

5 300. Q. And so it is your evidence that the  
6 work that -- well, let's start off, Generx is you, I  
7 assume?

8 A. Generx was started by Walter Thompson  
9 and Rob Brown. Rob left a decade ago -- two decades  
10 ago. I'm not a -- I am a shareholder in Generx  
11 (Byward Hall).

12 301. Q. And is there a difference between  
13 Generx and Generx (Byward Hall)?

14 A. No, for the purpose of this discussion  
15 it's Generx (Byward Hall).

16 302. Q. I see. And the American Express card  
17 is with Generx (Byward Hall)?

18 A. No, Generex Development Partners.

19 303. Q. And who owns that entity, the Generx  
20 Development Partners?

21 A. I used to. It no longer exists. But  
22 every time they issue a new card every three years or  
23 four years they just continue to make it out to the  
24 same company.

25 304. Q. I see. So you say there that you

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1 believe this work has substantially increased the  
2 value of the Ottawa property, and that's at paragraph  
3 47 of your affidavit. Whose work was that?

4 A. My work, the work of our consultants,  
5 the work of our architects.

6 305. Q. And was Mr. Thompson involved in that?

7 A. Yes, very much so.

8 306. Q. Now, was Mr. Thompson leading that or  
9 were you leading that?

10 A. I was leading that, the development  
11 work.

12 307. Q. But Mr. Thompson was aware of it?

13 A. Yes.

14 308. Q. I'm going to show you an affidavit that  
15 Mr. Thompson swore, dated June 26, 2017, for the  
16 motion discharging the Certificates of Pending  
17 Litigation. Do you recall that issue with the  
18 Certificate of Pending Litigation being on Rideau?

19 A. I do.

20 309. Q. And had you reviewed Mr. Thompson's  
21 affidavit sworn in support of Rideau's motion to  
22 discharge the CPLs?

23 A. No.

24 310. Q. So I'm going to show it to you. And  
25 I'm going to take you simply to paragraph 15 of Mr.

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1 Thompson's affidavit. Have a read of paragraph 15.  
2 But Mr. Thompson starts paragraph 15 by saying based  
3 on his arm's length discussions with brokers and  
4 potential lenders he verily believes that an arm's  
5 length buyer would not pay more than the 11,000,000  
6 purchase price paid in November 2015; do you see that?

7 A. I do.

8 311. Q. Then he goes on to explain why he  
9 thinks that's true. And do you agree with Mr.  
10 Thompson's sworn evidence to the court to discharge  
11 the CPL that a vendor would not pay more than Rideau  
12 had originally paid for the property some two years  
13 earlier?

14 A. Walter Thompson is certainly closer to  
15 what the market conditions are right now but I  
16 definitely think that the situation that currently  
17 exists with the property in receivership would impact  
18 its value.

19 312. Q. And this affidavit, to be fair to you,  
20 sir, was sworn before the receiver was appointed.  
21 Does that change your evidence?

22 A. I can't say what Mr. Thompson's  
23 thoughts were on the value of the property.

24 313. Q. And that's fair. And do you stand by  
25 your evidence that you believe that the work that

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1 Rideau did in between November 2015 and the time you  
2 swore your affidavit substantially increased the value  
3 of the Ottawa property?

4 A. I believe we did.

5 314. Q. And then at paragraph 48 of your  
6 affidavit you say, "To the knowledge of the receiver  
7 and the court Generx has been engaged in concerted  
8 efforts to obtain replacement financing to pay out  
9 KingSett and to continue to advance the project."

10 And you say that, "To the extent that the  
11 refinancing is successful Generx remains prepared to  
12 pay the disputed amounts regarding the Ottawa property  
13 into trust, pending the resolution of that  
14 litigation." Do you see that?

15 A. Yes.

16 315. Q. And as I understand it -- well, let me  
17 ask you, when you say you're willing to pay the  
18 disputed amounts do you mean the disputed amounts owed  
19 to the receivership companies or do you mean the  
20 disputed amounts owed to all the Davies developers?

21 A. The disputed amounts related to Byward  
22 Hall.

23 316. Q. So you don't mean the disputed amounts  
24 owed to 555 Princess and Kingston -- or Kitchener?

25 MR. BEEFORTH: Are you talking about the 3.7

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1 million?

2 THE DEPONENT: Yes. Yes, we're talking  
3 about the 3.7 million.

4 BY MR. BELL:

5 317. Q. So you're willing to pay the full 3.7  
6 million?

7 A. Yes, yes.

8 318. Q. That's what you're referring to? And  
9 then you talked earlier about loans within the  
10 umbrella organization. You told me that you  
11 considered TSI, TSSI and MCIL to be within those,  
12 right? Yes?

13 A. Yes.

14 319. Q. And so was it that project companies  
15 would be lending money to TSI or TSSI or MCIL, who was  
16 their shareholder?

17 A. Who was not a shareholder?

18 320. Q. Who was their shareholder. Like, I had  
19 understood your concept of the umbrella organization  
20 to be one project would lend money to another project  
21 when it needed financing. Why would you lend monies  
22 to TSI, TSSI and MCIL under that umbrella  
23 organization?

24 A. I can't honestly say for sure. That  
25 was a decision that would have been made by Diana



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1 Cassidy and our accountants.

2 321. Q. So you never authorized the lending of  
3 funds from the projects to the parent companies; TSI,  
4 TSSI or MCIL?

5 A. Well, obviously, I would have had to  
6 sign the cheque but to the extent -- what the practice  
7 was or why there was money being advanced to those  
8 projects at the time, I wouldn't have any knowledge of  
9 that at all.

10 322. Q. And related to Mr. Cane, who was the  
11 appraiser, how did you come to meet Mr. Cane?

12 A. Raj Singh introduced me to him.

13 323. Q. And was he Raj Singh's appraiser for  
14 other entities or other developments; do you know?

15 A. Not to the best of my knowledge. I  
16 believe Singh was given an appraisal that Cane had  
17 done for a rival syndicated mortgage company,  
18 Fortress, and that his appraisal had been deemed to be  
19 acceptable to Fortress and whoever was holding their  
20 RRSP money and Singh felt that his experience dealing  
21 with Fortress would be valuable in helping us.

22 324. Q. And I can take you to a number of  
23 emails but I think that there's no dispute between us,  
24 there was a number of occasions where Mr. Cane's  
25 appraisals that were used to raise finances increased

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1 over time, correct?

2 A. Yes.

3 325. Q. And was it the case that the -- well,  
4 why don't you explain to me: how was it that Mr.  
5 Cane's appraisals would increase over time? How did  
6 that come to be?

7 A. It's a fairly standard procedure in the  
8 development world that as the projects evolve they  
9 become tighter, more efficient. The first cut from a  
10 pro forma statement or a costing analysis would be  
11 very broad. It would be at that stage, the early  
12 initial stages, that Cane would be asked to render his  
13 opinion.

14 As time progressed and the architects did  
15 their work, further consultation with municipalities,  
16 engineering and construction refinements were added,  
17 the projects, generally speaking, the costs came down  
18 and the revenues would go up.

19 So if we had achieved certain milestone of  
20 predevelopment activities to increase what we felt the  
21 valuation of the project was we would ask Cane to take  
22 another look at the project with that in mind.

23 326. Q. And was this an iterative process  
24 between the Davies developers and Mr. Cane, where you  
25 would go back to him and say, 'Would you consider

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1 increasing the valuation of the project based upon  
2 providing certain information'?

3 A. We wouldn't ever phrase it that say,  
4 ask him, we would say that we believe we have achieved  
5 certain milestones and have increased the value of the  
6 property and we would forward him whatever relevant  
7 documentation would demonstrate that that had  
8 happened.

9 327. Q. And was Mr. Cane aware when he  
10 increased the value of a property that -- he was aware  
11 that that would be used for an additional fundraising,  
12 correct?

13 A. Yes.

14 328. Q. And I think he even says so at the  
15 beginning of his reports. Was he aware that the funds  
16 that would come from that fundraising would not be  
17 poured back into that project but instead go to  
18 another project to perhaps finance its interest or  
19 other development costs?

20 A. I don't believe he knew or didn't know.  
21 I certainly never discussed it with him.

22 329. Q. I'm going to take a little bit of time  
23 here, sir, but I promise you it's in everyone's best  
24 interest because I'm going through and I'm going to  
25 take you to fewer emails than I otherwise would. I'll

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1 take you to an email from you to Raj Singh, copying  
2 Chris Giamou, dated November 3rd, 2014. And the first  
3 email in the chain I want to take you to, sir, you see  
4 that you -- well, first off, who is Chris Giamou?

5 A. He was the chief financial officer of  
6 Memory Care.

7 330. Q. Okay. And then you see in the second  
8 sentence you say, "I'll work on Michael Cane to see if  
9 he can get us to 5.5 or 6 million appraised value"; do  
10 you see that?

11 A. Yes.

12 331. Q. And is that what the process would be,  
13 that you would work on Mr. Cane to see if you could  
14 get as high a valuation as you could?

15 A. Within the parameters that Cane could  
16 reasonably, you know, agree to.

17 332. Q. Right. Mr. Cane obviously ultimately  
18 agreed to it, I wasn't suggesting he didn't, but ---

19 A. I wouldn't say that he ultimately  
20 agreed to it, I think we presented the property in the  
21 best possible light we could and Cane would apply his  
22 test of whether or not that met his criteria and  
23 determine whether or not the valuation would support  
24 it.

25 333. Q. For sure. And I guess it goes without

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1 saying that it's in your best interests to get as high  
2 a valuation or appraisal as you possibly can, because  
3 that lets you raise more funds, which might help you  
4 with your cash flow difficulties in other projects,  
5 right?

6 A. Yes.

7 MR. BELL: So we can mark that as exhibit 9.  
8 That's the email from Mr. Davies to Mr. Singh, dated  
9 November 3rd, 2014.

10 --- EXHIBIT NO. 9: Email dated November 3rd, 2014

11 BY MR. BELL:

12 334. Q. And then I'm going to take you to an  
13 email from yourself, sir, to Mr. Thompson, dated  
14 November 14th, 2015. And you see there, sir -- I'm  
15 going to take you again just to the last two emails.  
16 The second-last email is an email from Mr. Thompson to  
17 you at your Textbook suites and it says, "After  
18 Michael is done appraising the two Ottawa properties  
19 maybe we should have him reappraise 555 and 525 so we  
20 can go back and get some senior financing. It would  
21 take a lot of pressure off." Do you see that?

22 A. Yes.

23 335. Q. And do you recall on what basis Mr.  
24 Cane would be willing to reappraise 555 and 525 as of  
25 November of 2015?

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1                   A.    Only if we had had an increase in the  
2                   underlying value of the property based on work that we  
3                   had done.

4    336.            Q.    Right.  And then you respond that  
5                   you're not sure you can offer him any compelling  
6                   evidence and you say he already questioned you on how  
7                   you expected to achieve 12 storeys when the  
8                   Williamsville study was recommending eight, right?

9                   A.    Mm-hmm.

10   337.            Q.    And yet Mr. Cane's original appraisal  
11                   was based upon a 12-storey plan; was it not?

12                   A.    I don't remember.

13   338.            Q.    You don't remember?

14                   A.    Yeah.

15   339.            Q.    Okay.

16                   A.    I thought it was 11.

17   340.            Q.    Eleven?

18                   MR. BEEFORTH:  Do you have an appraisal you  
19                   want to show him?  Like, there could be more than one,  
20                   so do you want ---

21                   MR. BELL:  Yes, that's fair.  The  
22                   fundraising -- I don't think we need to for the time  
23                   being -- but I think you're right that it's 11,  
24                   actually, Mr. Davies, despite the fact that it says  
25                   12.

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1 BY MR. BELL:

2 341. Q. And then you talk about punching up  
3 rental income. Was it always the plan that 525 and  
4 555 would both be rental income properties?

5 A. We weren't sure. We had one plan where  
6 one of them, and I don't recall which one, was going  
7 to be a condominium and one would be a straight  
8 rental. Then we looked at it where both were rental.  
9 We even looked at one scenario where one of them would  
10 be the donor site for parking and we would max out the  
11 density on the site beside it.

12 So there were a number of iterations that we  
13 were looking at with those. As you know, those sites  
14 are on either side of the same street and we were  
15 looking at them as a development in concert with each  
16 other.

17 342. Q. Mr. Goldstein knows that, I may not  
18 know that, but we'll mark that as exhibit 10.

19 --- EXHIBIT NO. 10: Email dated November 14th, 2015

20 BY MR. BELL:

21 343. Q. Then, sir, there's another email I want  
22 to show you from yourself to Mr. Harris and Raj Singh,  
23 copying Chris Giamou and Diana Cassidy. And this is  
24 an email dated February 19, 2015 and I just want to  
25 take you to the second paragraph where it says,

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1           "Opposite Kitchener, we could turn Tier 1's guys loose  
2           on that raise right away. The first appraisal on  
3           Kitchener was for 6.5 million, Michael's new appraisal  
4           is for 10.6 million", and then you go on. Do you  
5           recall what was the basis for the increase in Mr.  
6           Cane's valuation or appraisals from 6.5 million to  
7           10.6 million?

8                     A. The 6.5 was the first appraisal Cane  
9           had done with the first iteration of the building. So  
10          the only way it would have been worth any more was  
11          that the income had dramatically increased in the  
12          project. Otherwise there would have been no way to  
13          justify -- if his first appraisal was based on X  
14          dollars of income and the next appraisal was based on  
15          the same level of income there would be no appreciable  
16          increase in the value of the property.

17       344.           Q. And so it would have been the situation  
18          where you went back to Mr. Cane and said now the  
19          project is -- now the project is projecting to produce  
20          an increased amount of income and he would adjust his  
21          ---

22                     A. Yeah. And the only way for that to  
23          have happened is the building got bigger.

24       345.           Q. Right.

25                     A. I mean the income is the income, the



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1 income for a one-bedroom suite in a seniors' building  
2 would not have increased dramatically in that time  
3 frame, so the only way to increase the value between  
4 6.5 and 10 million would have been the building got  
5 bigger.

6 MR. BEEFORTH: Just to be clear, do you know  
7 that or are you guessing?

8 THE DEPONENT: No, I'm saying that -- I  
9 don't have the appraisal in front of me but the  
10 building would have gotten bigger and we would have  
11 learned more about rental rates.

12 BY MR. BELL:

13 346. Q. Fair enough. And do you have a  
14 specific recollection of the building getting bigger  
15 in Kitchener?

16 A. The building changed several times.

17 MR. BELL: We'll mark the email from Mr.  
18 Davies to Mr. Harris and Mr. Singh, dated February  
19 19th, 2015, as exhibit 11.

20 --- EXHIBIT NO. 11: Email dated February 19th, 2015

21 BY MR. BELL:

22 347. Q. And then there's one more that I want  
23 to show you on this, Mr. Davies, it's an email from  
24 Mr. Cane to you dated October 20th, 2016. Have a look  
25 at that. In particular I want to take you -- well,

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1 it's all Mr. Cane's email.

2 I want to take you to the last two  
3 paragraphs, Mr. Cane says, "As my reports are based on  
4 specific development time frames, all of which  
5 appeared to lapse, I'm not able to give a guarantee of  
6 current value. As I've said to you in the past and  
7 provided you with a list of all the assignments I've  
8 done and asked for an update on timing and  
9 development, which I have not received, I am now  
10 concerned that these appraisals, which I assume are  
11 being used to provide support for financing, are now  
12 out of date and irrelevant to the current day's  
13 situation"; do you see that?

14 A. I do.

15 348. Q. And that's as of October 20th, 2016,  
16 which I understand is approximately a week before  
17 Grant Thornton was appointed as trustee for Tier 1.  
18 Does that fit with your understanding of the timing?

19 A. Yeah, I think they were the 25th or  
20 something.

21 349. Q. Right. And so do you recall that  
22 before Grant Thornton was appointed as trustee there  
23 was an issue where Mr. Cane told you that all of the  
24 appraisals he had provided to you were quote/unquote,  
25 'irrelevant' to the current day's situation?

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1 MR. BEEFORTH: That's not what he says. The  
2 email says -- he's not making a statement, he's  
3 hypothesizing.

4 MR. BELL: He's expressing a concern.

5 THE DEPONENT: His concern was that the  
6 development time frames had lapsed.

7 BY MR. BELL:

8 350. Q. And why had all the development time  
9 frames lapsed?

10 A. Taking longer to get approvals.

11 351. Q. Each and every time? And so then Mr.  
12 Cane was telling you that the appraisals may or may  
13 not be valid as of October 20th, 2016. Do you recall  
14 this email?

15 A. Yeah. I believe my conversation with  
16 Michael was more along the lines of Michael wanted to  
17 do all brand new appraisals rather than give me an  
18 opinion of value.

19 352. Q. And you see Mr. Cane says, "As I've  
20 said to you in the past and provided you with a list  
21 of all the assignments", and then goes on, do you  
22 recall other discussions with Mr. Cane previous to  
23 October 20th where he raised this concern?

24 A. Yeah. If we were looking at raising  
25 new financing, which we were in the case of Memory

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1 Care, with the Pinnacle Wealth from Calgary Pinnacle  
2 wanted a reliance letter from Cane and Cane wouldn't  
3 provide it because the timing from when the reliance  
4 letters are being asked to the valuation was a period  
5 of time that Michael didn't want to certify the value,  
6 based on the time that had gone on.

7 353. Q. So were you in a situation as of  
8 October 2016 where you couldn't get Mr. Cane to give  
9 you a reliance letter for the appraisals?

10 A. I would have had to get Michael to -- I  
11 would have had to pay Michael to do an update.

12 354. Q. And yet the receivership companies, we  
13 know, had \$17,000.00 in the bank, right?

14 A. Right.

15 MR. BELL: Let's mark that as exhibit 12.

16 --- EXHIBIT NO. 12: Email dated October 20th, 2016

17 BY MR. BELL:

18 355. Q. So going back to where we started  
19 today, with the pro formas, sir -- and I appreciate  
20 you produced new pro formas. I'm going to refer to  
21 the old ones but I don't think anything changes but  
22 your counsel can let me know if I'm wrong about that.  
23 The pro formas I want to refer you to are 525 Princess  
24 and 555 Princess, which are the first two at exhibit B  
25 to your affidavit dated July 27, 2017.

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1                   And so first off, looking at 555 Princess,  
2                   which is the first one, you and I have already  
3                   discussed that 555 Princess paid a million dollars in  
4                   dividends. I assume you'll agree with me that that  
5                   million dollars is not reflected in this pro forma  
6                   that you've attached to your affidavit, correct?

7                   A. I don't see it.

8                   356.           Q. Okay. And then if you look on the  
9                   first page over under "Project Financing", you see the  
10                  box there about project financing?

11                  A. Yes.

12                  357.           Q. You see "Source of funds upon  
13                  acquisition". It refers to a senior lender advancing  
14                  60 percent of the funds or \$1.2 million; do you see  
15                  that?

16                  A. Yes.

17                  358.           Q. And that never happened, did it?

18                  A. No.

19                  359.           Q. And then mezzanine, as I understand it,  
20                  is often -- is what the SMI was. And you'll see that  
21                  this pro forma projects that upon acquisition the SMI  
22                  will advance \$400,000.00, correct?

23                  A. Yes.

24                  360.           Q. And then you see there's an equity  
25                  contribution that's being projected for \$400,000.00 as

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1 well, right?

2 A. Yes.

3 361. Q. And that never happened either, did it?

4 A. No.

5 362. Q. And then if you look at "Source of  
6 funds during construction" there is a construction  
7 loan that's contemplated for \$29,000,000.00 but that  
8 never happened, right?

9 A. Obviously.

10 363. Q. Because there was no construction,  
11 right?

12 A. We weren't ready to draw down  
13 construction funds at that point.

14 364. Q. Exactly. Exactly. But then the  
15 mezzanine, which is the SMI that's supposed to happen  
16 during construction, is for 6.35 million; do you see  
17 that?

18 A. Yes.

19 365. Q. And that did happen, didn't it?

20 A. Yes.

21 366. Q. So you did -- in the pro forma, even  
22 though you were planning on raising 6.4 million during  
23 construction through the mezzanine, you actually  
24 raised all of that upon acquisition, right?

25 A. Yes.

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1 367. Q. And then you'll see again there's  
2 another equity contribution contemplated of 6.4  
3 million but that never happened, did it?

4 A. No.

5 368. Q. So the only thing that actually  
6 happened was the SMI financing, the vast majority of  
7 which was to happen during construction but which  
8 instead all happened upon acquisition, right?

9 A. Right. Which is permitted under the  
10 loan agreement.

11 369. Q. My point is that this pro forma you've  
12 attached to your affidavit in no way reflects what  
13 actually happened, right?

14 A. Well, as it relates to the construction  
15 financing capital stack, no.

16 370. Q. Right. So the pro forma doesn't relate  
17 to the financing ---

18 A. The costs and things, I don't think  
19 there's any issue there.

20 371. Q. So we dealt with the value numbers, and  
21 we'll look at those new ones you've provided, but  
22 let's look at the costs and issues of that. Because  
23 next I want to go to 525 Princess, which is the second  
24 one behind the blue sheet. Mr. Beeforth can help you.  
25 And the second page, as I understand it, is what you

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1           were just referring to the cost and use side. So not  
2           the first page, I'm on the second page of that pro  
3           forma.

4                           A.    Yes.

5    372.           Q.    And a couple of things, if you look  
6           under the pro forma summary, which is in that second  
7           column there, if you go down under "Soft Costs" you  
8           see how there's "Interest and Finance"?

9                           A.    Yes.

10   373.           Q.    And a couple of things jump out at me;  
11           one is that if you go across that line you see how it  
12           appears that there's \$106,667.00 of interest being  
13           incurred on November '15 and January '16; you see  
14           that? November 2015 and January 2016.

15                          A.    Yes, I see it, but I think before we go  
16           too much further, Walter Thompson and Andre Antonaidis  
17           prepared the Textbook pro forma so if you want to --  
18           perhaps if you could put your --

19   374.           Q.    Questions to them?

20                          A.    --questions to them or put them in  
21           writing we would be happy to ---

22    --- UNDERTAKING NO. 3

23                          BY MR. BELL:

24   375.           Q.    I will take that undertaking but I just  
25           want an answer yes to your question -- you mean to



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1 tell me you have no idea? And if you have no idea  
2 that's fine. Because you had told me just a second  
3 ago that you thought the revenue and expenses of these  
4 pro formas were accurate.

5 So my understanding when I look at the  
6 interest and finance line under this "Soft Costs" is  
7 that in reality 525 Princess had to pay \$1.1 million  
8 in brokerage fees upon acquisition, and additionally a  
9 year worth of interest holdbacks, so that that number  
10 should be much, much higher than \$406,000.00. Does  
11 that fit with your understanding or do you just not  
12 know one way or another?

13 A. I don't know. Perhaps that money was -  
14 - perhaps those are net numbers after that has already  
15 been deducted.

16 MR. BEEFORTH: Don't guess.

17 BY MR. BELL:

18 376. Q. You just don't know?

19 A. That's a total guess, I don't know.

20 377. Q. Only Mr. Thompson would know?

21 A. Right.

22 378. Q. All right. And then again on 525  
23 Princess, which we know paid a million dollars in  
24 dividends, I don't see that million dollars reflected  
25 in this pro forma, do you?

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1           A.    You would have to speak to Thompson  
2           again about that.

3   379.        Q.    You just don't know one way or another?

4           A.    I don't know.

5   380.        Q.    All right.  And I assume you would  
6           agree with me that to the extent the pro formas don't  
7           accurately reflect the projected capital structure or  
8           the correct use of the funds that they wouldn't be  
9           particularly helpful to prospective borrowers; do you  
10          agree with me on that?

11           A.    I'm not suggesting that they are or not  
12          particularly useful.  I'm not sure I agree with your  
13          point.  Perhaps there is a reasonable explanation for  
14          your questions but I don't know what it is.

15   381.        Q.    And do you know -- and again, you may  
16          not know this, but do you have any -- well, first of  
17          all, did you ever review these pro formas before they  
18          were given out to anybody?

19           A.    Andre Antonaidis would walk me through  
20          them at a fairly high level and ask me if I had any  
21          comments about construction costs or any of the other  
22          consulting costs and things like that.

23   382.        Q.    And did you have an understanding at  
24          the time that a number of these pro formas were  
25          showing equity cap contributions being made when in

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1 fact no equity contributions were ever made?

2 A. I can't say that I recall that one way  
3 or the other.

4 383. Q. So you have no explanation for why that  
5 would be?

6 A. No.

7 384. Q. And then as I understand it you have  
8 the pro formas you've attached to exhibit B to your  
9 affidavit but you had previously provided pro formas  
10 to the receiver and as I understand it those pro  
11 formas are different. Do you have any explanation as  
12 to why the pro formas you had previously provided the  
13 receiver are different than the pro formas attached to  
14 your affidavit?

15 A. I think it would be the same answer as  
16 before, that over the course of the predevelopment  
17 work and then as work evolved the pro formas evolved.

18 385. Q. And where did you get these pro formas  
19 that you attached to exhibit B to your affidavit? Did  
20 you ask Mr. Thompson for them or did you have them?

21 A. Thompson put them all together with  
22 Antonaidis.

23 386. Q. But I mean at the time that you  
24 attached them to your affidavit. Did you have copies  
25 of them in your possession or did you have to ask Mr.

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1 Thompson for them?

2 A. I had to ask him for them.

3 387. Q. And is that the same for the pro formas  
4 that were given to Mr. Cane in relation to the  
5 appraisals? Did you have any involvement in that or  
6 do you know how those came to be?

7 A. That would have come from Andre  
8 Antonaidis.

9 388. Q. And so you have no explanation as to  
10 why those pro formas would be different than the ones  
11 attached to your affidavit either?

12 A. Without sitting down with Andre and  
13 going through line by line I can't say.

14 389. Q. And we talked about dividend payments.  
15 Really quickly on management fees, you speak about  
16 management fees a lot in your affidavit but I just  
17 want to make sure, there's no dispute between us that  
18 when you talk about a five percent being normal for  
19 management fees that's five percent of the total  
20 ultimate cost of the project, correct?

21 A. Some projects it's appropriate and some  
22 it's not.

23 390. Q. Right. But there's no dispute that  
24 between you and me that what was ultimately paid out  
25 to Aeolian on management fees on average vastly

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1 exceeded five percent of the actual costs incurred in  
2 these projects, correct?

3 A. No, that's not correct.

4 391. Q. All right. Let's look then at exhibit  
5 --

6 MR. BEEFORTH: Sorry, before you go on, I'm  
7 not sure I understand your question.

8 MR. BELL: Fair enough.

9 BY MR. BELL:

10 392. Q. So as I -- and let me try and explain  
11 it because I don't think there is a dispute between  
12 us. As I understood your evidence it was that  
13 management fees in the range -- depending on the fact  
14 situation but between two and six percent, with an  
15 average of five percent, was industry average, but  
16 that you calculate that percentage based on the  
17 ultimate total costs that are planned to be expended  
18 on any project by project completion date.

19 A. Correct.

20 393. Q. And what I'm asking you is the actual  
21 costs that were incurred in these projects were  
22 nowhere near that because it never got to  
23 construction, right?

24 A. That's true, but you said Aeolian  
25 received fee income in excess of five percent, but

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1 Aeolian didn't, the global venture received fees.

2 394. Q. I see. So the total ---

3 A. Aeolian might have taken 1.2 percent of  
4 it, of the five, or it might have taken 3.6 percent of  
5 the five, but it wasn't just Aeolian, it was the  
6 entire organization.

7 395. Q. I see. And I apologize for  
8 misspeaking. So you'll agree with me that the  
9 totality of the management fees that were expended  
10 exceeded five percent of the actual costs that were  
11 incurred for each and every project, right?

12 A. No, no, many of the projects were less  
13 than five percent.

14 396. Q. Okay. So let's look at exhibit G to  
15 the receiver's seventh report -- or supplement to the  
16 sixth report. I'll give you -- this is a clean copy.  
17 There you go. And what the receiver has done here,  
18 sir, is set out the total project costs and then the  
19 project cost to date and then what the cost to date as  
20 a percentage of total costs were; do you see that?

21 A. Mm-hmm.

22 397. Q. So, for example, on Scollard the total  
23 project costs were estimated to be 74,000,000 but  
24 because it never got to construction only 15.9 million  
25 was every spent. See what I'm saying?

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1 A. I do.

2 398. Q. And then the cost to date as a  
3 percentage of total costs was 21.8 percent, right?  
4 And you see that across the board, that never did any  
5 of the projects ever expend anything above 50 percent  
6 of the total projected costs.

7 A. Right. But that's not the way  
8 management fees are calculated. Management fees are  
9 not calculated based on being paid as construction  
10 goes on. The management function is all the work up  
11 to getting to a point where the project is ready to be  
12 constructed. You're mixing development fees with  
13 construction management fees. The development fee is  
14 earned at the time the project is ready to go to  
15 construction.

16 399. Q. And I'm not even making -- I'm going to  
17 make the suggestion where you're guessing I'm going,  
18 but I'm not even doing that now. My first question,  
19 which I couldn't get you to agree with, was simply  
20 that by math, right or wrong, the actual management  
21 fees that were expended for each and every project  
22 exceeded five percent of the total costs that were  
23 actually expended for that project?

24 A. But that's not how management fees are  
25 calculated. It has nothing to do -- the management

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1 fee has nothing -- the management fees that are paid  
2 relate to the predevelopment activities. There is no  
3 possible way you could incur the management fee if you  
4 hadn't done -- the construction is a construction  
5 management fee. Development fees are paid up to the  
6 start of construction.

7 400. Q. And I think what you're giving me is an  
8 explanation for why that is, but I just want you to  
9 acknowledge that you agree with me that that is the  
10 case, that the management fees were, for lack of a  
11 better word, front-end loaded on this. And you say  
12 that's normal because they're incurred at the front  
13 end. I'm just trying to get you to agree with me that  
14 the management fees that were incurred exceeded five  
15 percent of the total costs incurred.

16 A. I disagree. The management fee is  
17 calculated on the gross costs. The management fee is  
18 paid for predevelopment work up to the time you break  
19 ground, so whether the construction component is added  
20 in or not it's an irrelevant calculation. It's a  
21 calculation expressly designed and presented to make  
22 it look like we've excessively overcharged the  
23 projects and that's not the case.

24 401. Q. So when you say the industry average is  
25 five percent what's the denominator in that



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1 calculation? The numerator is the total management  
2 fees charged on the project, what's the denominator?

3 A. All of the costs.

4 402. Q. Total costs, including construction  
5 costs?

6 A. Yes.

7 403. Q. Did you ever turn your mind to the fact  
8 that each and every one of these projects was facing  
9 cash flow issues and that it might make sense to hold  
10 off on paying management fees until those cash flow  
11 issues were resolved?

12 A. The cash flow issues would have been a  
13 lot bigger if there was nobody advancing the progress  
14 on these projects on a day-to-day basis. These  
15 projects would have gone nowhere were it not for the  
16 concentrated effort of me and our entire staff.

17 404. Q. Unlike how far they did go?

18 A. They went a long way.

19 405. Q. Right. Okay. And then if I can get  
20 you to turn back to the actual report, page 4 of the  
21 report, sir? Have a look at paragraph 5 of page 4.  
22 And feel free to read paragraph 5 but what the  
23 receiver has done there is set out what the SMI  
24 initial advance was and compared that with the  
25 purchase price for each of the properties. Do you see

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1           that?

2                           A.    Yes.

3    406.            Q.    And then it has a loan to purchase  
4           price ratio; you see that?

5                           A.    Mm-hmm.

6    407.            Q.    And the lowest one is 125 percent and  
7           the highest one is 356 percent; do you see that?

8                           A.    Mm-hmm.

9    408.            Q.    And each and every time, except for  
10           once, the property was purchased on the very date the  
11           SMI was advanced, right, and the one time being Legacy  
12           Lane?

13                           A.    Yes.

14   409.            Q.    And did you ever turn your mind to the  
15           fact that despite the fact that investors were told  
16           that these were secured investments that their SMI was  
17           overleveraged between 125 percent and 356 percent on  
18           each project?

19                           A.    I don't believe they were  
20           overleveraged.

21   410.            Q.    I see. Do you recall making  
22           representations to investors that they would be  
23           secured on the property that was owned by the  
24           projects?

25                           A.    I referred to -- you mean the

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1 individual SMI investors?

2 411. Q. Yes.

3 A. I mean, I might have had two or three  
4 conversations in my life with individual SMI  
5 investors.

6 412. Q. Right. Have you watched the YouTube  
7 video that's referenced at footnote 2 of the  
8 receiver's report?

9 A. I have not.

10 413. Q. Would it surprise you to learn that you  
11 represented to investors that their investment would  
12 be secured against the properties?

13 A. Well, to the extent they had first  
14 mortgage security then yeah, of course they did.

15 MR. BEEFORTH: When you say "you" who are  
16 you referring to? Because I have seen the video.

17 MR. BELL: Mr. Davies.

18 MR. BEEFORTH: It's a Tier 1 video, not a  
19 John Davies video.

20 MR. BELL: But Mr. Davies speaks in the  
21 video.

22 MR. BEEFORTH: Pardon me?

23 MR. BELL: Mr. Davies speaks in the video.

24 Maybe this is the wrong YouTube reference. Okay.

25 There is a YouTube video where Mr. Davies speaks. If

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1 it's not this one ---

2 MR. BEEFORTH: I watched this one and Mr.  
3 Davies doesn't say anything.

4 MR. BELL: I apologize. There is one. I'll  
5 send it to you. But that's fair. I'll withdraw the  
6 question then -- and your answer then, as well, sir.

7 BY MR. BELL:

8 414. Q. Do you recall ever telling an investor  
9 their investment would be secured against the  
10 property?

11 A. Let me ask you a question, I'm not sure  
12 I understand where you're going. The ---

13 415. Q. That doesn't matter, sir, answer my  
14 question. Do you recall ever telling an investor that  
15 their investments would be secured against the  
16 properties?

17 A. Is the Tier 1 mortgage not registered  
18 on title?

19 416. Q. That's not my question, sir, answer my  
20 question. Do you recall ever telling an investor that  
21 their investments would be secured against the  
22 properties?

23 A. My answer is that the Tier 1 mortgages  
24 are registered on title and are therefore secured on  
25 title.

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1 417. Q. I think the problem is you're trying to  
2 go where I -- you're guessing what my insinuation is.  
3 My question is much simpler than that. My question  
4 is: do you have a recollection of ever telling an  
5 investor that their investment would be secured  
6 against the property?

7 A. And I am answering by saying if I did,  
8 and I have no specific recollection, but if I did it  
9 would be on the basis that the Tier 1 mortgage was  
10 registered on title.

11 418. Q. All right. And just going back quickly  
12 to Mr. Harris, how did you come to meet Mr. Harris?

13 A. His father introduced me to him.

14 419. Q. How did you come to meet his father?

15 A. A co-worker of mine at the time, 20 odd  
16 years ago, introduced me to him.

17 420. Q. And did you -- in what capacity did his  
18 father introduce you to Greg Harris?

19 A. When his father was stepping away from  
20 active involvement in the day-to-day running of the  
21 firm his father asked Greg to get involved.

22 421. Q. And when you say get involved -- sorry,  
23 so had Mr. Harris ever served as your counsel? And by  
24 Mr. Harris I mean the father.

25 A. Yes.

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1 422. Q. And had he ever served as counsel to  
2 the Davies developers?

3 A. No.

4 423. Q. It was just previous business  
5 relationship you had?

6 A. Yes.

7 424. Q. And so then he introduced you to his  
8 son Greg as a lawyer --

9 A. Yes.

10 425. Q. -- to take over as your lawyer for ---

11 A. I met Greg before he became a lawyer  
12 but ...

13 426. Q. And was Greg ever your or a corporation  
14 that you were involved in lawyer before the Davies  
15 developers?

16 A. Yes.

17 427. Q. Was he ever your personal lawyer?

18 A. He did real estate closings, if that  
19 would be considered a personal lawyer.

20 428. Q. So was it you that then introduced Mr.  
21 Harris to Mr. Singh?

22 A. No.

23 429. Q. Mr. Singh just happened to know Mr.  
24 Harris?

25 A. Mr. Harris had represented a number of

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1 Singh's businesses over the years.

2 430. Q. I see. Was it Mr. Harris that  
3 introduced you to Mr. Singh?

4 A. Yes.

5 431. Q. I see. Okay. And had you gone looking  
6 for financing from Mr. Harris and he suggested that  
7 you go and see Mr. Singh?

8 A. Yes.

9 432. Q. And how did you meet Mr. Thompson?

10 A. A construction contractor introduced me  
11 to him 24 years ago.

12 433. Q. Your house is still listed for sale?

13 A. Yes.

14 434. Q. And you're aware that we asked for your  
15 consent to register the Mareva order in this  
16 proceeding on the title to the Arizona property?

17 A. Yes.

18 435. Q. And you refused to give us that  
19 consent?

20 A. Yes.

21 436. Q. Why?

22 MR. BEEFORTH: You have his answer. He  
23 provided it to Mr. Zweig over email, that's our  
24 answer.

25 --- REFUSAL NO. 3

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1 MR. BELL: Give me five minutes. Off the  
2 record.

3 --- OFF THE RECORD AT 12:10 P.M. ---

4 --- UPON RESUMING AT 12:16 P.M. ---

5 BY MR. BELL:

6 437. Q. I'm going to show you Schedule C, sir,  
7 to the supplement to the receiver's sixth report,  
8 which is just the marketing materials. And as I've  
9 seen them, each of them -- and the one I showed you is  
10 Oakville, it's page 2, but if you just look at the  
11 loan to value ratio it says, "The loan to value ratio  
12 during development and construction shall not exceed  
13 80 percent of the completed stabilized value. Funds  
14 will be advanced on a cost to completed basis and  
15 certified by independent quantitative surveys", do you  
16 see that?

17 A. Yes.

18 438. Q. And are you aware of any of the Davies  
19 developers ever getting independent quantitative  
20 surveys?

21 A. Well, Cane is a chartered -- Royal  
22 Institute of Chartered Surveyors.

23 439. Q. So your understanding was all of his  
24 subsequent appraisals would qualify as an independent  
25 quantitative survey?



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1 A. Yes.

2 440. Q. And did Harris ever tell you that or  
3 did you ---

4 A. I don't recall ever having the  
5 conversation with Harris.

6 441. Q. Did you ever have that conversation  
7 with Mr. Singh?

8 A. No.

9 442. Q. Sir, how are you paying for your  
10 counsel in this proceeding?

11 MR. BEEFORTH: You know we're not going to  
12 answer that, Jon.

13 --- REFUSAL NO. 4

14 MR. BELL: I don't accept that refusal.  
15 Subject to undertakings, advisements and refusals  
16 those are all my questions.

17

18 --- WHEREUPON THE EXAMINATION WAS ADJOURNED AT 12:18 P.M.

19

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1 I hereby certify that this is the  
2 Cross-Examination of JOHN DAVIES,  
3 taken before me to the best of my  
4 skill and ability on the 9th day of  
5 August, 2017.

6

7

8

9

-----  
Tracy Wingrove - Court Reporter

10

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12

13

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January 1, 1990, and are not certified without the  
original signature of the Court Reporter

**TAB 3**

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

THE HONOURABLE	)	WEDNESDAY, THE 30 <sup>th</sup>
	)	
MR. JUSTICE MYERS	)	DAY OF AUGUST, 2017

B E T W E E N:

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

Plaintiff

- and -

**JOHN DAVIES AND AEOLIAN INVESTMENTS LTD.**

Defendants

**ORDER**

**NOTICE**

If you, the defendants and intended defendants, John Davies in your personal capacity and in your capacity as trustee and/or representative of both the Davies Arizona Trust and the Davies Family Trust (in all such capacities, “**Mr. Davies**”), Judith Davies in your personal capacity and in your capacity as trustee and/or representative of the Davies Family Trust (in all such capacities, “**Ms. Davies**”), Gregory Harris solely in your capacity as trustee and/or representative of the Davies Family Trust (“**Mr. Harris**”) and Aeolian Investments Ltd. (“**Aelioan**” and, collectively with Mr. Davies, Ms. Davies and Mr. Harris, the “**Defendants**”), disobey this order, you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least twenty-four (24) hours notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits the Defendants to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

**THIS MOTION**, made on notice by the Plaintiff, KSV Kofman Inc. (“**KSV**” or the “**Receiver**”), 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 capacity or in any other capacity, for an interlocutory Order in the form of a worldwide *Mareva* injunction restraining the Defendants from dissipating their assets and other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, the Receiver’s Fourth Report dated June 6, 2017 with the appendices thereto, the Receiver’s Sixth Report dated July 12, 2017 with the appendices thereto, the Receiver’s Supplement to the Sixth Report dated August 8, 2017 with the appendices thereto, the factum and book of authorities of the Plaintiff, and the affidavits of Mr. Davies sworn July 14 and July 27, 2017 (collectively, the “**Davies Affidavits**”) and the transcript of the cross-examination of Mr. Davies on the Davies Affidavits,

**AND ON HEARING** the submissions of counsel for the Plaintiff and counsel for Mr. Davies, Aeolian and Ms. Davies, with Mr. Harris’s counsel having advised that he takes no position on the motion,

**Service**

1. **THIS COURT ORDERS** that, to the extent necessary, service of the Notice of Motion, Motion Record, Supplementary Motion Record, Factum and Book of Authorities is hereby abridged and validated.

**Mareva Injunction**

2. **THIS COURT ORDERS** that the Defendants and, as applicable, their respective servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of the Defendants, wherever situate worldwide, including but not limited to the assets and accounts listed in Schedule “A” hereto;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

3. **THIS COURT ORDERS** that paragraph 1 applies to all of the Defendants' assets whether or not they are in their own name and whether they are solely or jointly owned. For the purpose of this order, the Defendants' assets include any asset which they have the power, directly or indirectly, to dispose of or deal with as if it were their own. The Defendants are to be regarded as having such power if a third party holds or controls the assets in accordance with their direct or indirect instructions.

4. **THIS COURT ORDERS** that if the total value free of charges or other securities of the Defendants' assets worldwide exceeds \$9,039,740, the Defendants may sell, remove, dissipate, alienate, transfer, assign, encumber, or similarly deal with them so long as the total unencumbered value of the Defendants' assets worldwide remains above \$9,039,740.

#### **Ordinary Living Expenses**

5. **THIS COURT ORDERS** that Ms. Davies, in her personal capacity, remains authorized and permitted to access and spend up to an aggregate amount of \$25,000 for ordinary living expenses and legal advice and representation.

6. **THIS COURT ORDERS** that the Defendants may apply for an order, on at least twenty-four (24) hours notice to the Plaintiff, specifying the amount of funds which they are entitled to spend on ordinary living expenses and legal advice and representation.

#### **Third Parties**

7. **THIS COURT ORDERS** Royal Bank of Canada, The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, Bank of Nova Scotia, Bank of Montreal, National Bank of Canada, Laurentian Bank of Canada, Tangerine Bank, President's Choice Bank, JP Morgan Chase and all other banks, credit unions, trusts, financial institutions and financial services companies, whether in Canada or elsewhere, including all of their respective affiliates and branches (collectively, the "**Banks**"), to forthwith freeze and prevent any removal or transfer of monies or assets of the Defendants held in any account or on credit on behalf of the Defendants, with the Banks, until further Order of the Court, including but not limited to the accounts listed in Schedule "A" hereto.

8. **THIS COURT ORDERS** that, to the extent not already done, the Banks forthwith disclose and deliver up to the Plaintiff any and all records held by the Banks concerning the Defendants' assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate worldwide, held on behalf of the Defendants by the Banks.

#### **Alternative Payment of Security into Court**

9. **THIS COURT ORDERS** that this Order will cease to have effect if the Defendants provide security by paying the sum of \$9,039,740 into Court, and the Accountant of the Superior Court of Justice is hereby directed to accept such payment.

**Dispensing with Requirement of Rule 40.03**

10. **THIS COURT ORDERS** that the requirements of Rule 40.03 of the *Rules of Civil Procedure* shall be and are hereby dispensed with pending further Order of this Court.

**Extra-Territorial Application**

11. **THIS COURT ORDERS** that, insofar as this Order purports to have any effect outside of the territorial jurisdiction of this Court, no person shall be affected by it or concerned by the terms of it until this Order is declared enforceable or registered or enforced by a foreign court of competent jurisdiction for that purpose, unless that person is:

- (a) a party to this action or any agent of a party to this action; or
- (b) a person who is subject to the judicial jurisdiction of this Court, who has received written notice of this Order within the territorial jurisdiction of this Court.

**Extra-Territorial Assistance**

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or elsewhere 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.

**Variation, Discharge or Extension of Order**

13. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this Order, on four (4) days notice to the Plaintiff.

14. **THIS COURT ORDERS** that this Order shall remain in full force and effect until there is a final disposition of this action on the merits, unless varied or amended by further Order of this Court.

**Costs**

15. **THIS COURT ORDERS** that the costs of this motion are reserved to a Judge hearing the action on the merits.

---

*The Honourable Mr. Justice Myers*

**SCHEDULE "A"**

<b>ACCOUNTS</b>			
<b>BANK</b>	<b>ADDRESS</b>	<b>ACCOUNT NO.</b>	<b>ACCOUNT HOLDER</b>
Royal Bank of Canada	Aurora-Yonge & Edward Branch, 14785 Yonge St-Unit 101, 14785 Yonge St, Aurora, ON L4G 1N1	00442 101 3069	Aeolian Investments Ltd.
JP Morgan Chase Bank, N.A.	270 Park Avenue, New York, NY, 10017	939712261	Davies Arizona Trust
Toronto Dominion Bank		5223071 3184	Davies Family Trust
Toronto Dominion Bank		7109208 1044	Judith Davies
Toronto Dominion Bank		6290533 1044	Judith Davies
Toronto Dominion Bank		VISA 4520880001949922 3184	Judith Davies
Toronto Dominion Bank		HELOC 3226203-3184	John Davies
Toronto Dominion Bank		VISA 4520700001429883 1988	John Davies
Toronto Dominion Bank		VISA 4520020000093816 3184	John Davies



<b>REAL PROPERTY</b>		
<b>MUNICIPAL ADDRESS</b>	<b>PROPERTY PIN</b>	<b>LEGAL DESCRIPTION</b>
24 Country Club Drive King City, ON L7B 1M5	29530-0018 (LT)	UNIT 18, LEVEL 1, YORK REGION VACANT LAND CONDOMINIUM PLAN NO. 999 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT  BLK 1 PL 65M3631, PTS 2, 3 & 4, 65R26022; TOWNSHIP OF KING, S/T & T/W AS SET OUT IN SCHEDULE "A" OF DECLARATION YR325496, S/T EASE IN YR342172.
35411 N. 66th Place, Carefree, Arizona, USA, 85377  -and/or-  35410 N. Ridgeway Drive, Carefree, Arizona, USA, 85377	APN 216-32-102	PARCEL 1:  LOT 17, CAREFREE GRAND VIEW ESTATES UNIT I, ACCORDING TO BOOK 224 OF MAPS, PAGE 26, RECORDS OF  MARICOPA COUNTY, ARIZONA.  PARCEL2:  AN EASEMENT FOR INGRESS AND EGRESS AND PUBLIC UTILITIES, APPURTENANT TO PARCEL NO. 1, AS SET  FORTH IN INSTRUMENT RECORDED IN DOCKET 14945, PAGE 461 AND IN DOCKET 14945, PAGE 464, RECORDS OF  MARICOPA COUNTY, ARIZONA, OVER ALL THE PRIVATE ROADS IN CAREFREE GRAND VIEW ESTATES I,  ACCORDING TO BOOK 224 OF MAPS, PAGE 26, BOULDER VISTA ESTATES, ACCORDING TO BOOK 227 OF MAPS,  PAGE 35; AND CAREFREE GRAND VIEW ESTATES II, ACCORDING TO BOOK 228 OF MAPS, PAGE 2, RECORDS OF  MARICOPA COUNTY, ARIZONA.

**KSV KOFMAN INC. in its capacity as Receiver and Manager of  
Certain Property of Scollard Development Corporation, et al.**  
Plaintiff

**JOHN DAVIES et al.**  
Defendants  
Court File No: CV-17-11822-00CL

v.

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

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Lawyers for the Plaintiff

**TAB 4**

Commercial List Court File No. # \_\_\_\_\_  
CV-17-11822-00CL

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

THE HONOURABLE \_\_\_\_\_ ) WEDNESDAY, THE  
30<sup>th</sup> \_\_\_\_\_ )  
MR. JUSTICE  
COMMERCIAL LIST<sup>1</sup> MYERS \_\_\_\_\_ ) DAY OF  
AUGUST, 2017

B E T W E E N:

**PLAINTIFF**

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

**Plaintiff**

- and -  
**DEFENDANT**

JOHN DAVIES AND AEOLIAN INVESTMENTS LTD.

**Defendants**

**ORDER<sup>2</sup>**

**NOTICE**

<sup>1</sup>—Prepared by the Commercial List Users' Committee of the Ontario Superior Court of Justice. The theory and approach behind this model order is to give the Courts and practitioners a guide for the use of such orders, while recognizing that the model order must be tailored to suit the particular circumstances of each case before the Court.

<sup>2</sup>—See generally UK Practice Direction form for "Freezing Injunctions"  
[http://www.dca.gov.uk/civil/procedure/procrules\\_fin/contents/practice\\_directions/pd\\_part25.htm](http://www.dca.gov.uk/civil/procedure/procrules_fin/contents/practice_directions/pd_part25.htm).

If you, the Defendant, ~~disobey this order~~ defendants and intended defendants, John Davies in your personal capacity and in your capacity as trustee and/or representative of both the Davies Arizona Trust and the Davies Family Trust (in all such capacities, "Mr. Davies"), Judith Davies in your personal capacity and in your capacity as trustee and/or representative of the Davies Family Trust (in all such capacities, "Ms. Davies"), Gregory Harris solely in your capacity as trustee and/or representative of the Davies Family Trust ("Mr. Harris") and Aeolian Investments Ltd. ("Aeolian" and, collectively with Mr. Davies, Ms. Davies and Mr. Harris, the "Defendants"), disobey this order, you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least twenty-four (24) hours notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits the Defendants to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS MOTION, made without notice by the Plaintiff, [ ], for an interim KSV Kofman Inc. ("KSV" or the "Receiver"), 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 capacity or in any other capacity, for an interlocutory Order in the form of a worldwide Mareva injunction restraining the Defendant, [ ], Defendants from dissipating their assets and other relief, was heard this day at [ ] 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of [ ] sworn [ ], on hearing the submissions of counsel for the Plaintiff, and on noting the undertaking of the Plaintiff to abide by any Order this Court may make concerning damages arising from the granting and enforcement of this Order, Notice of Motion, the Receiver's Fourth Report dated June 6, 2017 with the appendices thereto, the Receiver's Sixth Report dated July 12, 2017 with the appendices thereto, the Receiver's Supplement to the Sixth Report dated August 8, 2017 with the appendices thereto, the factum and book of authorities of the Plaintiff, and the affidavits of Mr. Davies sworn July 14 and July 27, 2017 (collectively, the "Davies Affidavits") and the transcript of the cross-examination of Mr. Davies on the Davies Affidavits,

AND ON HEARING the submissions of counsel for the Plaintiff and counsel for Mr. Davies, Aeolian and Ms. Davies, with Mr. Harris's counsel having advised that he takes no position on the motion,

Service

1. THIS COURT ORDERS that, to the extent necessary, service of the Notice of Motion, Motion Record, Supplementary Motion Record, Factum and Book of Authorities is hereby abridged and validated.

## Mareva Injunction

**2.** ~~1.~~ **THIS COURT ORDERS** that the Defendant, and its Defendants and, as applicable, their respective servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of the Defendants, wherever situate ~~[that are located in Ontario]~~,<sup>3</sup> worldwide, including but not limited to the assets and accounts listed in Schedule "A" hereto;<sup>4</sup>
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

**3.** ~~2.~~ **THIS COURT ORDERS** that paragraph 1 applies to all of the Defendant's Defendants' assets whether or not they are in his their own name and whether they are solely or jointly owned. For the purpose of this order, the Defendant's Defendants' assets include any asset which he they has ye the power, directly or indirectly, to dispose of or deal with as if it were his their own. The Defendants is are to be regarded as having such power if a third party holds or controls the assets in accordance with his their direct or indirect instructions.<sup>5</sup>

**4.** ~~3.~~ **THIS COURT ORDERS** that if the total value free of charges or other securities of the Defendants' assets ~~[in Ontario]~~ worldwide exceeds \$~~1~~ 2,039,740, the Defendants may sell, remove, dissipate, alienate, transfer, assign, encumber, or similarly deal with them so long as the total unencumbered value of the Defendant's Defendants' assets ~~[in Ontario]~~ worldwide remains above \$~~1~~ 2,039,740.

## Ordinary Living Expenses

**5.** ~~4.~~ **THIS COURT ORDERS** that the Defendant Ms. Davies, in her personal capacity, remains authorized and permitted to access and spend up to an aggregate amount of \$25,000 for ordinary living expenses and legal advice and representation.

<sup>3</sup>—See *Mooney v. Orr*, [1994] B.C.J. No. 2652 (B.C.S.C.) and *Pharma Investment Ltd. v. Clark*, [1997] O.J. No. 1334 (Gen. Div.) for a discussion of the scope of a Mareva Injunction.

<sup>4</sup>—Ordinarily, the plaintiff must show grounds for the belief that the defendant has some assets within the jurisdiction to obtain the injunction in the first place, but in its standard form, the Mareva injunction is not limited to those named assets: *Cretanor Marine Co. Ltd. v. Irish Marine Management Ltd.* [1978] 1 W.L.R. 966 at 973 (C.A.).

<sup>5</sup>—*Federal Bank of the Middle East Ltd. v. Hadkinson*, [2000] 1 W.L.R. 1695 (Eng. C.A.)

<sup>6</sup>—*Z Ltd. v. A.*, [1982] 1 All ER 556 (C.A.). As a practical point, specifying the maximum amount to be frozen will be simple where the claim relates to a specific amount of money, however this task will be more challenging where the claim is for general damages to be particularized and quantified at a later stage of the litigation. It will also be difficult for the affected financial institutions to determine which assets may be released under this provision. It may therefore be more appropriate to deal with the quantification of the maximum amount to be frozen at the return of the motion.

**6. THIS COURT ORDERS that the Defendants** may apply for an order, on at least twenty-four (24) hours notice to the Plaintiff, specifying the amount of funds which the Defendant ~~is they are~~ entitled to spend on ordinary living expenses and legal advice and representation.<sup>7</sup>

**Disclosure of Information**

~~5. THIS COURT ORDERS that the Defendant prepare and provide to the Plaintiff within [ ] days of the date of service of this Order, a sworn statement describing the nature, value, and location of his assets worldwide [in Ontario], whether in his own name or not and whether solely or jointly owned.<sup>8</sup>~~

~~6. THIS COURT ORDERS that the Defendant submit to examinations under oath within [ ] days of the delivery by the Defendant of the aforementioned sworn statements.~~

~~7. THIS COURT ORDERS that if the provision of any of this information is likely to incriminate the Defendant, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information referred to in paragraph 5 herein is contempt of court and may render the Defendant liable to be imprisoned, fined, or have his assets seized.<sup>9</sup>~~

**Third Parties**

**7. 8. THIS COURT ORDERS [ ] (Royal Bank of Canada, The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, Bank of Nova Scotia, Bank of Montreal, National Bank of Canada, Laurentian Bank of Canada, Tangerine Bank, President's Choice Bank, JP Morgan Chase and all other banks, credit unions, trusts, financial institutions and financial services companies, whether in Canada or elsewhere, including all of their respective affiliates and branches (collectively, the "Banks"))**, to forthwith freeze and prevent any removal or transfer of monies or assets of the Defendants held in any account or on credit on behalf of the Defendants, with the Banks, until further Order of the Court, including but not limited to the accounts listed in Schedule "A" hereto.<sup>10</sup>

<sup>7</sup>—*Z Ltd. v. A.*, *supra*; *Pharma Investments Ltd. v. Clark*, *supra* at para. 13. This provision may not be appropriate in the case of a specific fraud claim where the misappropriated amount is frozen, since the Defendant cannot be allowed to use funds that are identifiable as obtained wrongfully for living expenses. Further it will be difficult to specify an amount, without evidence from the Defendant regarding his or her needs and assets. See also the practical concerns raised above in footnote 5. Lord Denning has suggested that a separate account be opened so that the financial institutions affected by the order need not determine which sums are required for ordinary living expenses. Depending on the Plaintiff's knowledge of the specific accounts of the Defendant, it might be possible to specify from which account the funds for living expenses may be withdrawn. Given these practical difficulties, it is more appropriate to address the issue of living expenses on the expeditious return of the motion.

<sup>8</sup>—The Court has the inherent power to make ancillary orders as appear to be just and convenient to ensure that the exercise of the Mareva jurisdiction is effective to achieve its purpose and may make an order of "discovery in aid", an injunction where the plaintiff has "grounds for believing that the defendant does have assets within the jurisdiction, but has insufficient particulars of the whereabouts of such assets to make the injunction effective": Sharpe, at 2.1070, 2.1080.

<sup>9</sup>—*Pharma Investment Ltd. v. Clark*, *supra* at para. 16, but see *CBS United Kingdom Ltd. v. Lambert* [1983] Ch. 37, [1982] 3 All E.R. 237 (C.A.).

<sup>10</sup>—*Z Ltd. v. A.*, *supra* at 563.

**8.** ~~9.~~ **THIS COURT ORDERS that, to the extent not already done,** the Banks forthwith disclose and deliver up to the Plaintiff any and all records held by the Banks concerning the Defendant's **Defendants'** assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate [~~in Ontario~~] **worldwide**, held on behalf of the Defendants by the Banks.<sup>+1</sup>

**Alternative Payment of Security into Court**

**9.** ~~10.~~ **THIS COURT ORDERS** that this Order will cease to have effect if the Defendants provides security by paying the sum of \$~~1~~**19,039,740** into Court, and the Accountant of the Superior Court of Justice is hereby directed to accept such payment.<sup>+2</sup>

**Dispensing with Requirement of Rule 40.03**

**10.** **THIS COURT ORDERS that the requirements of Rule 40.03 of the Rules of Civil Procedure shall be and are hereby dispensed with pending further Order of this Court.**

**Extra-Territorial Application**

**11.** **THIS COURT ORDERS that, insofar as this Order purports to have any effect outside of the territorial jurisdiction of this Court, no person shall be affected by it or concerned by the terms of it until this Order is declared enforceable or registered or enforced by a foreign court of competent jurisdiction for that purpose, unless that person is:**

- (a) **a party to this action or any agent of a party to this action; or**
- (b) **a person who is subject to the judicial jurisdiction of this Court, who has received written notice of this Order within the territorial jurisdiction of this Court.**

**Extra-Territorial Assistance**

**12.** **THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or elsewhere 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.**

<sup>+1</sup>—The Plaintiff ordinarily must bear any costs associated with a search of bank records to determine the whereabouts and amounts of the defendant's assets on deposit: *Searose Ltd. v. Seatrain U.K. Ltd.* [1981] 1 W.L.R. (Q.B.)

<sup>+2</sup>—Specifying the amount of security attracts the same practical problems identified in footnote 5.



**Variation, Discharge or Extension of Order**

**13.** ~~11.~~ **THIS COURT ORDERS** that anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this ~~Order~~, on four (4) days notice to the Plaintiff.

**14.** ~~12.~~ **THIS COURT ORDERS** that the Plaintiff shall apply for an extension of this Order within ten (10) days hereof, failing which this Order will terminate.<sup>13</sup> **this Order shall remain in full force and effect until there is a final disposition of this action on the merits, unless varied or amended by further Order of this Court.**

**Costs**

**15.** **THIS COURT ORDERS** that the costs of this motion are reserved to a Judge hearing the action on the merits.

*The Honourable Mr. Justice Myers*

**SCHEDULE "A"**

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.

ACCOUNTS			
BANK	ADDRESS	ACCOUNT NO.	ACCOUNT HOLDER

<sup>13</sup> ~~Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rule 40.02.~~

ACCOUNTS			
BANK	ADDRESS	ACCOUNT NO.	ACCOUNT HOLDER
Royal Bank of Canada	Aurora Young & Edward Branch, 14735 Young St. Unit 101, 14735 Young St. Aurora, ON L6G 1N1	80462 101 2063	Aurora Investments Ltd.
J.P. Morgan Chase Bank, N.A.	270 Park Avenue, New York, NY, 10017	929712261	Davies Aronson Trust
Toronto Dominion Bank		5225071 3184	Davies Family Trust
Toronto Dominion Bank		7109208 1044	Jedick Davies
Toronto Dominion Bank		6299553 1044	Jedick Davies
Toronto Dominion Bank		VISA 6570801001989922 2184	Jedick Davies
Toronto Dominion Bank		HELOC 3224702 3184	Jedick Davies
Toronto Dominion Bank		VISA 832070001429683 1088	Jedick Davies
Toronto Dominion Bank		VISA 657080100002814 3184	Jedick Davies

<u>REAL PROPERTY</u>		
<u>MUNICIPAL ADDRESS</u>	<u>PROPERTY PIN</u>	<u>LEGAL DESCRIPTION</u>
<p><u>24 Country Club Drive</u> <u>King City, ON</u> <u>L7R 1M5</u></p>	<p><u>28536-0018 (LT)</u></p>	<p><u>UNIT 18, LEVEL 1, YORK REGION VACANT</u> <u>LAND CONDOMINIUM PLAN NO. 999 AND ITS</u> <u>APPURTENANT INTEREST. THE</u> <u>DESCRIPTION OF THE CONDOMINIUM</u> <u>PROPERTY IS: P1</u></p> <p><u>BLK 1 PL 45MM21, PIS 7, 3 &amp; 4, 45R24022,</u> <u>TOWNSHIP OF KING, S/T &amp; T/W AS SET OUT</u> <u>IN SCHEDULE "A" OF DECLARATION,</u> <u>YR32549, S/T EASE IN YR342172.</u></p>
<p><u>25411 N. 46th Place,</u> <u>Carefree, Arizona, USA,</u> <u>85377</u></p> <p><u>and/or:</u></p> <p><u>25418 N. Railway Drive,</u> <u>Carefree, Arizona, USA,</u> <u>85377</u></p>	<p><u>APN 214-22-102</u></p>	<p><u>PARCEL 1:</u></p> <p><u>LOT 17, CAREFREE GRAND VIEW ESTATES</u> <u>UNIT I, ACCORDING TO BOOK 224 OF MAPS,</u> <u>PAGE 26, RECORDS OF</u> <u>MARICOPA COUNTY, ARIZONA.</u></p> <p><u>PARCEL 2:</u></p> <p><u>AN EASEMENT FOR INGRESS AND EGRESS</u> <u>AND PUBLIC UTILITIES, APPURTENANT TO</u> <u>PARCEL NO. 1, AS SET</u> <u>FOORTH IN INSTRUMENT RECORDED IN</u> <u>DOCKET 14945, PAGE 461 AND IN DOCKET</u> <u>14945, PAGE 464 RECORDS OF</u> <u>MARICOPA COUNTY, ARIZONA, OVER ALL</u> <u>THE PRIVATE ROADS IN CAREFREE GRAND</u> <u>VIEW ESTATES I.</u></p> <p><u>ACCORDING TO BOOK 224 OF MAPS, PAGE 26,</u> <u>BOULDER VISTA ESTATES, ACCORDING TO</u> <u>BOOK 227 OF MAPS,</u> <u>PAGE 35, AND CAREFREE GRAND VIEW</u> <u>ESTATES II, ACCORDING TO BOOK 224 OF</u> <u>MAPS, PAGE 2, RECORDS OF</u> <u>MARICOPA COUNTY, ARIZONA.</u></p>

**ASV KOJEMAN INC.** in its capacity as Receiver and Manager of  
Certain Property of Scollard Development Corporation, et al.  
**Plaintiff**

**v.**

**JOHN DAVIES et al.**  
**Defendants**

Court File No: CV-17-11822-09CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

**ORDER**

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Lawyers for the Plaintiff

Plaintiff

—and—

Defendant

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER

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**KSV KOFMAN INC. in its capacity as Receiver and Manager of  
Certain Property of Scollard Development Corporation, et al.**  
Plaintiff

**JOHN DAVIES et al.**

Defendants

Court File No: CV-17-11822-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**SUPPLEMENTARY MOTION RECORD  
(Motion for a *Mareva* Injunction –  
Returnable August 30, 2017)**

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