

ONTARIO

DIVISIONAL COURT, SUPERIOR COURT OF JUSTICE

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

**MOTION RECORD
(Volume 5 of 5)**

October 13, 2017

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KSV Kofman Inc.**

August 8, 2017

**as Receiver and Manager of Certain Property
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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.**

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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 Aeollan.

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 17th 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 17th Order and the endorsement are attached as Appendix "A".
4. In accordance with the terms of the July 17th 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 best¹.
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.

¹ 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 YouTube² 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	11,966	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 Companies³ 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

² <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.

³ 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
Receipts	
Syndicated Mortgage Investment	6,387
Other	14
Total	6,401
Disbursements	
Land	2,131
Broker Commissions	1,086
Interest holdback	511
Professional fees	225
Payments to shareholders	
Dividends	1,000
Other	1,337
Development costs	-
Total	6,290
Cash balance, January 28, 2016	111

4.0 Pro Formas Prepared by John Davies

1. 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 injection⁴;
 - 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;

⁴ 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 Companies⁵ nor has construction financing been secured⁶. 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.⁷ 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).

⁵ With the exception of footings and foundations on Burlington.

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

⁷ 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 Affidavit⁸, 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".

⁸ 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.⁹
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

⁹ 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*"¹⁰ 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.

¹⁰ 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

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

THE HONOURABLE

)
)
)

MONDAY, THE 17th

DAY OF JULY, 2017



JUSTICE MYERS

**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.

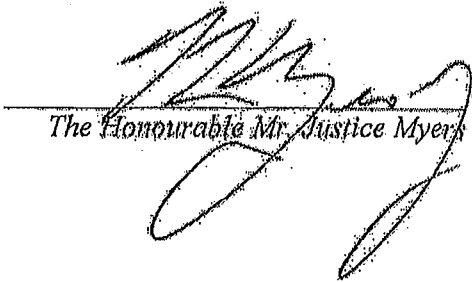
Variation, Discharge or Extension of Order

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 

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

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

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

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

Facsimile: (416) 863-1716

Lawyers for the Plaintiff

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

July 17/17

July 17/17

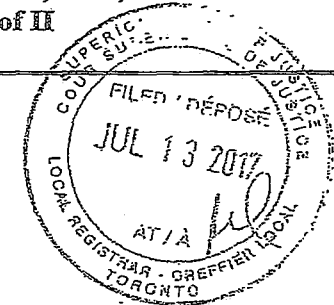
For kindred attached, order to go
Despite the Order set out in the
attached Exhibit No. Davies is
authorised and ~~allowed~~ allowed
to access all spend up to an
aggregate amount of \$25,000
to retain counsel and sustain himself
in the interim period.

[Handwritten 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#57307A)
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

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>K.S.V. SOFTMAN INC.</u> <u>et al.</u>	<input type="checkbox"/> Present
		<input type="checkbox"/> Duty Counsel
	Respondent(s): <u>FORN 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 Δs CONSENT TO A BRIEF CONTINUATION OF THE STAREVA INJUNCTION WITH NO ADMISSION THAT IT IS PROPER BUT MERELY TO ALLOW FOR A SCHEDULED, EFFICIENT HEARING & PROCESS FOR HIS INTENDED MOTION TO SET THE INJUNCTION ASIDE. THE CONSENT THEREFORE IS WHOLLY WITHOUT PREJUDICE TO THE Δs

1/2

Superior Court of Justice

(Name of Court)

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

(Court office address)

2

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>IT CANNOT BE USED TO ANSWER ANY LATER ARGUMENTS THAT THEY MAKE.</p> <p>THE RECEIVER ASKS TO EXTEND THE ORDER TO JUSTICE DAVIES PERSONALLY AND SAH AND TWO OTHERS AS TRUSTEES. THE RECEIVER HAS DEMONSTRATED THAT FUNDS FROM THE PUBLIC INVESTORS THAT ARE SUBJECT TO THE CLAIMS AGAINST US, WE GIVE 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.</p> <p>THE IT WAS A CLEAR CLAIM UNDER ONTARIO LAW TO OWNERSHIP OF AN</p>		

Handwritten signature or initials

Superior Court of Justice

(Name of Court)

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

(Court office address)

Endorsement

(Handwritten signature/initials)

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.

INTEREST IN PROPERTY PURCHASES WITH
MONIES IT PROVES AT TRIAL WERE MISAPPROPRIATED
AND USED IN NON-ASSETS RELATED TRANSACTIONS
SUCH AS FUNDING ONE'S SPOUSE OR HOME.

I AM SATISFIED THAT DESPITE THE
DAMNUS UNDERTAKING TO HOLD THE ASSETS
AN ORDER SHOULD BE GRANTED 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 OF THE UNDERTAKING
I AM SATISFIED THAT THE BALANCE OF
CONVENIENCE SUPPORTS THE ORDER SOUGHT.
THERE IS A REAL RISK OF DISSIPATION OF

(9)

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 OF 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 CORPORATION & OR FROM FUNDS GIVEN BY THAT COMPANY TO MRS. DAVIES. SHE IS NOT A FUNNEL THROUGH WHICH INVESTOR FUNDS ARE Poured AS PART OF THE LAUNDERING CYCLES OF CORPORATE ENTITIES AND TRUSTS LINKED UP TO PROTECT AND HIDE POTENTIALLY ILL-GOTTEN FUNDS. MRS. DAVIES ALSO IN CONCERT WITH MR. DAVIES IN RESPONSE TO THEIR MORTGAGEE'S SUPPORTS ENFORCEMENT EFFORTS AND RE-LISTING THEIR TORONTO HOME DESPITE THIS COURT'S ORDER. MR. DAVIES SAYS THE RECEIVER 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 ~~THE~~ A'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 APTS FOR PUBLIC INVESTORS WHOSE FUNDS ARE MISSING. IF ~~IT~~ LEFT

1/2

Superior Court of Justice
(Name of Court)

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

Endorsement

6

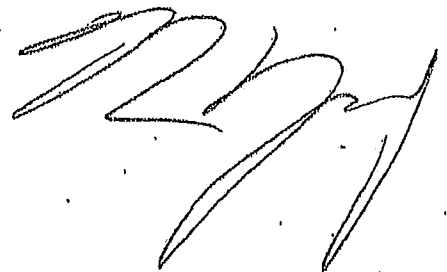
(Court office address)

Page

Date

THEMSELVES VULNERABLE TO SUCH
EXTRAORDINARY RELIEF. AS A MATTER
OF COURSE, THEN THEY HAVE TO BEAR THE
RISK OF COSTS INCURRED DURING THE ENSUING
INVESTIGATION OF THE IT'S SPURIOUS
FALSE CASE.

ORDERS SIGNED A.S. ASHERO, 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 NEIGHBOR'S ORDERS AND PROCEEDINGS.



TAB 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:

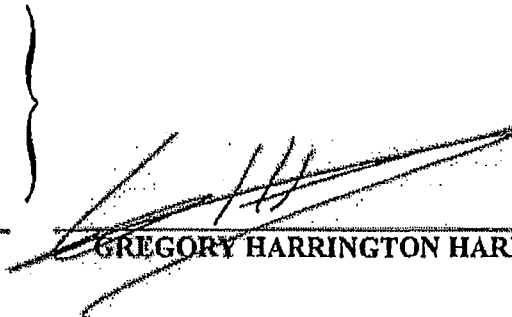
1. I, Gregory Harrington Harris ("Harris"), am a trustee of the Davies Family Trust ("DFT") and am subject, in my capacity as a Trustee of the DFT, to a Court Order by the Honourable Justice Myers dated July 17, 2017 ("Order") in the within matter.
2. I have been provided with a copy of the Order dated 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

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

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

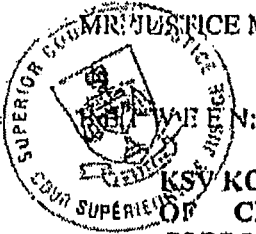
THE HONOURABLE

)
)
)

MONDAY, THE 17th

MR. JUSTICE MYERS

DAY OF JULY, 2017



**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. ("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.

- 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

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 -

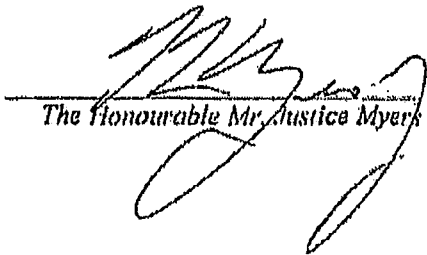
Variation, Discharge or Extension of Order

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 

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. PARCEL 2: 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

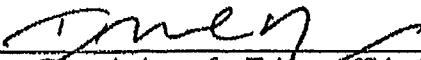
(Sworn July 24, 2017)

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 24th DAY OF JULY, 2017



Commissioner for Taking Affidavits, etc.
Michael Beckwith

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

Assets	Value	Location
1) 24 Country Club Drive (Residence)	1,600,000	Ontario
30% shareholder interest in McMurray Street Investments Ltd.	unknown	Ontario
	<u>Total Assets</u>	
	-	<u>1,600,000</u>

Liabilities

Total Liabilities -

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
Total Assets	<u><u>1,140,000 - 1,490,000</u></u>	

Liabilities	Value (USD)	Location
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
Total Liabilities	<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

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.

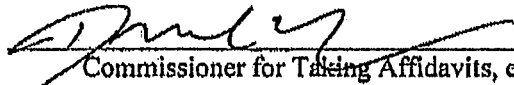
SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on July 24, 2017


Commissioner for Taking Affidavits
(or as may be)
Michael Bechtel



JUDITH DAVIES

THIS IS EXHIBIT "A"
REFERRED TO IN THE AFFIDAVIT OF
JUDITH DAVIES
SWORN BEFORE ME
THIS 24th 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
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

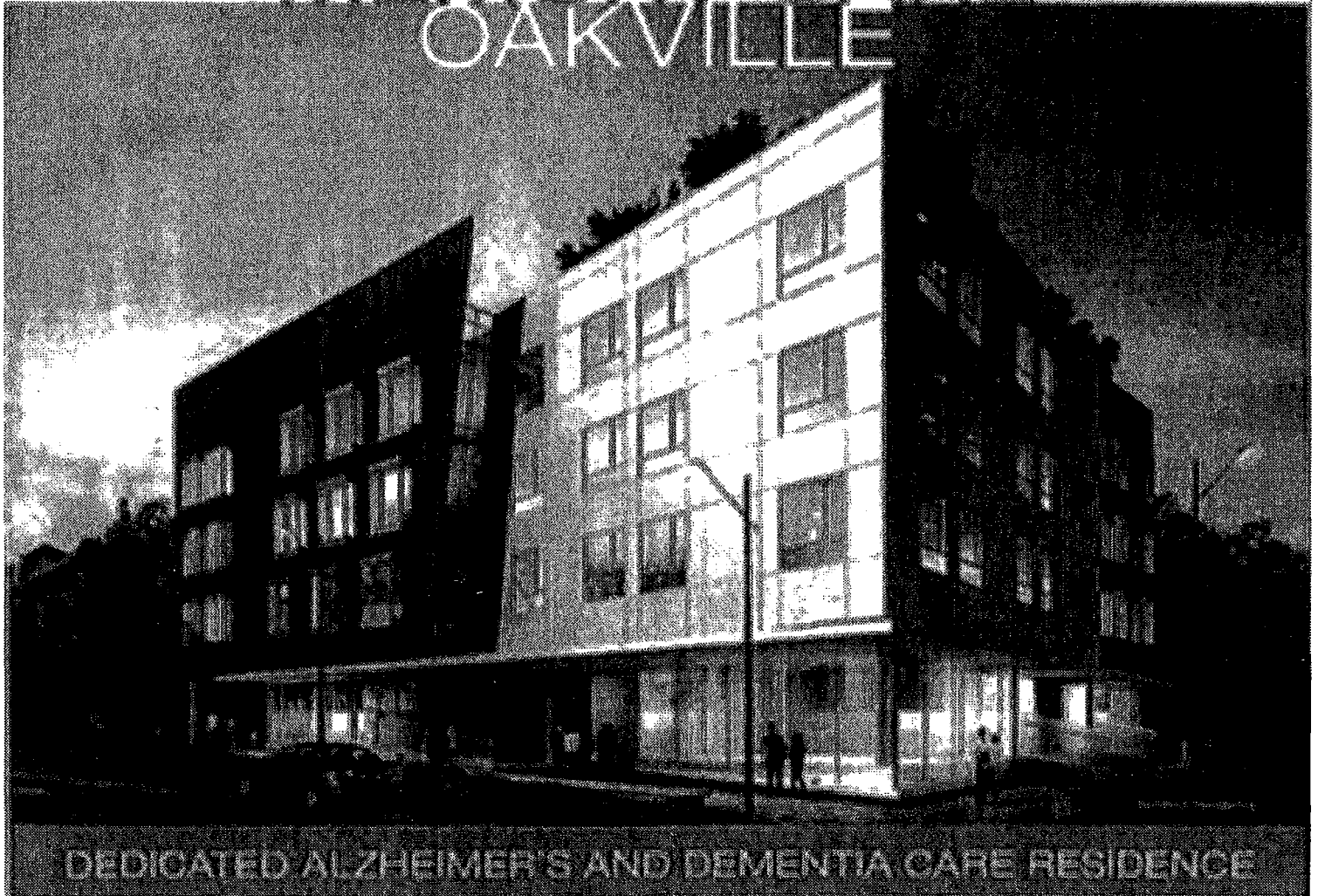
Kenneth Kraft
LSUC #: 31919P
Tel.: (416) 863-4374
Fax: (416) 863-4592
kenneth.kraft@dentons.com

Michael Beeforth
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Tel.: (416) 367-6779
Fax: (416) 863-4592
michael.beeforth@dentons.com

Lawyers for the Defendants

TAB C

MEMORY CARE OAKVILLE

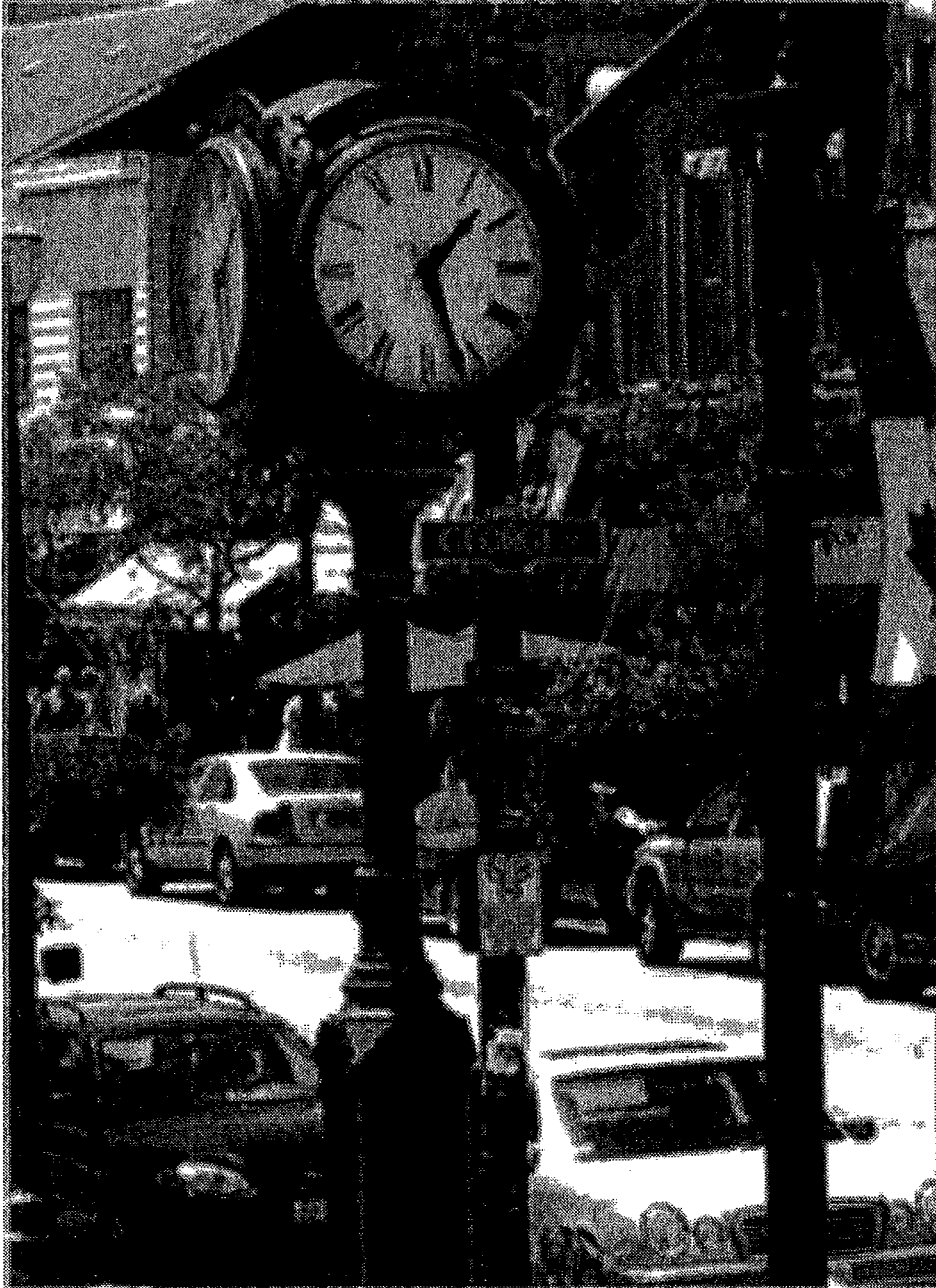


ADDITIONAL FIRST MORTGAGE FINANCING \$2.5 MILLION

- 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

OAKVILLE



MARKET AND DEMOGRAPHICS

11% of Oakville's population are seniors, making Oakville one of the most aged over 65 cities in Canada. The national trend for the Canadian population is 10% or more.

Oakville is part of the GFS and is a future growth. Oakville has a population of 205,000 (estimated vs. 170,000 in 2000). Median household income is \$39,000. The average home price is \$195,000.

Oakville's average income rank is in the middle in Canada, and it is the 10th wealthiest community in Canada.

Oakville is rated as a great place to live in Canada.

There are 10,000 persons in the Hamilton and Burlington areas that have dementia. Burlington, Milton, Mississauga and the rest of the region's population is 10%.

There are 13,000 registered Alzheimer's patients in the Hamilton-Burlington area. This represents 1.2% of the total population of 10 million. There are 10,000 registered Alzheimer's patients in Canada. This represents approximately 1.2% of the national population.

The demographics of the community are similar to the national average of 1.2% of the population with dementia. This is 1.2% of the total population of 10 million.

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

The area has a population of 205,000 persons and there are 13,000 registered Alzheimer's patients within the service area.

That number is expected to double by 2024.



SYNDICATED MORTGAGE

The syndicated mortgage... (text is mostly illegible due to low contrast)

SECURITY AND RISK MITIGATION

Mortgage Registrations:

The mortgage... (text is mostly illegible due to low contrast)

Loan to Value Ratio:

The loan to value ratio... (text is mostly illegible due to low contrast)

Nominating Trust Corporations:

A trust corporation... (text is mostly illegible due to low contrast)

THE DEVELOPER

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.

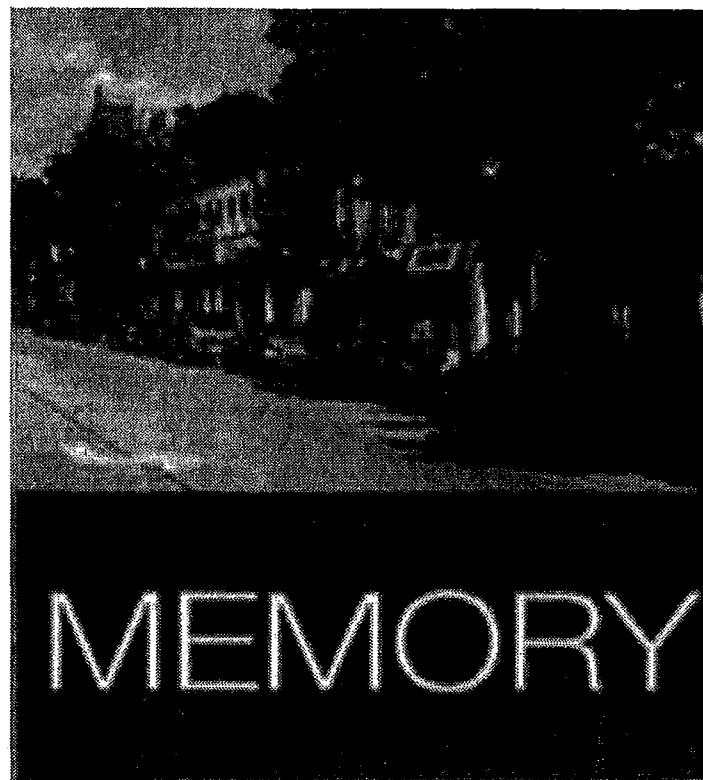
Memory Care facilities are taking the lead in this fight in Canada. **Memory Care** is establishing a nationally recognized standard of care and residency for Alzheimer's and dementia patients and we are meeting this challenge head on by providing quality, private-pay, stand-alone residences for Alzheimer's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

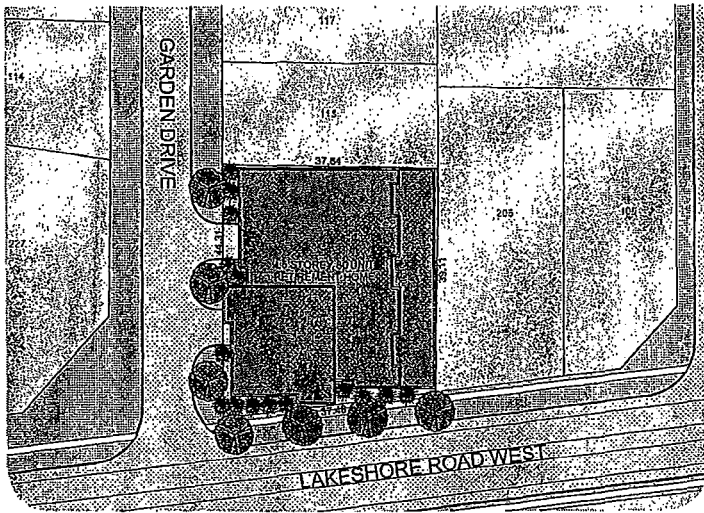
PROJECT UPDATE

1419

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.





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

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



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:
Pellean 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 Thought 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.

OAKVILLE



MANAGEMENT FIRM -
Tier1 Transaction Advisory Services Inc.
 3100 Steeles Avenue East, Suite 802, Markham, Ontario L3R 8T3
 Tel: 647-748-8437 | Fax: 647-689-2374

Facility Manager and Operator:
Eldersco Management and Consulting Corp.

Quantity Surveyors:
Polcan Woodcuff 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:
Vistar Engineering

Landscapes:
Terraplan

Planners:
Lucas and Associates

Environmental:
Church and Throught Ltd.

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

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Eldersco Management and Consulting Corp.
- Quantity Surveyors:**
Polcan Woodcuff Inc.
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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:**
Vistar Engineering
- Landscapes:**
Terraplan
- Planners:**
Lucas and Associates
- Environmental:**
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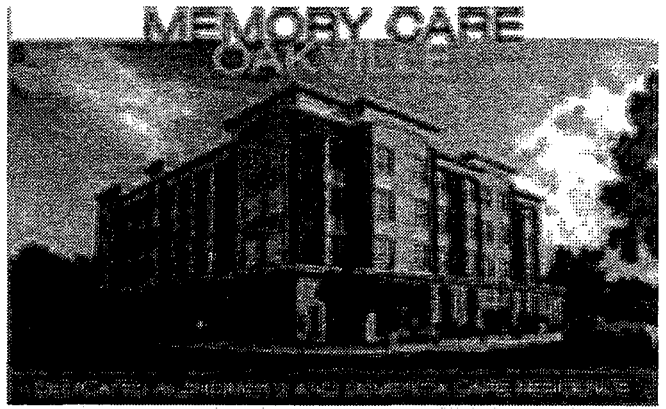
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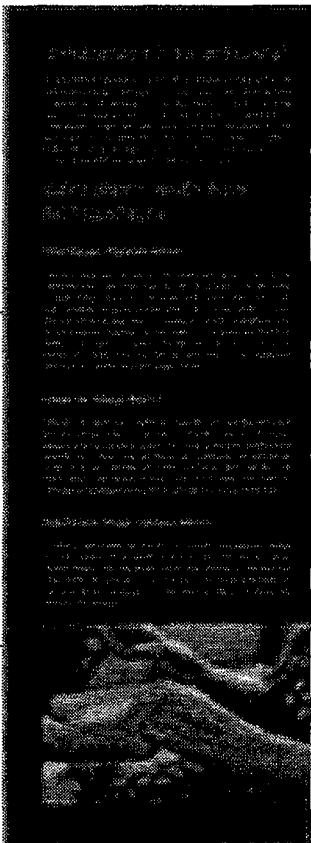
MEMORY CARE INVESTMENTS LTD.

TIER1 ADVISORY



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
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- \$25,000 minimum



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THE FINANCIER

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PROJECT DESCRIPTION

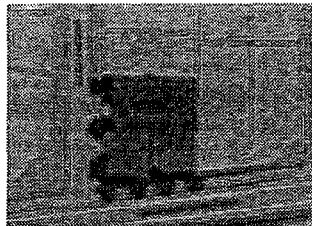
Alzheimer's disease and dementia patients and their families face an impending dilemma in their search for quality sustainable care in Canada. Victims of the second, most feared disease in this country have very few options when it comes to the prospect of finding appropriate housing and care. The governmental 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.

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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.



Location: NE corner of Lakeshore Road West and Garden Drive, Oakville, Ontario
Zoning: High-density residential
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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- 78-resident maximum to allow for an unrivalled level of care and treatment
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MEMORY CARE



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MEMORY CARE OAKVILLE

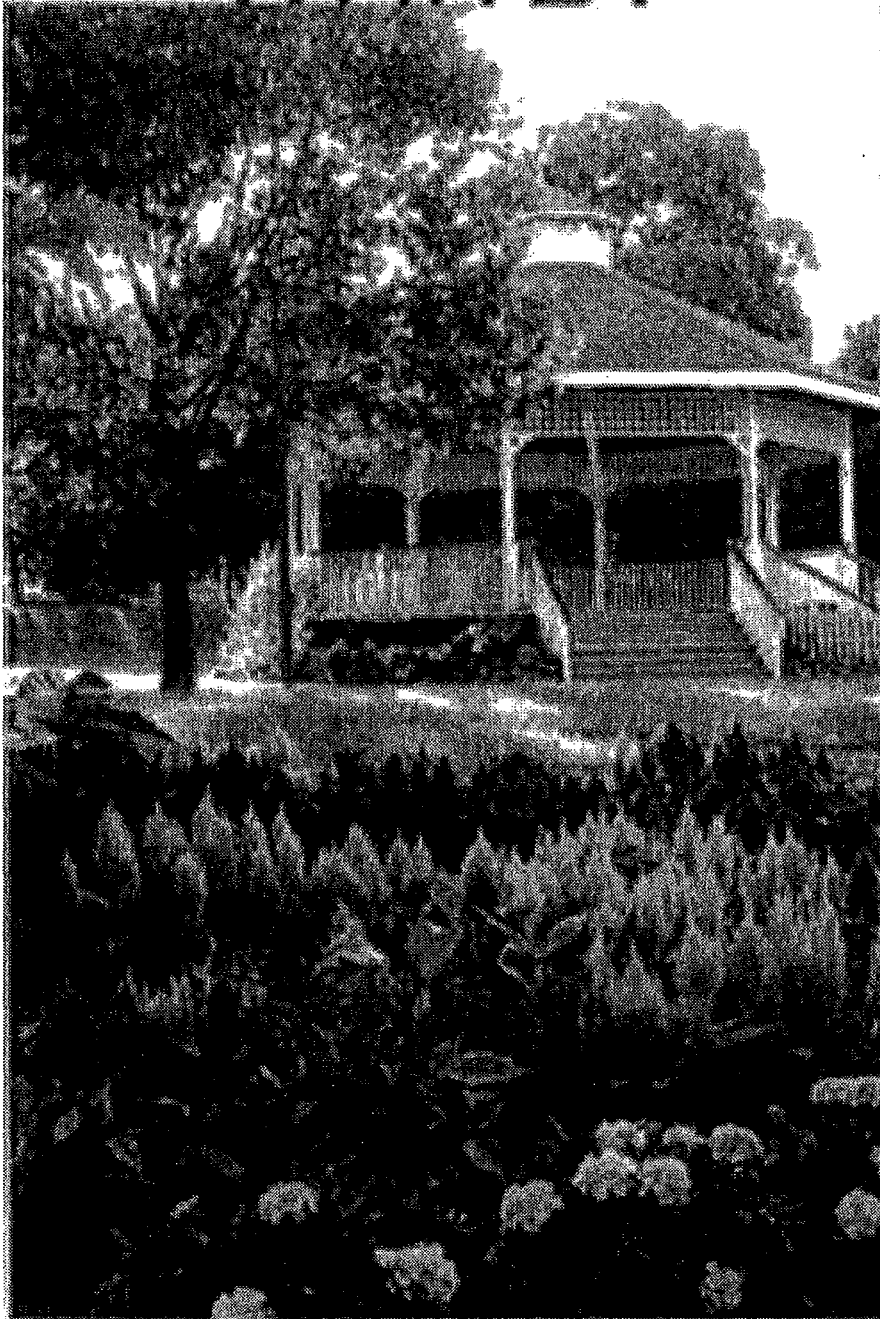
TOWN HOMES AT WHITBY HARBOUR

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**

Whitby is a growing community with a diverse economy. It is a major center for the automotive industry, with a large number of manufacturing plants and a growing number of service and retail businesses. The city is also a major center for education, with the University of Waterloo and the Whitby campus of the University of Waterloo. The city is also a major center for health care, with the Whitby campus of the University of Waterloo and the Whitby campus of the University of Waterloo.

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SYNDICATED MORTGAGE

In a syndicated mortgage, one lender is the issuer of the mortgage and is responsible for a mortgage in a pool of other lenders. The issuer of the mortgage is responsible for the mortgage through the entire life of the mortgage. The issuer of the mortgage is responsible for the mortgage through the entire life of the mortgage. The issuer of the mortgage is responsible for the mortgage through the entire life of the mortgage.

SECURITY AND RISK MITIGATION

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Loans to Value Ratio:

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Northwest Trust Corporation:

A trust corporation will act as the issuer of the mortgage. The trust corporation will act as the issuer of the mortgage. The trust corporation will act as the issuer of the mortgage.

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.

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Tier1 Transaction Advisory Services Inc.

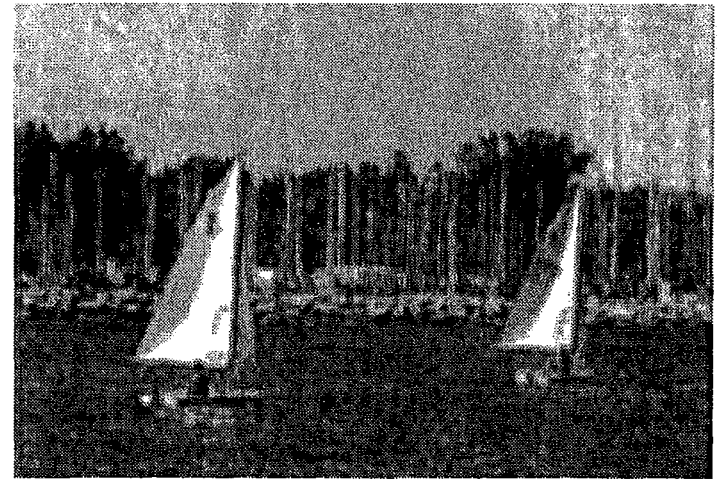


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THE ARCHITECT

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

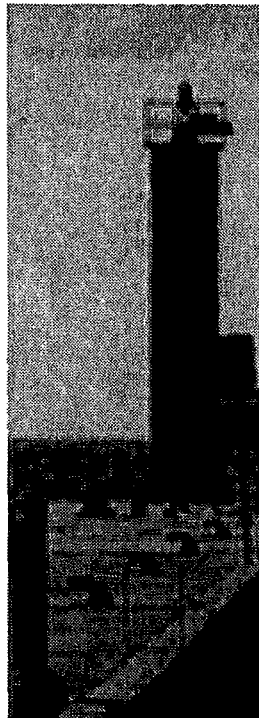


Award winning graphic designers and the go-to specialists in the marketing of residential and mixed-use development projects for over 30 years, pb marketing has been retained by Scollard Development Corporation to conceive the overall project identity and direct marketing efforts. Many different concepts 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

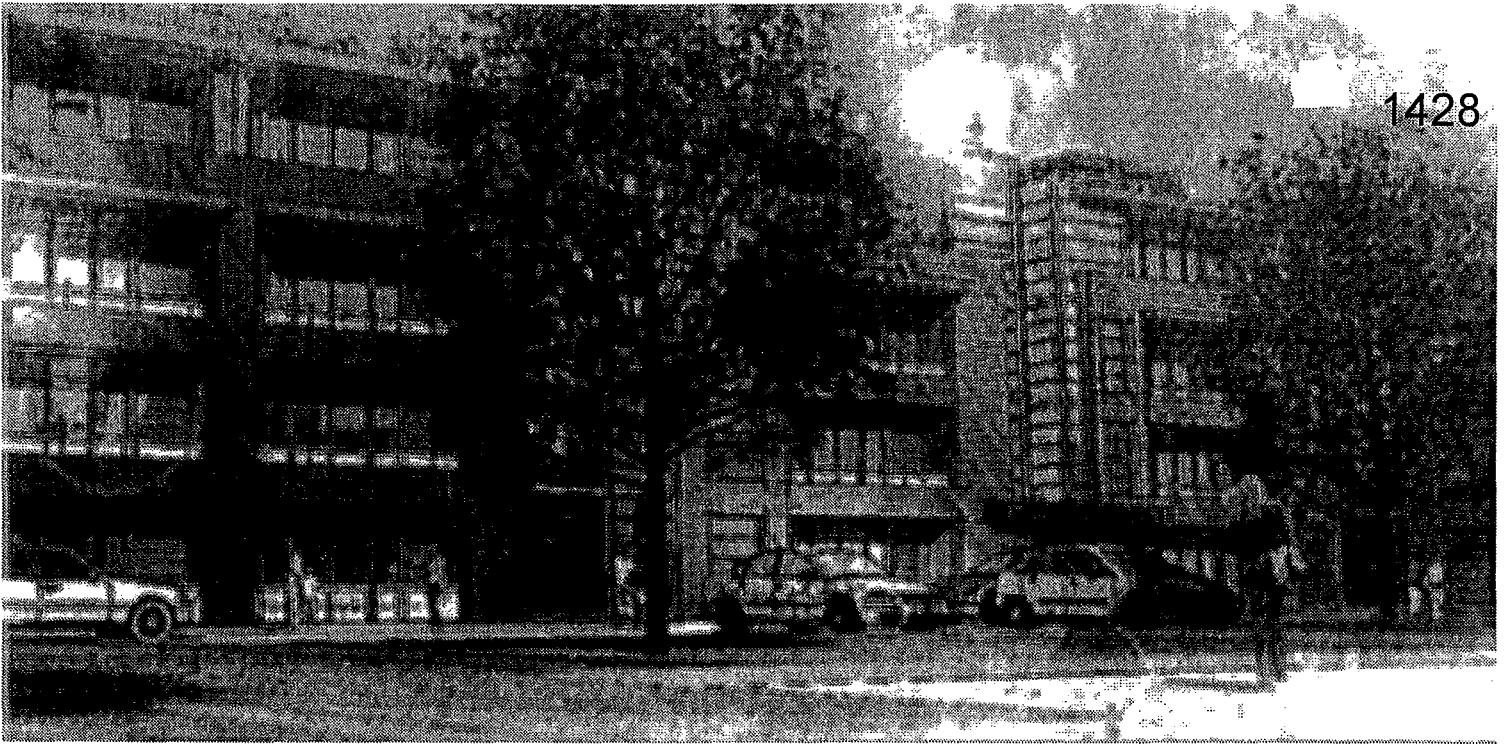
PROJECT DESCRIPTION

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



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
HARRIS + HARRIS LLP

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.

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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.

525 PRINCESS ST.



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

MUSKOKA



HUNTSVILLE FACTS

- Huntsville is recognized as one of the most beautiful cities in the world. The Huntsville area is home to the largest and most diverse group of lakes in the world, with over 100 lakes and 1,000 miles of shoreline. The area is also home to the largest and most diverse group of lakes in the world, with over 100 lakes and 1,000 miles of shoreline.
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"#1 Summer destination in the world, 2011"
 "One of the best trips in the world, 2012"
 -National Geographic Traveler Magazine

LIMITED-TIME OFFERING

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

Professional Services

- Quantity Surveyors:**
Pulcin Woodcraft Inc.
- Legal Advisors:**
Harris + Harris LLP
- Project Insurance:**
NTRACT Insurance
- Appraisers:**
Michael Caine Consultants
- Registered Custodian:**
Olympic Trust
- Architects:**
MCL Architects
- Structural Engineering:**
SWS Engineering
- Mechanical and Electrical:**
Tietzer Engineering
- Site Servicing Engineers:**
Poussiere Engineering Ltd.
- Planners:**
Plewaxco
- Environmentals:**
Church and Taught Ltd.

MANAGEMENT FIRM

Tier 1 Transaction Advisory Services Inc.
 3685 Kingston Road, Scarborough, ON M1M 1C2
 Tel: 947-940-7187 | Fax: 947-940-6438 | www.t1advisory.com

TIER 1 ADVISORY Tier 1 Transaction Advisory Services Inc. is the creator, provider and administrator of syndicated second mortgages, also known as principal assured mortgages. The syndicated mortgage is an RRSP-qualified investment, requiring a full term of professional support services to complete each syndicated mortgage transaction.

MORTGAGE BROKERAGES

First Commonwealth Mortgage Corporation



First Commonwealth has been in business since 1994. Its principal broker is Julie Cassidy, FSCO license #118550. Ms. Cassidy has been licensed by the Financial Services Commission of Ontario since 1997. All syndicated mortgage transactions will be handled by licensed mortgage agents and brokers.

Tier 1 Mortgage Corporation

LAW FIRM

Harris + Harris LLP
 Lawyers - Mark Swartz and Greg Harris

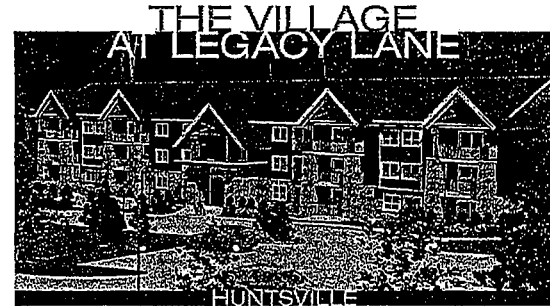


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LEGACY LANE
 INVESTMENTS LTD.

TIER 1
 ADVISORY



A WORLD-CLASS INVESTMENT OPPORTUNITY SYNDICATED MORTGAGE

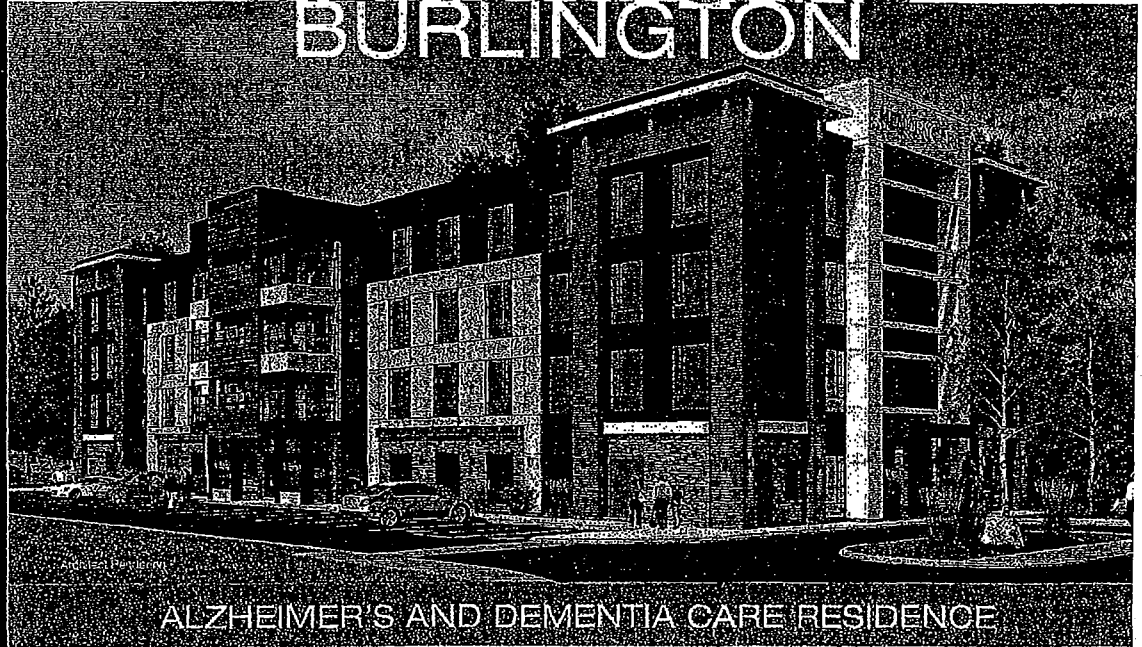
- 8% annual fixed rate of interest
- Interest paid quarterly
- 4% per annum end-of-term investor bonus paid in distributable cash proceeds
- 36-month term
- Cash or RRSP eligible
- \$25,000 minimum

MEMORY CARE
INVESTMENTS LTD.

Investment offered through
First Commonwealth Mortgage Corporation
(FSCO licence #10836)



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.

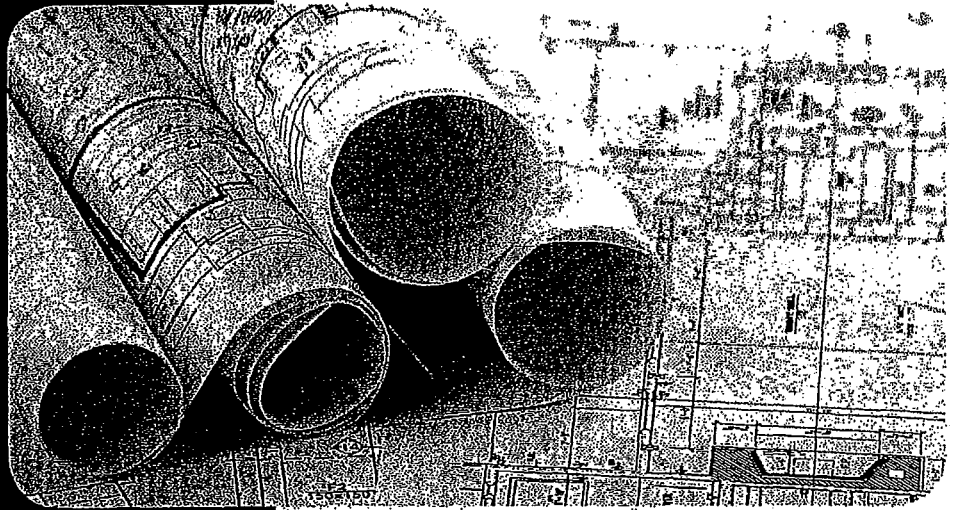


Raj Singh
Tier 1 Transaction
Advisory Services Inc.

THE DEVELOPER

Memory Care Investments (Burlington) Ltd.

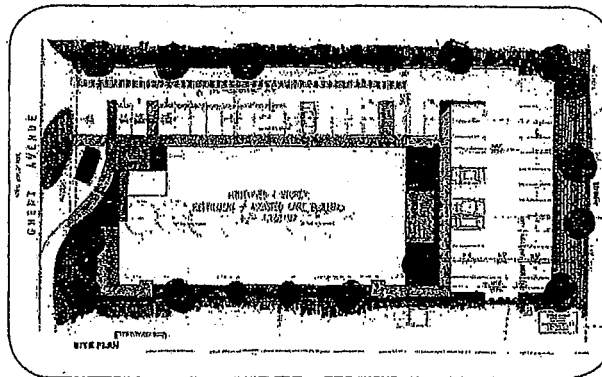
Memory Care Investments (Burlington) Ltd., the developer of the Burlington Alzheimer's and Dementia Care facility, was founded by John Davies, a founding partner of GeneX Inc., one of Canada's most successful condominium, resort, retail and office developers. John has a wealth of real estate development, 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



Location:	2170 Ghent Avenue, Burlington, Ontario
Zoning:	Retirement Residence (zoning fully in place)
Site Area:	Approximately 1 acre
Building Size:	Approximately 57,000 sq. ft.
Height:	4 storeys
Parking:	Surface
Units:	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)
- 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, burlington.ca and 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**



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**Law Firm --
Harris + Harris LLP**



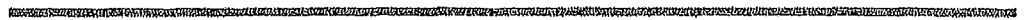
HARRIS + HARRIS LLP
HARRISONS AND SOLICITORS

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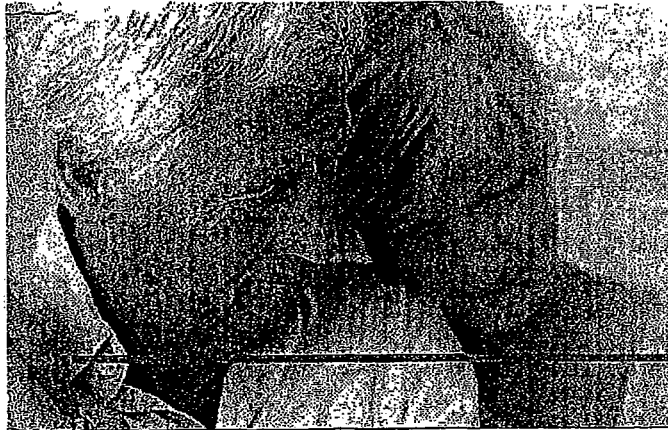
THE LARGEST GENERATION IN HISTORY IS APPROACHING THE YEARS OF DEMENTIA

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.

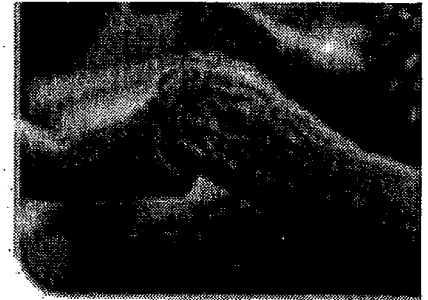
Memory Care facilities will feature a variety of suites with private baths, individual climate control and emergency call systems. A state-of-the-art GPS monitoring and communications system will protect residents at all times while health and wellness care is integrated with local hospitals and physicians.

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.



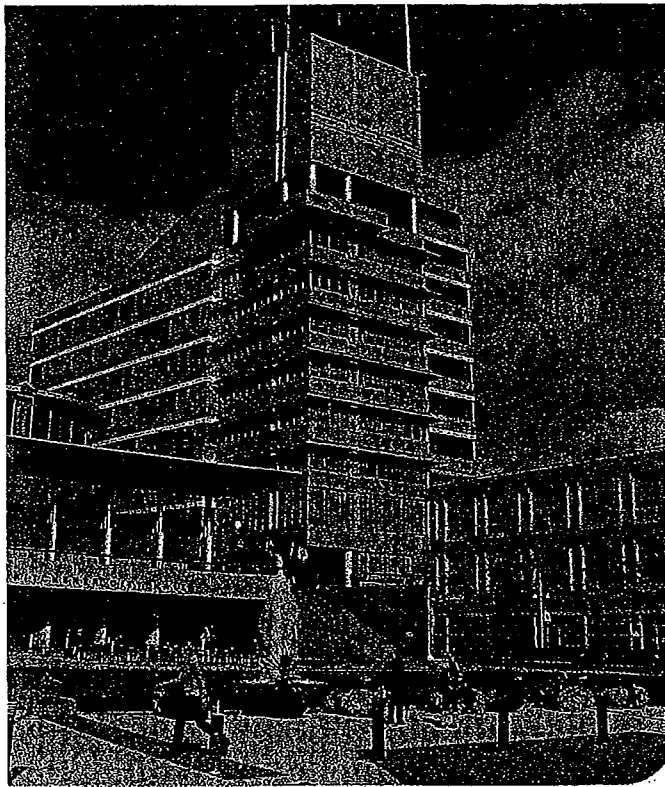
"The predicted surge in dementia cases will certainly overwhelm Canada's health care system unless specific and targeted action is taken. Canada must act now."

—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

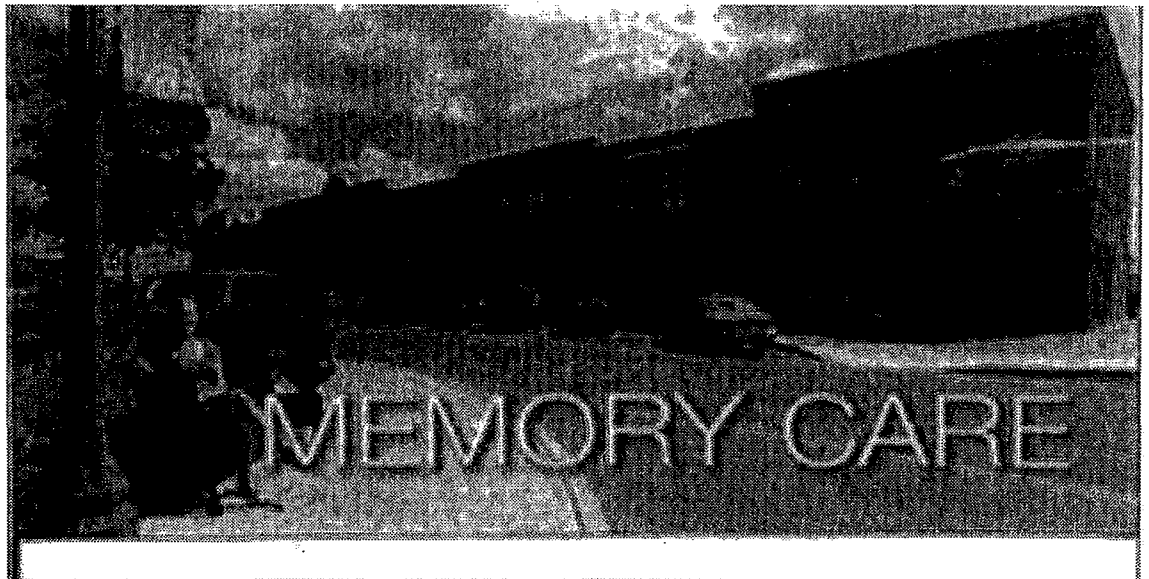
Currently, there are no standalone Alzheimer's-only care facilities specifically designed and managed to provide for the care of dementia patients in Canada.

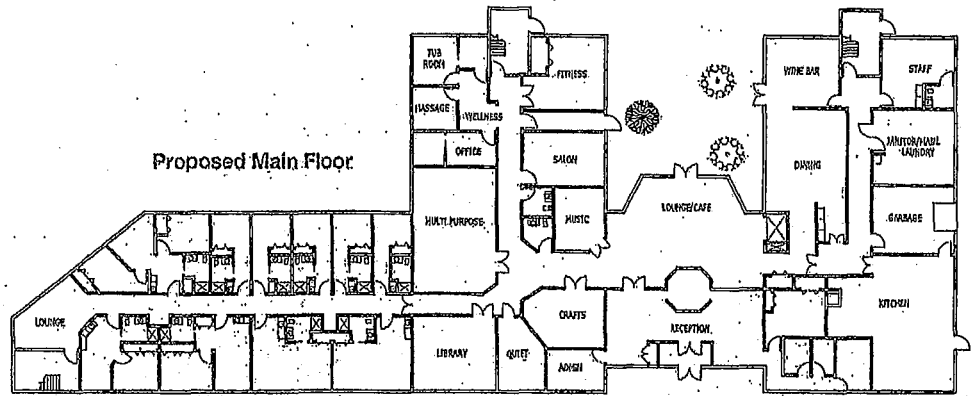


MARKET AND DEMOGRAPHICS

- With a population of more than 232,000, Kitchener is the largest city in Waterloo Region, which is home to over 650,000.
- 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.





Location: 169 Borden Avenue North, Kitchener, Ontario
Zoning: Retirement Residence (zoning fully in place)
Site Area: 1.85 acre +/-
Building Size: 63,000 square feet
Height: 3 storeys
Parking: Surface
Units: 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 650,000 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.



Shael Simon
Eldercare
Consulting Inc.

THE DEVELOPER

Memory Care Investments Ltd.

Memory Care Investments Ltd., the developer of the Klitchner Alzheimer's and Dementia Care facility, was founded by John Davies, a founding partner of Genex 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 1976. 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 OLTCA) 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 (COAC) 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:

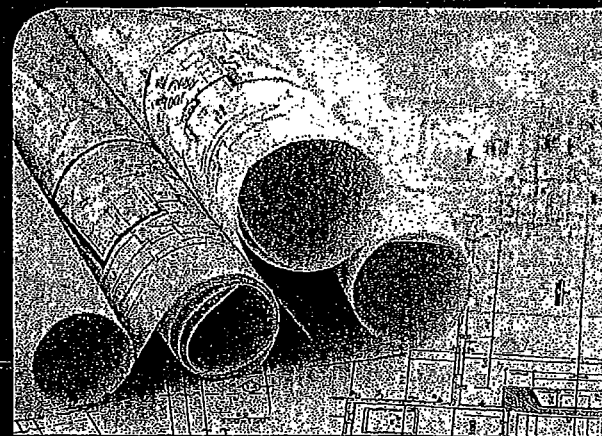
The mortgage that will secure the investment by investors will be registered as a first mortgage against the property, in the name of each lender through a nominee trust corporation and in the case of RRSP investors, directly in the name of the RRSP account and the RRSP trustee. The first mortgage will 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 contacted the acquisition of the land and retained the civil 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.



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, Carlsle 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 1976. 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 ONHA) 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:

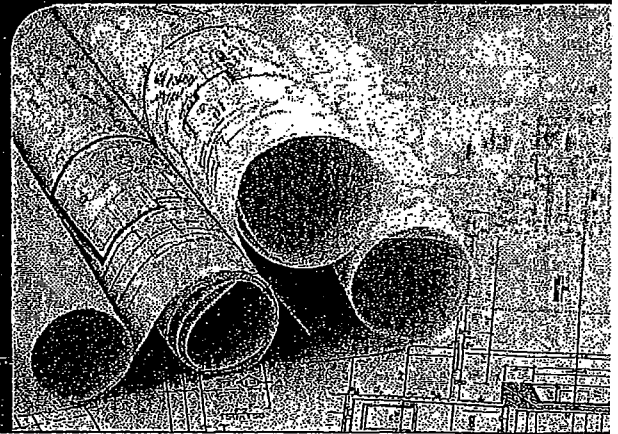
The mortgage that will secure the investment by investors will be registered as a first mortgage against the property, in the name of each lender through a nominee trust corporation and in the case of RRSP investors, directly in the name of the RRSP account and the RRSP trustee. The first mortgage will 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.



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 -

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 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 and Tier 1 Mortgage Corporation, FSCO Licence #12314.

TAB D

From: John Davies
To: 'Raj Singh'
CC: 'Chris Glamou'
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 Glamou'; '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@lcfunding.com]
Sent: October 31, 2014 12:16 PM
To: John Davies; 'Chris Glamou'
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
www.icfunding.com

Seniors Housing | Apartment | Retail | Industrial | Office

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From: John Davies [<mailto:john@memorycare.ca>]
Sent: October-31-14 11:49 AM
To: Greg Wood; 'Chris Glamou'
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 Glamou
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

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 London, ON N6J 1Y4
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 C 519.671.3528
woodg@icfunding.com
www.icfunding.com

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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
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

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 C 519.671.3528
woodg@icfunding.com
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 of 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> 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]
Sent: November 20, 2015 3:31 PM
To: John Davies <john@textbooksuites.com>
Cc: Wilson Costa <WCosta@smarchitects.ca>; Ryan Hicks <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>
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>
Subject: Re: Rideau, Bronson adn Ross Park - Precast Panel

Thanks John.

Regards,

Feby

From: John Davies <john@textbooksuites.com>
Sent: November 20, 2015 2:07 PM
To: Feby Kuriakose
Subject: RE: Rideau, Bronson adn 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>
Cc: Edward Thomas <edward@srmarchitects.ca>; Ryan Hicks <rhicks@srmarchitects.ca>
Subject: Rideau, Bronson adn 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 advice 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 Skyway 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
 Web www.harrisandharris.com



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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 22nd, 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
 416-477-7744 ext 236
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>; Andre Antanaitis <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

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 <raisingsh100@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> 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> 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@gxudc.com>]
Sent: November-19-15 6:12 PM
To: Raj Singh <rajsingh100@gmail.com>; John Davics <[johndavies55@rogers.com](mailto: johndavies55@rogers.com)>
Cc: Gregory H. Harris <gregharris@harrisandharris.com>; Andre Antanaitis <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 Glamou'
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 \$800K 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 Glamou'
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
Email gregharris@harrisandharris.com
Web 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: raisingh100@gmail.com; 'Chris Glamou'
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>
Cc: raisingh100@gmail.com; 'Chris Glamou' <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
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From: John Davies [<mailto:john@memorycare.ca>]
Sent: March-16-16 12:10 PM
To: Gregory Harris
Cc: raisingh100@gmail.com; 'Chris Glamou'
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>
Cc: 'Chris Glamou (Memory Care)' <chris@memorycare.ca>; raisingh100@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>
Cc: 'Chris Glamou (Memory Care)' <chris@memorycare.ca>; 'raisingh100@gmail.com' <raisingh100@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 Glamou'; '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 1st. If we can get them to Peter Tuovl 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 Tuovl 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 1st 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 5th. 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 9th.

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

Thanks,

John.

TAB 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.

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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.

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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; 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

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 BARRISTERS AND SOLICITORS

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From: 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 there 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 schools 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.

TAB F

PROFORMA SUMMARY	22	24	25	26	27	28	29	30	31	GRAND
Cash flow - Capital cost	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	July-17	Aug-17	Sep-17	TOTAL
Units Occupied - Monthly	0	0	0	0	0	65	65	65		
Units Occupied - Total	0	0	0	0	0	65	130	195		
INTERIM OPERATIONS										
Monthly rent - Total									0	0
Monthly rent - Residents						100,500	200,500	300,500	0	601,500
Less: Operating costs						28,083	56,165	84,247	0	168,500
Other	0	0	0	0	0	72,216	144,432	216,648	0	433,296
Total cash receipts						72,216	144,432	216,648	0	433,296
Construction % - Monthly	6.9%	6.4%	6.7%	10.8%	10.5%	0.3%	0.3%	0.3%		100.0%
Construction % - Total	64.2%	72.1%	77.8%	88.6%	92.1%	99.4%	99.7%	100.0%		
COSTS / CASH PAYMENTS:										
General Requirements									0	1,106,278
Site Work & Connections	65,075	65,075	65,075	65,075	65,075				0	325,538
Concrete/Formwork/Paving									0	4,425,131
Masonry									0	45,679
Marble	81,947	81,947	61,947						0	291,679
Carpentry	122,920	122,920	122,920	122,920	122,920				0	883,358
Thermal & Moisture Protection	153,650	153,650	153,650	153,650	153,650				0	1,229,108
Doors & Windows	184,380	184,380	184,380	184,380	184,380				0	1,475,037
Finishes	215,110	215,110	215,110	215,110	215,110				0	1,720,877
Appliances & Furnishings									0	1,543,786
Emergency Spendings				61,400	61,400				0	122,800
Conveying Systems	122,920	122,920	122,920	122,920	122,920				0	491,679
Mechanical	389,246	389,246	389,246	389,246	389,246				0	4,670,551
Electrical	286,813	286,813	286,813	286,813	286,813				0	3,441,753
Upgrades & other			75,000	75,000					0	150,000
Construction Management	47,882	47,882	47,882	47,882	47,882	47,882	47,882	47,882	0	864,434
Construction Contingency	27,316	27,316	27,316	27,316	27,316	27,316	27,316	27,316	0	491,478
Design & Consulting	14,318	14,318	14,318	14,318	14,318	14,318	14,318	14,318	0	1,163,410
Legal & Dev. Management	113,717	113,717	113,717	113,717	113,717	113,717	113,717	113,717	0	2,615,500
Sales & Marketing	23,676	23,676	23,676	23,676	23,676	100,296	100,296	100,296	0	852,148
Interest & Finance	#VALUE!	117,154	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!
NET - Net of rebates								2,491,399	0	2,491,399
Soft cost contingency	13,043	13,043	13,043	13,043	13,043	13,043	13,043	13,043	0	300,000
Land Costs	2,647	2,647	2,647	2,647	2,647				0	6,865,724
Total cash payments	#VALUE!	1,598,813	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!
CASH REQUIRED	#VALUE!	1,598,813	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!
FINANCING:										
Equity advances									6,350,000	6,350,000
Mazzanese Mortgage advance									6,350,000	6,350,000
Construction advance	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!
Total FINANCING	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!
Closing bank balance	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!	#VALUE!
11 EQUITY FINANCING:										
Opening Equity balance	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000
Current advances (repaid)	0	0	0	0	0	0	0	0	6,350,000	6,350,000
Cumulative Equity balance	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	0	0
21 MEZZANINE FINANCING:										
Opening Mezzanine balance	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000	6,350,000
Current Advances (Repayments)	0	0	0	0	0	0	0	0	6,350,000	6,350,000

LINE	W.D.P.	Est. in Complete	Total Forecast	SF/GFA	UNIT	Notes - Set to complete	Percent
LAND							
1	0	2,000.00	2,000.00	10,000	100	Land fee, transfer fee	200.00
2	0	20,000.00	20,000.00	50,000.00	50	Land fee, transfer fee	100.00
3	0	20,000.00	20,000.00	50,000.00	50	Land fee, transfer fee	100.00
4	0	2,000.00	2,000.00	5,000.00	50	Land fee, transfer fee	100.00
5	0	2,000.00	2,000.00	5,000.00	50	Land fee, transfer fee	100.00
6	0	10,000.00	10,000.00	25,000.00	25	Land fee, transfer fee	100.00
7	0	2,000.00	2,000.00	5,000.00	50	Land fee, transfer fee	100.00
8	0	2,000.00	2,000.00	5,000.00	50	Land fee, transfer fee	100.00
9	0	2,000.00	2,000.00	5,000.00	50	Land fee, transfer fee	100.00
10	0	100,000.00	100,000.00	100,000.00	100	Land fee, transfer fee	100.00
CONSTRUCTION							
11	0	6,885,724.21	6,885,724.21	519,000	13.25	Concrete foundation	100.00
12	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
13	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
14	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
15	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
16	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
17	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
18	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
19	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
20	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
21	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
22	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
23	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
24	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
25	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
26	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
27	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
28	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
29	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
30	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
31	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
32	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
33	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
34	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
35	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
36	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
37	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
38	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
39	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
40	0	1,000,000.00	1,000,000.00	50,000	20.00	Concrete foundation	100.00
DESIGN							
41	0	484,678.00	484,678.00	24,233.90	20.00	Architect	100.00
42	0	98,938.00	98,938.00	4,946.90	6.47	Structural Engineer	100.00
43	0	123,678.00	123,678.00	6,183.90	15.95	Mechanical & Electrical	100.00
44	0	98,938.00	98,938.00	4,946.90	6.47	Landscaping Architect	100.00
45	0	98,938.00	98,938.00	4,946.90	6.47	Interior Designer	100.00
46	0	98,938.00	98,938.00	4,946.90	6.47	Cost Estimator	100.00
47	0	98,938.00	98,938.00	4,946.90	6.47	Inspection & Site Testing	100.00
48	0	98,938.00	98,938.00	4,946.90	6.47	Cost consultant	100.00
49	0	98,938.00	98,938.00	4,946.90	6.47	Construction Management	100.00
50	0	98,938.00	98,938.00	4,946.90	6.47	Architectural Consultant	100.00
51	0	98,938.00	98,938.00	4,946.90	6.47	Specialist consultant	100.00
52	0	98,938.00	98,938.00	4,946.90	6.47	Other specialist consultant	100.00
53	0	98,938.00	98,938.00	4,946.90	6.47	Other specialist consultant	100.00
54	0	98,938.00	98,938.00	4,946.90	6.47	Other specialist consultant	100.00

1555 Princess Street, Kingston, ON
 DETAILED CAPITAL COST ASSUMPTIONS

05-Jan-06
 2:41:47

555 Princess Street, Kingston, ON
DETAILED CAPITAL COST ASSUMPTIONS
as at 00-Jan-00

00-Jan-00
27-Jul-17

70 LEGAL & DEV. MANAGEMENT
71 Legal Fees
72 Accounting
73 Surveyor
74 Misc. Development
75 Land Acquisition
76 Development Management
77 Total LEGAL & ADMINISTRATION

78 SALES & MARKETING
79 Marketing & Advertising
80 Leasing Office - Construction
81 Leasing Office - Operations
82 Commercials
83 Commercials - Ontario Broker
84 Inquiries - Retail Questionnaire
85 Leasing Consultant
86 Retail - Tenant Incentives
87 Retail - Commissions
88 Total SALES & MARKETING

89 FINANCE
90 Construction Loan Fees
91 Mortgage Loan Fees
92 Service Charges & misc.
93 Appraisal
94 Tenant/BLD enrolment
95 Deposit Insurance Fees
96 Letter of Credit Fees
97 Project Monitor
98 Mortgage Loan Interest
99 Construction Loan Interest
100 Total FINANCE

101 INTERIM OPERATIONS
102 Income rec'd collections
103 Interest operating costs
104 Other
105 Interest Earned on Deposits
106 Total INTERIM OPERATIONS

107 CONTINGENCY & HST
108 HST - net of rebates
109 General contingency
110 Total CONTINGENCIES & HST

Total CAPITAL COSTS

(1)	(2)	(3)	(4)	(5)	(6)	Notes - Est to complete
W/LP	Estimated to Complete	Total Forecast				
0	380,000	380,000	12%	\$2,000		Lease (Corp org) Financing
0	22,500	22,500	3	\$7,500		Annual financials < 2 years
0	78,000	78,000		\$200		
0	25,000	25,000		\$25,000		Out of pockets
0	0	0		0		
0	2,100,000	2,100,000	42,000,000%	5.0%		TEXTBOOK Development fees as % total costs
0	2,615,500	2,615,500				
0	155,000	155,000		\$800		Allowance
0	50,000	50,000	1,000	\$53.00		Est 1,000 of sales centre
0	60,000	60,000	12	\$5,000		Staff & overhead for one year
0	300,000	300,000	0.33%	\$3,610,800		Approx. 1 month revenue
0	0	0	0.05%	0.00%		Inc store
0	100,000	100,000	0	\$700,000		Retail storefront - Prop rent/mgmt
0	0	0		50,000		
0	157,000	157,000	6,260	\$25.00		Allowance per sq. ft. (1 year) rent
0	28,280	28,280	15.00%	\$57,000		System cost (6% - 11 x 3%)
0	852,148	852,148				
0	633,000	633,000	2.00%	25,000,000		1% Lender + 1% Broker + 2.5% Stamping fee
0	317,500	317,500	5.00%	6,350,000		Lender/broker fee/legals
0	7,200	7,200	\$150,000	48		Monthly bank charges
0	40,000	40,000	1	20,000		Allowance for 2 appraisal
0	5,000	5,000		\$5,000.00		BLD enrolment
0	0	0	0	0.00%		
0	12,500	12,500	2.50%			Allowance for \$250,000 K of LC to City
0	105,000	105,000	35	6,500		Bank's monitor during construction
0	1,029,333	1,029,333	6,250,000%	10,000		Estimate per cash flow
0	#VALUE!	#VALUE!		5.00%		Estimate as per cash flow
0	#VALUE!	#VALUE!				
0	-631,800	-631,800				Per cash flow
0	168,504	168,504				Per cash flow
0	0	0				
0	0	0				
0	-433,296	-433,296				
0	2,490,365	2,490,365	4.95%	\$6,319,859		Allowance for net-rebate of HST
0	300,000	300,000				Allowance
0	2,790,365	2,790,365	0	0		
0	#VALUE!	#VALUE!				

Sale	Cont'd Sale	Clump
75,222	75,222	150,444
75,222	75,222	150,444
355	355	710

Costs	Net Costs	Net Costs
HST Land Acq	1,661,333	#VALUE!
#VALUE!	1,661,333	#VALUE!
Net Loan		#VALUE!

Stamping Fee	on	one third	of	Cost of Loan
2.50%				\$28,400,000
\$	245,000			

TAB 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 SMIs, 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

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 <rajsingh100@gmail.com>
Date: Tue, 19 Mar 2013 18:32:48 -0400
To: John Davies <Johndavies55@rogers.com>
Cc: Greg Harris <gregharris@harrisandharris.com>; Bruce Stewart <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

1 Tue, Mar 19, 2013 at 6:19 PM, <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 <rajsingh100@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: rajsingh100@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 gave 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 <rajsingh100@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> 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 Cell: 416.471.0155

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From: Raj Singh <raisingsh100@gmail.com>
To: Bruce Stewart <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: <raisingh100@gmail.com>
 Date: Sat, Mar 16, 2013 at 10:33 AM
 Subject: Fw: Scollard
 To: Kris Parthiban <kris.parthiban@tier1advisory.com>

Proforma.
 Confidential.

Kris, we can discuss to do exec summary.

Raj

Sent from my BlackBerry 10 smartphone.

From: lohndavies55@rogers.com
 Sent: Friday, March 15, 2013 2:25 PM
 To: Raj Singh, President
 Reply To: lohndavies55@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>
 Date: Fri, 15 Mar 2013 11:23:37 -0700 (PDT)
 To: John Davies <lohndavies55@rogers.com>
 Reply To: Bruce Stewart <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/raisngh100>

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Raj Singh

My LinkedIn Profile:

<http://ca.linkedin.com/in/raisngh100>

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Raj Singh

My LinkedIn Profile:

<http://ca.linkedin.com/in/raisngh100>

--
Raj Singh

My LinkedIn Profile:

<http://ca.linkedin.com/in/raisngh100>

TAB 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 1st 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
 Web www.harrisandharris.com



HARRIS + HARRIS LLP
 ADVISERS AND ACCOUNTANTS

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:john.davies55@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

DELEGATION AGREEMENT

THIS AGREEMENT is made as of the 28th 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.

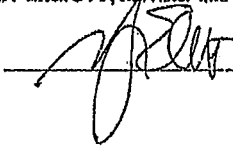
- 2 -

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, *Attorney* and Solicitor



DELEGATION AGREEMENT

THIS AGREEMENT is made as of the 2nd 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.

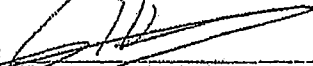
1.03 HH covenants and undertakes to provide to Elliott any information reasonably requested by Elliott to verify that the Interest Reserve proceeds held in trust by HH have been used solely to pay amounts owing to syndicated mortgage lenders on their respective due dates.

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.

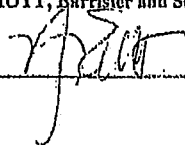
- 2 -

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 1st 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

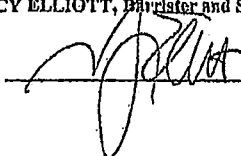
Per: 

Name: Gregory H. Harris

Title: Partner

I have authority to bind the partnership

NANCY ELLIOTT, ~~Partner~~ and Solicitor



DELEGATION AGREEMENT

THIS AGREEMENT is made as of the 1st 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.

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 17th day of April, 2015

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 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 5th 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

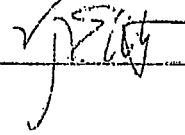
Per: 

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 8th day of April, 2014

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 Seofford Development Corporation and Seofford 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

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:

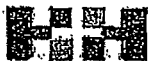
It is important that you are aware (which I'm sure you are), that if the McMurray investors do not receive their interest when due, it becomes an Event of Default requiring McMurray to notify each investor as to the Default and it triggers a whole host of remedies that become available to the investors.

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 Klitchner 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
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2355 Skymark Avenue
Suite 300
Mississauga, Ontario
L4W 4Y6
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75.629.4350
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From: John Davles [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 Davles; ralsingh100@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
www.harrisandharris.com



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From: Gregory Harris
Sent: Tuesday, October 15, 2013 1:37 PM
To: John Davies; rajsingh100@gmail.com
Cc: Nicola 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 Olympia clients).

Peter:

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

Greg

Gregory H. Harris
Harris + Harris LLP
2355 Skyway Avenue
Suite 300
Mississauga, Ontario
L4W 4Y6
Phone 905.629.7800 x 240
Fax 905.629.4350
Cell 416.480.2507
Email: gregharris@harrisandharris.com
Web www.harrisandharris.com



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From: John Davies [<mailto:john.davies55@rogers.com>]
Sent: Tuesday, October 15, 2013 1:33 PM
To: Gregory Harris; rajsingh100@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: rajsingh100@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 905.629.4360
Cell 416.460.2507
Email gregharris@harrisandharris.com
or www.harrisandharris.com



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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
L4Y 4Y8
Phone 905.629.7800 x 240
Fax 905.629.4350

Cell 416.460.2507
 Email gregharris@harrisandharris.com
 Web www.harrisandharris.com



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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 Indemnity 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

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
 Web 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
 2365 Skymark Avenue
 Suite 300
 Mississauga, Ontario
 L4W 4Y6
 Phone 905.629.7800 x 240
 Fax 905.629.4360
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 Web 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; Maria 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

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
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.

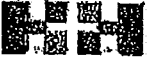
Kindly review the attached, and subject to your approval, please arrange to have the Acknowledgement and Direction signed on behalf of B2B Bank and return same to me by email at your earliest convenience.

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
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 Guildwood 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 Caney 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 1st 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 1st 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 2nd 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 1st 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 4th 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 1st 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 1st.

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 1st.

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 Glamou, 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 18th I believe. We negotiated a closing extension to September 15th. Someone needs to impress upon someone at OT in the strongest possible terms that we need the full \$13.6 million on September 15th. 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.

), 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 2nd. 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 Glamou, 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/raisingsh100>

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

From: Raj Singh <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>; Chris

Giamou, CMA <chris@memorycare.ca>; Gregory H. Harris, L.L.B, Partner <gregharris@harrisandharris.com>;

Brenda Schultz <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> 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>
 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>; Raj Singh, B.So., MBA, CEO <rajsingh100@gmail.com>;
 Gregory Harris <GregHarris@harrisandharris.com>; Brenda Schultz <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
 Fax No. 905.629.4350
 Email: petermatukas@harrisandharris.com
www.harrisandharris.com

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

From: johndavies55@rogers.com [<mailto:johndavies55@rogers.com>]
 Sent: August-25-14 1:31 PM
 To: Peter Matukas
 Cc: Chris Giamou, CMA; Raj Singh, B.So., 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/raisingsh100>

On Fri, Apr 29, 2016 at 3:48 PM, Peter Matukas <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
www.harrisandharris.com



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From: Gregory Harris
Sent: April-29-16 3:31 PM
To: 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

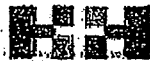
Phone 905.629.7800 x 240

Fax 905.629.4350

Cell 416.460.2507

Email gregharris@harrisandharris.com

Web www.harrisandharris.com



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

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 1st.

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

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

Web www.harrisandharris.com



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From: Peter Matukas
Sent: April-29-16 2:29 PM
To: [johndavies55@rogers.com](mailto: johndavies55@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.

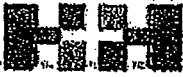
John – this interest distribution is particularly salient given that we are still awaiting an election from one of the investors, and thus all of the investors are stuck and entitled to interest until repayment of their principal regardless of whether they have elected to continue with the project or 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 Skycmark Avenue, Suite 300
 Mississauga, Ontario L4W 4Y6
 Tel No. 905.629.7800
 Fax No. 905.629.4350
 Email: petermatukas@harrisandharris.com
www.harrisandharris.com



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From: Peter Matukas
 Sent: December-01-14 10:31 AM
 To: 'johndavies55@rogers.com'
 Cc: 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 15, 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
 Fax No. 905.629.4350
 Email: petermatukas@harrisandharris.com
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From: Peter Matukas
 Sent: November-03-14 10:22 AM
 To: 'johndavies55@rogers.com'
 Cc: 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 18, 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
Fax No. 905.629.4350
Email: petermatukas@harrisandharris.com
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John Davies

From: John Davies <Johndavies55@rogers.com>
 Sent: February 19, 2015 11:15 AM
 To: 'Greg Harris'; 'rajsingh100@gmail.com'
 Cc: 'Chris Glamou'; '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 1st. 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 \$10.5 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 1st 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 5th. 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 9th.

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 30th 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 1st 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 Glamou; 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](mailto: johndavies55@rogers.com)
 Cc: Chris Glamou <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](mailto: johndavies55@rogers.com)
 Sent: Wednesday, December 23, 2015 11:22 AM
 To: Raj Singh
 Cc: Chris Glamou; Gregory H. Harris
 Subject: Re: # 12066 Memory Care; Burlington sets of drawings

By 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 Fengata 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-filling. 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 its 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
Tier I Advisor

My LinkedIn Profile:

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

On Wed, Dec 23, 2015 at 10:21 AM, <john.davies55@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: john.davies55@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: john.davies55@rogers.com [mailto:john.davies55@rogers.com]
Sent: December 22, 2015 6:31 PM
To: Raj Singh <rajsingh100@gmail.com>; Chris Glamou <chris@memorycare.ca>
Cc: Gregory H. Harris <greg@harrisandharris.com>
Subject: Re: # 12066 Memory Care: Burlington sets of drawings

TAB 17

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

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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
---	EXHIBIT NO. 11:	Email dated February 19th, 2015 ...	88
---	EXHIBIT NO. 12:	Email dated October 20th, 2016	91

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I N D E X O F U N D E R T A K I N G S

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--- UNDERTAKING NO. 1	7
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I N D E X O F R E F U S A L S

REFERENCE NO.	PAGE NO.
--- REFUSAL NO. 1	24
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--- REFUSAL NO. 4	112

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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.

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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 forma,
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

August 9th, 2017

J. DAVIES - 9

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?

August 9th, 2017

J. DAVIES - 10

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

August 9th, 2017

J. DAVIES - 11

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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J. DAVIES - 12

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

August 9th, 2017

J. DAVIES - 13

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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J. DAVIES - 14

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?

August 9th, 2017

J. DAVIES - 15

- 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.

August 9th, 2017

J. DAVIES - 16

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,

August 9th, 2017

J. DAVIES - 17

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

August 9th, 2017

J. DAVIES - 18

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

August 9th, 2017

J. DAVIES - 19

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

August 9th, 2017

J. DAVIES - 20

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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J. DAVIES - 21

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?

August 9th, 2017

J. DAVIES - 22

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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J. DAVIES - 23

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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J. DAVIES - 24

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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J. DAVIES - 25

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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J. DAVIES - 26

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 through 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

20

21

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25

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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

Tracy Wingrove - Court Reporter

9

10

Reproductions of this transcript are in direct

11

violation of O.R. 587/91 Administration of Justice Act

12

January 1, 1990, and are not certified without the

13

original signature of the Court Reporter

TAB 18

List of Relevant Transcripts and Location in Record

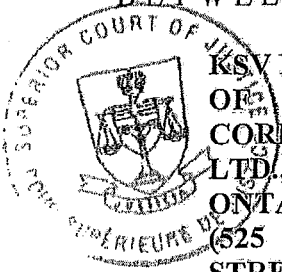
1. Transcript of the Cross-Examination of John Davies conducted on June 16, 2017 - Tab 15 (H) of the Motion Record of the Defendants dated October 13, 2017
2. Transcript of the Cross-Examination of John Davies conducted on August 9, 2017 - Tab 17 of the Motion Record of the Defendants dated October 13, 2017

TAB 19

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:



K.S.V. 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

NOTICE OF ACTION

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the Statement of Claim served with this Notice of Action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Notice of Action is served on you, if you are served in Ontario.


If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date June 6, 2017 Issued by 
Local Registrar

Address of
court office: 330 University Avenue
Toronto, ON M5G 1E6-1R7

TO: JOHN DAVIES
24 Country Club Drive
King City, ON
L7B 1M5

AND TO: AEOLIAN INVESTMENTS LTD.
2355 Skymark Avenue, Suite 300
Mississauga, ON
L4W 4Y6

- and -

24 Country Club Drive
King City, ON
L7B 1M5

CLAIM

1. The plaintiff, KSV Kofman Inc. (“**KSV**”), solely in its capacity as receiver and manager of certain property of Scollard Development Corporation (“**Scollard**”), Memory Care Investments (Kitchener) Ltd. (“**Kitchener**”), Memory Care Investments (Oakville) Ltd. (“**Oakville**”), 1703858 Ontario Inc. (“**Burlington**”), Legacy Lane Investments Ltd. (“**Legacy Lane**”), Textbook (525 Princess Street) Inc. (“**525 Princess**”) and Textbook (555 Princess Street) Inc. (“**555 Princess**”), (collectively, the “**Receivership Companies**”), and not in its personal capacity or in any other capacity, claims against the defendants, John Davies (“**Davies**”) and Aeolian Investments Ltd. (“**Aeolian**” and, together with Davies, the “**Defendants**”), jointly and severally (as applicable):

- (a) a constructive trust and/or damages in the sum of \$50,000,000 or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court, for Davies’ fraud, deceit, conspiracy, breach of fiduciary duty, negligence, conversion, unlawful means tort and unjust enrichment, and for Aeolian’s fraud, deceit, conspiracy, unlawful means tort and unjust enrichment;
- (b) a declaration that the plaintiff is entitled to trace the Receivership Companies’ assets into the hands of the Defendants and a declaration that the Defendants hold those assets as constructive trustees for the plaintiff;
- (c) an interim, interlocutory and permanent order, in the form of a worldwide *Mareva* injunction, restraining 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, whether directly or indirectly, from

selling, liquidating, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of their assets, wherever situate;

- (d) a declaration that the liability of Davies arises out of fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity for purposes of section 178(1)(d) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended;
- (e) special damages, including all costs and expenses arising out of the detection, investigation, and quantification of the losses suffered by the Receivership Companies, in an amount to be particularized prior to trial;
- (f) punitive or exemplary damages in an amount to be particularized prior to trial;
- (g) pre-judgment and post-judgment interest on a compound basis or, alternatively, pursuant to the *Courts of Justice Act*, RSO 1990, c C 43, as amended;
- (h) costs of this action, including the costs of any and all interim and interlocutory motions, on a full indemnity or other appropriate scale, including all applicable taxes; and
- (i) such further and other relief, including equitable relief and constructive trusts in favour of the plaintiff, as this Honourable Court deems just.

Parties

2. The plaintiff, KSV, is the court-appointed receiver and manager of certain property of the Receivership Companies appointed pursuant to orders of the Ontario Superior Court of Justice

(Commercial List) dated February 2, 2017, April 28, 2017 and May 2, 2017. Each of the Receivership Companies in respect of which KSV has been appointed receiver and manager was advanced monies on a secured basis by various trust corporations, which monies had been raised from investors through syndicated mortgages for particular real estate development projects specific to the respective Receivership Companies. In particular:

- (a) Scollard is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by Scollard Trustee Corporation (“**Scollard Trust Co.**”), which monies had been raised from investors through a syndicated mortgage for a particular real estate development project specific to Scollard. The sole officer and director of Scollard is Davies.
- (b) Kitchener is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by MC Trustee (Kitchener) Ltd. (“**Kitchener Trust Co.**”), which monies had been raised from investors through a syndicated mortgage for a particular real estate development project specific to Kitchener. The sole officer and director of Kitchener is Davies.
- (c) Oakville is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by 2223947 Ontario Limited (“**Oakville/Burlington/Legacy Lane Trust Co.**”), which monies had been raised from investors through a syndicated mortgage for a particular real estate development project specific to Oakville. The sole officer and director of Oakville is Davies.

- (d) Burlington is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by the Oakville/Burlington/Legacy Lane Trust Co., which monies had been raised from investors through a syndicated mortgage for a particular real estate development project specific to Burlington. The sole officer and director of Burlington is Davies.
- (e) Legacy Lane is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by the Oakville/Burlington/Legacy Lane Trust Co., which monies had been raised from investors through a syndicated mortgage for a particular real estate development project specific to Legacy Lane. The sole officer and director of Legacy Lane is Davies.
- (f) 525 Princess is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by Textbook Student Suites (525 Princess Street) Trustee Corporation (“**525 Trust Co.**”), which monies had been raised from investors through a syndicated mortgage for a particular real estate development project specific to 525 Princess. The only officers and directors of 525 Princess are Davies and Walter Thompson (“**Thompson**”).
- (g) 555 Princess is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by Textbook Student Suites (555 Princess Street) Trustee Corporation (“**555 Trust Co.**” and together with Scollard Trust Co., Kitchener Trust Co., Oakville/Burlington/Legacy Lane Trust Co. and 525 Trust Co., the “**Trust Companies**”), which monies had been raised from investors through a syndicated mortgage for a particular real estate development project

specific to 555 Princess. The only officers and directors of 555 Princess are Davies and Thompson.

3. The defendant, Davies, is an individual residing in King City, Ontario. He was, at all material times, a director and officer of the Receivership Companies.

4. The defendant, Aeolian, is a company incorporated pursuant to the laws of Ontario. Aeolian's mailing address is Davies' personal residence in King City, Ontario. Aeolian is directly owned by Davies' spouse and children: Judith Davies, Sarah Davies and Jessica Davies.

Background

5. This action is in respect of a fraudulent scheme whereby the Defendants misappropriated millions of dollars from the investing public by diverting funds from the Receivership Companies (and the respective real estate development projects in which the funds were required to be invested) through corporate structures Davies controlled to, *inter alia*, himself, his family members and other parties related to him, including Aeolian.

6. The Defendants' conduct has exposed the Receivership Companies to significant liabilities in the form of claims for damages and losses from their creditors, including the innocent investors whose funds they misappropriated.

The Loan Agreements

7. Under the loan agreements between the respective Receivership Companies and the applicable Trust Companies (the "Loan Agreements"), the funds advanced from the Trust Companies to the Receivership Companies were to be used to purchase real property and to pay

the soft costs associated with the specific real estate development projects (the "Projects") for which the funds were invested and advanced.

8. In raising the monies from investors, the Receivership Companies covenanted that they would not, without the consent of the applicable Trust Company (subject to certain limited exceptions), "use the proceeds of any Loan Instalment for any purposes other than the development and construction of the project on the Property".

Prohibited Management Fees

9. Contrary to the Loan Agreements and the Receivership Companies' contractual and legal obligations, Davies caused the Receivership Companies to improperly pay millions of dollars in management fees to his family members and other related parties, notwithstanding that the Receivership Companies never entered into any management services agreements or received services that would justify such payments.

10. Specifically, Davies caused Scollard, Oakville, Kitchener, Burlington, Legacy Lane, and a non-Receivership Company that Davies controls, McMurray Street Investments Inc. ("McMurray"), to transfer \$4.069 million in prohibited management fees to Aeolian:

- (a) Scollard transferred \$1,244,000 to Aeolian;
- (b) Oakville transferred \$1,112,000 to Aeolian;
- (c) Kitchener transferred \$506,000 to Aeolian;
- (d) Burlington transferred \$592,000 to Aeolian;
- (e) Legacy Lane transferred \$341,000 to Aeolian; and

(f) McMurray transferred \$274,000 to Aeolian.

11. These payments are all prohibited under the Loan Agreements.

Further Potentially Improper Management Fees

12. Pursuant to Section 7.02(c) of the Loan Agreements with 525 Princess and 555 Princess, ordinary course payments to shareholders for amounts related to the management, development and operation of the Property are permitted, provided such payments are reasonable in relation to the services rendered.

13. Davies caused 525 Princess and 555 Princess to transfer to Aeolian (purportedly in respect of management fees) amounts that appear to be unreasonable, particularly given that these Receivership Companies never entered into any management agreements with Aeolian and the Projects for which the funds were advanced have achieved very limited progress (they both remain in the pre-construction phase).

Improper Transfers to TSI, TSSI and MCIL

14. Contrary to the Loan Agreements and the Receivership Companies' contractual and legal obligations, Davies caused certain of the Receivership Companies to improperly transfer millions of dollars to Textbook Suites Inc. ("TSI"), Textbook Student Suites Inc. ("TSSI") and Memory Care Investments Ltd. ("MCIL"), the parent companies of Kitchener, Oakville, Burlington, 525 Princess and 555 Princess, all three of which are owned, in part, by Aeolian.

15. These funds were transferred to TSI, TSSI and MCIL by cheque. The memo line on each of the cheques indicated that payment was a "loan", notwithstanding that:

- (a) none of these "loans" were documented;
- (b) no interest has been received by any of the applicable Receivership Companies on account of any such "loan"; and
- (c) the relevant Loan Agreements do not permit the applicable Receivership Companies to make these loans.

Improper Dividends

16. Davies also caused certain Receivership Companies to improperly pay significant dividends to Aeolian. Specifically, Davies caused 525 Princess and 555 Princess to each pay \$250,000 in dividends to Aeolian.

17. While the payment of dividends is permitted under the Loan Agreements in certain circumstances, dividends are only to be paid from the "excess proceeds after the [real estate development property] has been acquired". In each instance, Davies caused the dividends to be paid immediately after 525 Princess and 555 Princess received the funds from the applicable Trust Company at a time when 525 Princess and 555 Princess had no profits. Further, as a result of the payment of dividends and the payments to related parties, 525 Princess and 555 Princess essentially had no further monies to advance their respective Projects.

18. These dividend distributions caused or contributed to 525 Princess and 555 Princess becoming insolvent (if they were not already insolvent at the time of payment).

Improper Payments to Davies' Family Members

19. Davies also caused certain of the Receivership Companies to make further payments directly to his spouse and children for services purportedly rendered by them in connection with the Projects. These services were not provided, or the payments in respect of any services that were provided are unreasonable. These payments are prohibited under the applicable Loan Agreements and constitute a breach of the Loan Agreements.

Improper Inter-Company Transfers and Transfers to Affiliates

20. In further contravention of the Loan Agreements, Davies routinely caused the Receivership Companies to improperly transfer monies between entities and to affiliates, including over \$17 million to and among the Receivership Companies and certain non-Receivership Companies that Davies controls, including Textbook Ross Park Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc. and McMurray.

21. Davies also caused the Receivership Companies to improperly transfer monies to Lafontaine Terrace Management Corporation ("**Lafontaine**") and Memory Care Investments (Victoria) Ltd. ("**MC Victoria**") – two companies in respect of which Davies is the sole director and officer. Specifically:

- (a) Scollard, Legacy Lane, Burlington and Oakville improperly transferred a total of \$324,000 to Lafontaine; and
- (b) Legacy Lane improperly transferred \$15,000 to MC Victoria.

22. These transfers are prohibited under the applicable Loan Agreements and constitute a breach of the Loan Agreements.

Misappropriation of Funds to Finance the Purchase of the Ottawa Property

23. Davies also improperly diverted further funds from 555 Princess and Kitchener (and the respective Projects in which the funds were required to be invested) to a non-Receiver'ship Company that he controls, Textbook (256 Rideau St.) Inc. ("Rideau"), to finance Rideau's purchase of real property municipally described as 256 Rideau Street, Ottawa, Ontario and 211 Besserer Street, Ottawa, Ontario (collectively, the "Ottawa Property").

24. The Ottawa Property was purchased by Rideau on or around November 6, 2015 for \$11 million.

25. Immediately prior to Rideau's purchase of the Ottawa Property, on October 27, 2015, Davies caused 555 Princess to improperly transfer \$1.39 million to Rideau, and he caused Kitchener to improperly transfer \$111,000 to Rideau, both by way of cheque. The cheques were both signed by Davies.

26. The funds were transferred from 555 Princess and Kitchener to Rideau for no consideration, for an illegitimate business purpose and in contravention of the relevant Loan Agreements. Despite the fact that the funds were required to be used for specific Projects to be respectively undertaken by 555 Princess and Kitchener, Davies caused the funds to be transferred to Rideau with complete disregard for the separate corporate identities of 555 Princess, Kitchener and Rideau and the contractual and legal obligations of the parties, which had the result of sheltering assets and frustrating both 555 Princess's and Kitchener's creditors.

27. Following Rideau's acquisition of the Ottawa Property, Davies caused a further \$61,200 to be improperly transferred to Rideau from 555 Princess, 525 Princess and Burlington by way of cheques, each of which was also signed by Davies. Specifically:

- (a) \$2,200 was transferred by Burlington to Rideau on November 5, 2015;
- (b) \$36,000 was transferred by 555 Princess to Rideau on December 17, 2015;
- (c) \$7,000 was transferred by 555 Princess to Rideau on May 31, 2016; and
- (d) \$16,000 was transferred by 525 Princess to Rideau on June 20, 2016.

28. Despite the fact that these funds were required to be used for the specific Projects to be respectively undertaken by 555 Princess, 525 Princess and Burlington, the \$61,200 was transferred to Rideau for no consideration, for an illegitimate business purpose and in contravention of the relevant Loan Agreements.

29. On May 16, 2016, KSV (in its capacity as receiver and manager of 555 Princess, 525 Princess, Kitchener and Burlington) sought an order, on an *ex parte* basis, for the issuance and registration of Certificates of Pending Litigation ("CPLs") on title to the Ottawa Property. On May 17, 2017, the Court granted the order (the "CPL Order") and the CPLs were registered on title. Neither Davies nor Rideau, nor any other party, has since contested the CPL Order or the registration of the CPLs on title.

The Defendants' Fraud and Deceit

30. The Defendants perpetrated the fraudulent scheme described herein. Although the precise particulars of the fraudulent scheme are only fully known to the Defendants at this time, they include, without limitation:

- (a) knowingly concealing and falsely representing the relationships between themselves and other related, non-arm's length parties;
- (b) knowingly directing and causing prohibited payments and transfers to be made by the Receivership Companies to such related, non-arm's length parties, including payments and transfers for which no goods or services of value were provided;
- (c) dishonestly diverting funds (which were effectively trust funds) from the Receivership Companies to shell corporations and a network of non-arm's length parties to obtain secret profits for their own benefits; and
- (d) intentionally and deceitfully directing payments to shell corporations and a network of non-arm's length parties to covertly divert funds from the Receivership Companies, shelter the funds, avoid detection and thwart recovery attempts.

31. All of the above caused detriment and deprivation to the Receivership Companies.

The Defendants' Conspiracy

32. The Defendants acted in combination or in concert, by agreement or with a common design, to perpetrate the fraudulent scheme described herein. The full particulars of the agreement

or common design are only fully known to the Defendants at this time, but further particulars will be provided in advance of trial.

33. The Defendants' conduct in perpetrating the fraudulent scheme was unlawful (including the torts and other wrongful acts and omissions described herein) and directed towards the Receivership Companies and their creditors, including the innocent investors whose funds they misappropriated. The Defendants knew that injury to the Receivership Companies and their creditors was likely to result in the circumstances, and such injury did result.

34. The predominant purpose of the Defendants' conduct was to intentionally harm the Receivership Companies and their creditors, and the Defendants' conduct did harm them.

35. The Defendants are liable to the Receivership Companies for predominant purpose conspiracy and unlawful act conspiracy, amongst other things.

Davies' Breach of Fiduciary Duty and Negligence

36. By virtue of the positions Davies held, he was a fiduciary of the Receivership Companies and owed each of them fiduciary duties, contractual duties, statutory duties (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended) and a duty of care to, among other things:

- (a) act honestly and in good faith with a view to their best interests;
- (b) avoid improper self-dealing;
- (c) avoid conflicts of interest; and

- (d) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

37. By reason of the facts described above, Davies breached these duties and failed to act in a manner that was required of him as a director and an officer of the Receivership Companies.

38. The Receivership Companies were vulnerable to the unilateral exercise of Davies' discretion and power, particularly given that he was the controlling mind and management of the Receivership Companies. By reason of the facts described above, Davies breached his duties to the Receivership Companies, including his fiduciary and other duties owed, including but not limited to his duties of good faith, honest performance and loyalty.

39. By reason of the facts described above, Davies also breached express and/or implied terms of his employment agreement with the Receivership Companies. Among other things, Davies was, at a minimum, required to conduct himself and the operations of the Receivership Companies in a competent and lawful manner, which he failed to do. Davies' conduct breached the standard of care required of him and he was grossly negligent in the performance of his duties as an officer of the Receivership Companies.

40. Davies effectively treated the Receivership Companies as his own personal fiefdom, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest, or corporate separateness, amongst other things. He effectively operated each of the Receivership Companies as his own personal corporation and saw their assets as his own. This resulted in his failure to act in the best interests of the Receivership Companies, including by defrauding the Receivership Companies and enriching himself and parties related to him at the expense of the Receivership Companies and their creditors.

The Unlawful Means Tort

41. By virtue of the Defendants' acts and omissions as described herein, they intentionally inflicted economic harm on the Receivership Companies and their creditors. In doing so, they used unlawful means (including but not limited to fraud, deceit and conspiracy) as against third parties, including the innocent investors whose funds they misappropriated.

The Defendants' Conversion

42. The Receivership Companies were in possession of, or entitled to immediate possession of, the specific and identifiable funds described above. The Defendants intentionally and wrongfully converted the Receivership Companies' funds for their own use inconsistent with the Receivership Companies' right of possession and other rights, and thereby deprived the Receivership Companies (and their creditors) of the benefit of the funds, exposing them to significant liabilities. KSV is entitled to recover the entire amount the Defendants have converted.

The Defendants' Unjust Enrichment

43. By virtue of the facts set out above, the Defendants and parties related to the Defendants have been unjustly enriched. The Receivership Companies have suffered a corresponding deprivation, and there is no juristic reason for the Defendants' enrichment or for the Receivership Companies' corresponding deprivation. There is no reason why the Defendants should not be held to account for their enrichment and for the damages they have caused.

Constructive Trust(s)

44. The Defendants received and retained the Receivership Companies' funds with full knowledge of the fraud, deceit, conspiracy and conversion they had committed, and with full

knowledge of Davies' breach of his fiduciary and other legal duties owed to the Receivership Companies. By virtue of facts described herein, including, among other things, the Defendants' unjust enrichment, the Defendants hold all funds that they diverted, misappropriated and improperly received from the Receivership Companies as trustees of a constructive trust (or trusts) for the benefit of the plaintiff.

Davies' Liquidation and Alienation of Assets

45. Following his improper conduct as described above, and after the commencement of the receivership proceeding in January 2017, Davies embarked on a course of conduct designed to liquidate his assets and put them beyond the reach of the Receivership Companies and their creditors. Among other things, on April 25, 2017, Davies sold his cottage located in Gravenhurst, Ontario for approximately \$3 million. Davies also sold his personal residence located in King City, Ontario, which he jointly owns with his spouse, though the transaction has not yet closed. The listing price for the residence was \$1.6 million.

Losses and Harm

46. The conduct of the Defendants as described above has caused, and is continuing to cause, significant damage to the Receivership Companies and their creditors, including financial losses and loss of profitable business opportunities, the full extent of which has not yet fully materialized and is not yet fully known to KSV at this time.

47. The secured debt obligations of the Receivership Companies currently total approximately \$65,281,000, including approximately \$59,331,000 owing to the Trust Companies (being monies raised by the Trust Companies from investors) and the balance owing to other lenders, primarily

mortgagees. Virtually the only valuable assets the Receivership Companies currently have to satisfy these secured debt obligations (and all the other debt obligations and liabilities of the Receivership Companies) are the real properties for which the Receivership Companies collectively paid approximately \$22,455,000. The creditors of the Receivership Companies will suffer a significant shortfall that cannot be precisely determined at this time but is expected to total tens of millions of dollars.

48. Full particulars of the Receivership Companies' damages will be provided prior to trial.

49. The conduct of the Defendants as described above has also caused, and is continuing to cause, irreparable harm to the Receivership Companies and their creditors. In the absence of relief from this Honourable Court, the Defendants will be able to continue liquidating assets and alienating them, thereby causing the Receivership Companies and their creditors further harm which would not be compensable in damages alone.

50. The plaintiff has incurred, and is continuing to incur, costs and out-of-pocket expenses relating to investigations into the Defendants' misconduct, which special damages shall be particularized prior to trial.

51. The Defendants' actions constitute a wanton, callous, high-handed and outrageous disregard for the Receivership Companies' rights and interests, and for the rights and interests of their creditors, including the investing public whose funds they misappropriated. The Defendants deliberately and wilfully undertook the fraudulent and unlawful activities described herein in an underhanded manner, knowing that their conduct was wrong and would cause harm to the Receivership Companies and their creditors. The Defendants' conduct ought to attract the

disapproval of this Honourable Court and result in a material award of punitive or exemplary damages.

52. Given the duplicitous and deceitful manner in which the Defendants have acted, together with all the surrounding circumstances, including Davies' sale of both his cottage and personal residence shortly after the receivership proceedings were commenced, there is a real and demonstrated risk that the Defendants will permanently abscond with the Receivership Companies' funds and dissipate assets to avoid enforcement of any judgment the plaintiff may ultimately obtain. In all the circumstances, interim and interlocutory injunctive relief, *inter alia*, enjoining the Defendants from accessing, liquidating, dissipating, alienating or otherwise dealing with their assets pending disposition of the matter on the merits is necessary, just and appropriate.

Place of Trial

53. KSV proposes that the trial of this action take place in the City of Toronto in the Province of Ontario.

June 6, 2017

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Lawyers for the Plaintiff

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.

Court File No: CV-17-1822-00CL
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF ACTION

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Lawyers for the Plaintiff

TAB 20

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

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 -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, AND GREGORY HARRIS SOLELY IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST

Defendants

**FRESH AS AMENDED STATEMENT OF CLAIM
Notice of Action issued on June 6, 2017**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

DATE: August 30, 2017

Issued by: _____
Local Registrar

Address of Court Office:

330 University Avenue
Toronto, ON M5G 1R7

TO:

DENTONS CANADA LLP
77 King Street West, Suite 400
TD Centre
Toronto, ON M5K 0A1

Michael Beeforth
Phone: (416) 367-6779
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Lawyers for the Defendants,
John Davies, Judith Davies and Aeolian
Investments Ltd.

AND TO:

GREGORY HARRIS
2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

CLAIM

1. The plaintiff, KSV Kofman Inc. (“**KSV**”), solely in its capacity as receiver and manager of certain property of Scollard Development Corporation (“**Scollard**”), Memory Care Investments (Kitchener) Ltd. (“**Kitchener**”), Memory Care Investments (Oakville) Ltd. (“**Oakville**”), 1703858 Ontario Inc. (“**Burlington**”), Legacy Lane Investments Ltd. (“**Legacy Lane**”), Textbook (525 Princess Street) Inc. (“**525 Princess**”) and Textbook (555 Princess Street) Inc. (“**555 Princess**”) (collectively, the “**Receivership Companies**”), and not in its personal capacity or in any other capacity, claims against the defendants, Aeolian Investments Ltd. (“**Aeolian**”), John Davies (“**Mr. Davies**”) in his personal capacity and in his capacity as trustee and/or representative of both the Davies Arizona Trust (the “**Arizona Trust**”) and the Davies Family Trust (the “**Family Trust**”), Judith Davies (“**Ms. Davies**”) in her personal capacity and in her capacity as trustee and/or representative of the Family Trust, and Gregory Harris solely in his capacity as trustee and/or representative of the Family Trust (“**Mr. Harris**”) and collectively with Aeolian, Mr. Davies and Ms. Davies, the “**Defendants**”), jointly and severally (as applicable):

- (a) a constructive trust and/or damages in the sum of \$50,000,000 or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court, for the Defendants’ fraud, deceit, conspiracy, conversion, unlawful means tort and/or unjust enrichment, and for Mr. Davies’ breach of fiduciary duty and negligence;

- (b) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Receivership Companies and improperly diverted by or to the Defendants or any person, corporation or other entity on their behalf;
- (c) a declaration that the plaintiff is entitled to trace the Receivership Companies' assets, properties, and funds into the hands of the Defendants, and a declaration that the Defendants hold those assets, properties, and funds as constructive trustees for the plaintiff;
- (d) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Receivership Companies and improperly diverted by or to the Defendants or any person, corporation or other entity on their behalf, and in respect of the traceable products thereof;
- (e) an interim, interlocutory and permanent order, in the form of a worldwide *Mareva* injunction, restraining 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, whether directly or indirectly, from selling, liquidating, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of their assets, wherever situate;
- (f) a declaration that the liability of Mr. Davies arises out of fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity, and/or that the liability of Mr. Davies, Ms. Davies and Mr. Harris arises from obtaining property or services by false pretences or fraudulent misrepresentation, for

purposes of sections 178(1)(d) and/or 178(1)(e) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended;

- (g) special damages, including all costs and expenses arising out of the detection, investigation, and quantification of the losses suffered by the Receivership Companies, in an amount to be particularized prior to trial;
- (h) punitive and/or exemplary damages in an amount to be particularized prior to trial;
- (i) pre-judgment and post-judgment interest on a compound basis or, alternatively, pursuant to the *Courts of Justice Act*, RSO 1990, c C 43, as amended;
- (j) costs of this action, including the costs of any and all interim and interlocutory motions, on a full indemnity or other appropriate scale, including all applicable taxes; and
- (k) such further and other relief, including equitable relief and constructive trusts in favour of the plaintiff, as this Honourable Court deems just.

Parties

2. The plaintiff, KSV, is the court-appointed receiver and manager of certain property of the Receivership Companies appointed pursuant to orders of the Ontario Superior Court of Justice (Commercial List) dated February 2, April 28 and May 2, 2017. Each of the Receivership Companies in respect of which KSV has been appointed receiver and manager was advanced monies on a secured basis by various trust corporations, which monies had been raised from

investors through syndicated mortgage investments (“SMIs”) for particular real estate development projects specific to the respective Receivership Companies. In particular:

- (a) Scollard is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by Scollard Trustee Corporation (“**Scollard Trust Co.**”), which monies had been raised from investors through a SMI for a particular real estate development project specific to Scollard. The sole officer and director of Scollard is Mr. Davies.
- (b) Kitchener is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by MC Trustee (Kitchener) Ltd. (“**Kitchener Trust Co.**”), which monies had been raised from investors through a SMI for a particular real estate development project specific to Kitchener. The sole officer and director of Kitchener is Mr. Davies.
- (c) Oakville is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by 2223947 Ontario Limited (“**Oakville/Burlington/Legacy Lane Trust Co.**”), which monies had been raised from investors through a SMI for a particular real estate development project specific to Oakville. The sole officer and director of Oakville is Mr. Davies.
- (d) Burlington is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by the Oakville/Burlington/Legacy Lane Trust Co., which monies had been raised from investors through a SMI for a particular real estate development project specific to Burlington. The sole officer and director of Burlington is Mr. Davies.

- (e) Legacy Lane is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by the Oakville/Burlington/Legacy Lane Trust Co., which monies had been raised from investors through a SMI for a particular real estate development project specific to Legacy Lane. The sole officer and director of Legacy Lane is Mr. Davies.
- (f) 525 Princess is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by Textbook Student Suites (525 Princess Street) Trustee Corporation ("**525 Trust Co.**"), which monies had been raised from investors through a SMI for a particular real estate development project specific to 525 Princess. The only officers and directors of 525 Princess are Mr. Davies and Walter Thompson ("**Mr. Thompson**").
- (g) 555 Princess is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by Textbook Student Suites (555 Princess Street) Trustee Corporation ("**555 Trust Co.**" and together with Scollard Trust Co., Kitchener Trust Co., Oakville/Burlington/Legacy Lane Trust Co. and 525 Trust Co., the "**Trust Companies**"), which monies had been raised from investors through a SMI for a particular real estate development project specific to 555 Princess. The only officers and directors of 555 Princess are Mr. Davies and Mr. Thompson.

3. The defendant, Mr. Davies, is an individual residing in King City, Ontario. He was, at all material times, a director and officer of the Receivership Companies and other relevant entities. He was also, at all material times, the trustee and/or representative of the Family Trust, together

with Ms. Davies and Mr. Harris. He was also, at all material times, the sole trustee and/or representative of the Arizona Trust.

4. The defendant, Ms. Davies, is an individual residing in King City, Ontario. She is Mr. Davies' spouse. She was, at all material times, the trustee and/or representative of the Family Trust, together with Mr. Davies and Mr. Harris.

5. The defendant, Mr. Harris, is an individual residing in King City, Ontario. He is a licensed Ontario lawyer in private practice. He was, at all material times, the trustee and/or representative of the Family Trust, together with Mr. Davies and Ms. Davies. Mr. Harris is a party to this litigation solely in his capacity as the trustee and/or representative of the Family Trust and not in his personal capacity or in any other capacity. All allegations and claims against Mr. Harris relate exclusively to his role as trustee and/or representative of the Family Trust.

6. While the plaintiff's investigation into the SMI scheme is presently ongoing, the plaintiff has discovered no reason to date to believe that Ms. Davies or Mr. Harris, in their capacities as trustees of the Family Trust, engaged in any fraudulent, deceitful or other misconduct relating to the Family Trust. Nevertheless, given that the Family Trust improperly received and retained funds that were initially sourced from SMI monies advanced to the Receivership Companies, one or more of the trustees of the Family Trust caused, directed and/or had knowledge of such improper transfers. The role that each of the trustees played (or did not play) in these improper transfers is known only to the Defendants. In any event, each of the trustees of the Family Trust must be named as a defendant to allow the plaintiff to obtain the sought after relief regarding the assets improperly funneled to the Family Trust.

7. The Family Trust and the Arizona Trust are trusts that were established by or at the direction of Mr. Davies in or around 2003 and 2013, respectively. The beneficiaries of the Family Trust are Mr. Davies, Ms. Davies and the Davies children: Jessica Deborah Davies, Sarah Ramona Davies, Andrew John Davies and Walter Robert Jackson Davies (collectively, the “**Davies Children**”), as well as any future children and issue of Mr. Davies. The beneficiaries of the Arizona Trust are the Davies Children. Mr. Davies, in his capacity as sole trustee of the Arizona Trust, owns, among other things, real property municipally described as 35411 N. 66th Place in Carefree, Arizona, United States (the “**Arizona Property**”), that was acquired with funds from Aeolian, which were initially sourced from SMI monies advanced to the Receivership Companies and related entities.

8. The defendant, Aeolian, is a company incorporated pursuant to the laws of Ontario. Aeolian’s mailing address is Mr. and Ms. Davies’ personal residence in King City, Ontario. Aeolian is directly owned by Ms. Davies and the Davies Children. Mr. Davies is Aeolian’s sole officer and director. Aeolian is a direct or indirect shareholder of each of the Receivership Companies. Specifically, Aeolian is a direct shareholder of Scollard and Legacy Lane. Aeolian is also a shareholder of Memory Care Investments Ltd. (“**MCIL**”), which is a shareholder of Kitchener, Oakville and Memory Care Investments Burlington Ltd. (“**MC Burlington**”), which wholly owns Burlington. Aeolian is a shareholder of Textbook Student Suites Inc. (“**TSSI**”), which is a shareholder of 525 Princess and 555 Princess. Aeolian is also a shareholder of Textbook Suites Inc. (“**TSI**”), which is a shareholder of Textbook (445 Princess Street) Inc. (“**445 Princess**”), a non-Receivership Company.

Background

9. This action is in respect of a fraudulent SMI scheme whereby the Defendants conspired with one another to misappropriate millions of dollars from the investing public by diverting funds from the Receivership Companies (and the respective real estate development projects (the “**Projects**”) for which the funds were specifically advanced) through corporate structures Mr. Davies directly and/or indirectly controlled to, *inter alia*, himself, his family members (including Ms. Davies) and other parties related to them (including Aeolian, the Family Trust and the Arizona Trust).

10. For each of the Receivership Companies’ Projects, the applicable Receivership Company was advanced monies that were raised from investors through SMI offerings, which were sourced by Tier 1 Transaction Advisory Inc. and/or related entities (collectively, “**Tier 1**”).

11. To support the amounts raised, the Receivership Companies retained an appraiser to provide estimated hypothetical market values of the subject sites, assuming they could be developed. The appraisals were based on several other assumptions, including: (i) development costs, as estimated by the applicable Receivership Company 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.

12. Importantly, certain of the Project pro formas on which the appraisals were based contained false and/or materially inaccurate and misleading information. For instance, certain of the pro formas:

- (a) reflected an equity injection by the respective Receivership Company, but in no case was such an equity contribution ever made by Mr. Davies or any of the other shareholders of the Receivership Companies;
- (b) failed to account for a significant portion of the initial costs, consisting of fees payable to Tier 1, amounts due to agents who sold the SMI products to investors, professional costs and amounts to fund a one-year interest reserve (the “**Initial Costs**”); and
- (c) did not reflect the payment of dividends, which, as described in more detail below, were paid from the initial SMI advances for each of 525 Princess and 555 Princess.

13. Further, certain appraisals were based on unrealistic and unattainable development plans that could never come to fruition given, among other things, zoning, planning and other restrictions.

14. Investors were led to believe that the advances from the Trust Companies to the Receivership Companies would be used for, and fully secured against, specific real property with a first-ranking security interest. However, this was not the case. Each initial SMI fundraise significantly exceeded the purchase price of the real property, resulting in the loans from each of the Trust Companies to the Receivership Companies being under-secured from the day they were made. Further, contrary to the representations made to investors, in some instances the Receivership Companies borrowed funds on a first-ranking secured basis against the real property *after* raising the SMIs.

15. Of the SMI monies raised, approximately 30% of the proceeds was immediately used to pay the Initial Costs.

16. The remaining amounts were routinely used for other Projects in respect of which the investors had no security interest.

17. Certain (and perhaps all) of the Receivership Companies were insolvent from the date of the first SMI advance and the Projects undertaken by the Receivership Companies had virtually no prospect of success due to, among other things, the lack of equity capital (which necessitated further borrowing to advance the Projects), the significant Initial Costs, the use of monies to fund expenses on other unrelated projects, and the front-end loading of excessive dividends, management fees and other undue payments to Mr. Davies and to affiliates of, and persons related to, Mr. Davies and others.

18. Notwithstanding that approximately \$65 million was raised from investors through SMIs during a booming real estate market, the Receivership Companies currently only have properties for which they collectively paid approximately \$13.5 million,¹ all of which remain in the pre-construction phase (with the exception of the Burlington Project, which has footings and foundations), and no available cash to further develop the Projects. Had there not been new financings in other projects that raised additional funds from new investors, which funds were loaned to and among the Receivership Companies to fund pre-existing liabilities, the Receivership Companies would have been unable to service interest and other obligations they were required to pay. Accordingly, the scheme had all of the hallmarks of a Ponzi scheme as its continuance was dependent upon the raising of ever increasing sums of new money.

¹ Pursuant to a Court Order dated August 3, 2017, the Scollard property, which was acquired for \$9 million, was sold.

19. Mr. Davies, Ms. Davies and entities related to them collectively received approximately \$5 million from the Receivership Companies, yet the investors, who were advised they would have safe and fully secured investments in real property with a first-ranking charge (which would only be subordinated to construction financing intended to create additional value), stand to lose the majority of their investment.

20. The Defendants' conduct has exposed the Receivership Companies to significant liabilities in the form of claims for damages and losses from their creditors, including the innocent investors whose funds they misappropriated.

The Loan Agreements

21. Under the loan agreements between the respective Receivership Companies and the applicable Trust Companies (the "**Loan Agreements**"), the funds advanced from the Trust Companies to the Receivership Companies were to be used to purchase real property and to pay soft costs associated with the Projects for which the funds were invested and advanced.

22. In raising the monies from investors, the Receivership Companies covenanted that they would not, without the consent of the applicable Trust Company (subject to certain limited exceptions), "use the proceeds of any Loan Instalment for any purposes other than the development and construction of the project on the Property".

Prohibited Management Fees

23. Pursuant to Section 7.02(c) of the Loan Agreements with Scollard, Oakville, Kitchener, Burlington and Legacy Lane, the payment of management fees to shareholders is prohibited absent the written consent of the applicable Trust Company.

24. Pursuant to Section 7.02(c) of the Loan Agreements with 525 Princess and 555 Princess, ordinary course payments to shareholders for amounts related to the management, development and operation of the Property are permitted, but only if such payments are reasonable in relation to the services rendered, unless the written consent of the applicable Trust Company is obtained.

25. Contrary to these Loan Agreements and the Receivership Companies' contractual and legal obligations, Mr. Davies caused the Receivership Companies to improperly pay millions of dollars in management fees directly to Aeolian, notwithstanding that, among other things, the Receivership Companies never (i) received the written consent of the Trust Companies for these payments, (ii) entered into any management services agreements, or (iii) received services that would justify such payments.

26. Specifically, Mr. Davies caused certain Receivership Companies, including Scollard, Oakville, Kitchener, Burlington and Legacy Lane, to transfer \$3.795 million in prohibited management fees directly to Aeolian:

- (a) Scollard transferred approximately \$1,244,000 to Aeolian;
- (b) Oakville transferred approximately \$1,112,000 to Aeolian;
- (c) Kitchener transferred approximately \$506,000 to Aeolian;
- (d) Burlington transferred approximately \$592,000 to Aeolian; and
- (e) Legacy Lane transferred approximately \$341,000 to Aeolian.

27. These payments are all prohibited under the Loan Agreements.

28. Mr. Davies also caused 525 Princess and 555 Princess to transfer to Aeolian (purportedly in respect of management fees) amounts that are unreasonable, particularly given that these Receivership Companies never entered into any management agreements with Aeolian, the Projects for which the funds were advanced have achieved very limited progress (they both remain in the pre-construction phase), and the intended Projects are unlikely to ever be developed because of, among other things, zoning and other restrictions that preclude such developments.

29. These payments are also all prohibited under the Loan Agreements.

30. Further, the management fees in respect of each of the Projects were paid at an accelerated rate inconsistent with the stage of development of the Projects.

31. These payments are all in addition to other improper payments that Mr. Davies caused certain non-Receivership Companies that Mr. Davies controls, including McMurray Street Investments Inc. ("**McMurray**") and Textbook Ross Park Inc. ("**Ross Park**"), to make to Aeolian, purportedly also in respect of management fees.

Improper Transfers to TSI, TSSI and MCIL

32. Contrary to the Loan Agreements and the Receivership Companies' contractual and legal obligations, Mr. Davies caused certain of the Receivership Companies to improperly transfer approximately \$2.1 million to TSI, TSSI and MCIL, the parent companies of Kitchener, Oakville, Burlington, 525 Princess and 555 Princess, all three of which are owned, in part, by Aeolian.

33. These funds were transferred to TSI, TSSI and MCIL by cheque. The memo line on each of the cheques indicated that payment was a “loan”, notwithstanding that:

- (a) none of these “loans” were documented;
- (b) none of these “loans” were secured in any way;
- (c) no interest has been received by any of the applicable Receivership Companies on account of any such “loan”; and
- (d) the relevant Loan Agreements do not permit the applicable Receivership Companies to make these loans.

Improper Dividends

34. Mr. Davies also caused certain Receivership Companies to improperly pay significant dividends to Aeolian and others. Specifically, Mr. Davies caused 525 Princess and 555 Princess to respectively pay \$250,000 each in dividends to Aeolian (for a total of \$500,000). Mr. Davies further caused an additional \$1.5 million in dividends to be paid from 525 Princess and 555 Princess to the companies’ other shareholders.

35. While the payment of dividends is permitted under the Loan Agreements in certain circumstances, dividends are only to be paid from the “excess proceeds after the [real estate development property] has been acquired”. In each instance, Mr. Davies caused the dividends to be paid to Aeolian and the other shareholders immediately after 525 Princess and 555 Princess received the funds from the applicable Trust Company at a time when 525 Princess and 555 Princess had no profits and insufficient cash to develop the respective Projects. As a result of the

payment of dividends and the payments to related parties, 525 Princess and 555 Princess essentially had no further monies to advance their respective Projects.

36. These dividend distributions caused 525 Princess and 555 Princess to become insolvent or contributed to their insolvency (if they were not already insolvent at the time of payment).

Improper Payments to Mr. Davies' Family Members

37. Mr. Davies also caused certain of the Receivership Companies to make further payments directly, and indirectly through Aeolian, to Ms. Davies and certain Davies Children for services purportedly rendered by them in connection with the Projects. To the extent these services were not provided, or the payments in respect of any services that were provided are unreasonable, these payments are prohibited under the applicable Loan Agreements and constitute a breach of the Loan Agreements.

Improper Inter-Company Transfers and Transfers to Affiliates

38. In further contravention of the Loan Agreements, Mr. Davies routinely caused the Receivership Companies to improperly transfer monies between entities and to affiliates, including over \$17 million to and among the Receivership Companies and certain non-Receivership Companies that Mr. Davies controls, including 445 Princess, Textbook (774 Bronson Avenue) Inc. ("**Bronson**"), Ross Park and McMurray as well as TSI, TSSI and MCIL, amongst others.

39. Mr. Davies caused such intercompany transfers to be made as the Receivership Companies' Projects were facing a liquidity crisis, which necessitated the making of intercompany loans to perpetuate the scheme and avoid defaulting on the loans from the Trust

Companies and the Receivership Companies' other obligations. This has all of the hallmarks of a Ponzi scheme.

40. Mr. Davies also caused certain Receivership Companies to improperly transfer monies to Lafontaine Terrace Management Corporation ("**Lafontaine**") and Memory Care Investments (Victoria) Ltd. ("**MC Victoria**") – two companies in respect of which Mr. Davies is the sole director and officer, which are both owned, in different proportions, by Mr. Davies and/or Aeolian, amongst others. Specifically:

- (a) Scollard, Legacy Lane, Burlington and Oakville improperly transferred a total of \$324,000 to Lafontaine; and
- (b) Legacy Lane improperly transferred \$15,000 to MC Victoria.

41. These transfers are prohibited under the applicable Loan Agreements and constitute a breach of the Loan Agreements.

Misappropriation of Funds to Finance the Purchase of the Ottawa Property

42. Mr. Davies also improperly diverted further funds from 555 Princess and Kitchener (and the respective Projects in which the funds were required to be invested) to a non-Receiverhip Company that Mr. Davies controlled, Generx (Byward Hall) Inc. (formerly Textbook (256 Rideau St.) Inc.) ("**Rideau**"), which is also now in receivership, to finance Rideau's purchase of real property municipally described as 256 Rideau Street, Ottawa, Ontario and 211 Besserer Street, Ottawa, Ontario (collectively, the "**Ottawa Property**").

43. The Ottawa Property was purchased by Rideau on or around November 6, 2015 for \$11 million.

44. Immediately prior to Rideau's purchase of the Ottawa Property, on October 27, 2015, Mr. Davies caused 555 Princess to improperly transfer \$1.39 million to Rideau, and Mr. Davies caused Kitchener to improperly transfer \$111,000 to Rideau, both by way of cheque. The cheques were both signed by Mr. Davies.

45. The funds were transferred from 555 Princess and Kitchener to Rideau for no consideration, with no security, for an illegitimate business purpose and in contravention of the relevant Loan Agreements.

46. Despite the fact that the funds were required to be used for specific Projects to be respectively undertaken by 555 Princess and Kitchener, Mr. Davies caused the funds to be transferred to Rideau with complete disregard for the separate corporate identities of 555 Princess, Kitchener and Rideau and the contractual and legal obligations of the parties, which had the result of sheltering assets and frustrating creditors of both 555 Princess and Kitchener.

47. Following Rideau's acquisition of the Ottawa Property, Mr. Davies caused a further \$61,200 to be improperly transferred to Rideau from 555 Princess, 525 Princess and Burlington by way of cheques, each of which was also signed by Mr. Davies. Specifically:

- (a) \$2,200 was transferred by Burlington to Rideau on November 5, 2015;
- (b) \$36,000 was transferred by 555 Princess to Rideau on December 17, 2015;
- (c) \$7,000 was transferred by 555 Princess to Rideau on May 31, 2016; and

(d) \$16,000 was transferred by 525 Princess to Rideau on June 20, 2016.

48. Despite the fact that these funds were required to be used for the specific Projects to be respectively undertaken by 555 Princess, 525 Princess and Burlington, the \$61,200 was transferred to Rideau for no consideration, with no security, for an illegitimate business purpose and in contravention of the relevant Loan Agreements.

The Arizona Property

49. The Arizona Property was purchased by the Arizona Trust for US\$1.2 million. The funds used to purchase the Arizona Property came from Aeolian, with the BofI Federal Bank having a US\$600,000 mortgage on the Arizona Property. Almost US\$2 million was spent to renovate the Arizona Property following its acquisition. Aeolian funded substantially all of the costs to purchase and renovate the Arizona Property (at least in part through the Family Trust and the Arizona Trust), which funds came directly and/or indirectly from the Receivership Companies and related entities. Ms. Davies and/or Mr. Harris, as trustees and/or representatives of the Family Trust, had knowledge of these payments.

Aeolian and Ms. Davies

50. Aeolian transferred over \$2.5 million, which it received from the Receivership Companies and other related entities, directly to Ms. Davies, purportedly in respect of management fees, although she performed no work for or on behalf of Aeolian or any of the Receivership Companies. Aeolian further used \$1.3 million, which it received from the Receivership Companies and other related entities, to pay day-to-day living and other personal expenses charged on an American Express card used by Mr. and Ms. Davies. Additionally, over

US\$1.8 million, which initially came from the Receivership Companies and other related entities, went from Aeolian toward the purchase and renovation of the Arizona Property.

51. At all material times, Aeolian and Ms. Davies knowingly acted as a conduit for Mr. Davies to improperly divert and funnel millions of dollars from the Receivership Companies to himself, his family members and others for their own personal use and benefit.

Current Status of Projects

52. Millions of dollars were paid by the Receivership Companies to Mr. Davies, Ms. Davies and other related parties in respect of management fees, dividends and other amounts; however, all of the Projects remain in the early stages of development and none of the Receivership Companies has any capital to further develop their respective Projects.

53. Mr. Davies was fully aware that the Projects would suffer, and were in fact suffering, from a liquidity crisis. Notwithstanding this knowledge, rather than addressing the liquidity issues in a reasonable and appropriate manner in accordance with his legal obligations, Mr. Davies instead raised, and/or facilitated the raising of, further funds from investors, purportedly for particular Projects, with full knowledge, and with the intention, that those funds would instead be used to improperly pay interest payments and other expenses in relation to other Projects that had no connection to the specific Projects for which the funds were purportedly raised, in contravention of the Loan Agreements. This allowed the Defendants to perpetuate, and continue to perpetuate, their fraudulent scheme.

54. The acts and omissions of Mr. Davies purposefully mislead and defrauded the Receivership Companies and their creditors, including the innocent investors whose funds were

misappropriated. Specifically, investors were intentionally lead to believe that they were investing on the basis of a particular Loan Agreement (and the attributes of a specific Project), when Mr. Davies specifically knew and intended that the funds would go elsewhere, resulting in the misappropriation and pilfering of funds.

Fraud and Deceit

55. The Defendants perpetrated the fraudulent scheme described herein. Although the precise particulars of the fraudulent scheme are only fully known to the Defendants at this time, they include, without limitation:

(a) With respect to Mr. Davies:

- (i) intentionally creating and/or facilitating the creation of Project pro formas that in no way reflected commercial reality to obtain artificially inflated appraisals that were used in connection with the SMI offerings and the raising of capital from investors;
- (ii) misrepresenting the nature of the Projects and the potential for the Project development to be successfully executed, including the likelihood of obtaining the necessary planning approvals;
- (iii) knowingly concealing and falsely representing the capital structure of the Receivership Companies, including the purported equity injections that would be made by shareholders; and/or
- (iv) intentionally and deceitfully raising and/or facilitating the raising of funds from investors, and diverting those funds from the Receivership

Companies to which they were advanced, for purposes inconsistent with the purposes for which the funds were purportedly invested and advanced;

- (b) With respect to Mr. Davies, Ms. Davies and/or Aeolian:
- (i) knowingly concealing and falsely representing the relationships between themselves and other related, non-arm's length parties;
 - (ii) knowingly directing, causing, facilitating and/or allowing prohibited payments and transfers to be made by the Receivership Companies to such related, non-arm's length parties, including payments and transfers for which no goods or services, or no goods or services of any material value, were provided;
 - (iii) dishonestly diverting funds from the Receivership Companies to shell corporations and a network of non-arm's length parties to obtain secret profits for their own benefits; and/or
 - (iv) intentionally and deceitfully directing and/or facilitating payments to shell corporations and a network of non-arm's length parties to covertly divert funds from the Receivership Companies, shelter the funds, avoid detection and thwart recovery attempts;
- (c) With respect to some or all of the Defendants:
- (i) knowingly receiving, retaining and/or using funds, which rightfully belonged to the Receivership Companies; and/or

- (ii) failing to take any steps, or any reasonable or sufficient steps, to stop the improper conduct or mitigate the harm being caused by it.

56. Mr. Davies, Ms. Davies and entities related to them (including Aeolian, the Family Trust and the Arizona Trust) perpetrated and/or facilitated the fraudulent scheme described herein in order to profit, and continue to profit, through the receipt of millions in undue management fees (which exceeded \$3.8 million from the Receivership Companies), dividends (\$500,000 from the Receivership Companies) and/or other amounts to which they were not properly entitled.

57. All of the above caused detriment and deprivation to the Receivership Companies.

Conspiracy

58. Some or all of the Defendants acted in combination or in concert, by agreement or with a common design, to perpetrate the fraudulent scheme described herein. The full particulars of the agreement or common design are only fully known to these Defendants at this time, but further particulars will be provided in advance of trial.

59. The conduct of these Defendants in perpetrating the fraudulent scheme was unlawful (including the torts and other wrongful acts and omissions described herein) and directed towards the Receivership Companies and their creditors, including the innocent investors whose funds they misappropriated. These Defendants knew that injury to the Receivership Companies and their creditors was likely to result in the circumstances, and such injury did result.

60. The predominant purpose of these Defendants' conduct was to intentionally harm the Receivership Companies and their creditors, and the conduct of these Defendants did harm them.

61. These Defendants are liable to the Receivership Companies for predominant purpose conspiracy and unlawful act conspiracy, amongst other things.

Mr. Davies' Breach of Fiduciary Duty and Negligence

62. By virtue of the positions Mr. Davies held, he was a fiduciary of each of the Receivership Companies and owed each of them fiduciary duties, contractual duties, statutory duties (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended) and a duty of care to, among other things:

- (a) act honestly and in good faith with a view to their best interests;
- (b) avoid improper self-dealing;
- (c) avoid conflicts of interest; and
- (d) exercise the care, diligence and skill that reasonably prudent persons would exercise in comparable circumstances.

63. By reason of the facts described above, Mr. Davies breached these duties and failed to act in a manner that was required of him as a director and officer of the Receivership Companies.

64. The Receivership Companies were vulnerable to the unilateral exercise of Mr. Davies' discretion and power, particularly given that he was the controlling mind and management of the Receivership Companies. By reason of the facts described above, Mr. Davies breached his duties to the Receivership Companies, including his fiduciary and other duties owed, including but not limited to his duties of good faith, honest performance and loyalty.

65. By reason of the facts described above, Mr. Davies also breached express and/or implied terms of his employment agreements with the respective Receivership Companies. Among other things, Mr. Davies was, at a minimum, required to conduct himself and the operations of the Receivership Companies in a competent and lawful manner, which he failed to do. Mr. Davies' conduct breached the standard of care required of him and he was grossly negligent in the performance of his duties as an officer of each of the Receivership Companies.

66. Mr. Davies effectively treated the respective Receivership Companies as his own personal fiefdom, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest, or corporate separateness, amongst other things. He effectively operated each of the Receivership Companies as his own personal corporation and saw their assets as his own. This resulted in his failure to act in the best interests of the Receivership Companies, including by defrauding the Receivership Companies and enriching himself and parties related to him at the expense of the Receivership Companies and their creditors.

Unlawful Means Tort

67. By virtue of their acts and omissions as described herein, some or all of the Defendants intentionally inflicted economic harm on the Receivership Companies and their creditors. In doing so, they used unlawful means (including but not limited to fraud, deceit and conspiracy) as against third parties, including the innocent investors whose funds they misappropriated.

Conversion

68. The Receivership Companies were in possession of, or entitled to immediate possession of, the specific and identifiable funds described above. Some or all of the Defendants intentionally and wrongfully converted the Receivership Companies' funds for their own use

inconsistent with the Receivership Companies' right of possession and other rights, and thereby deprived the Receivership Companies (and their creditors) of the benefit of the funds, exposing them to significant liabilities. The plaintiff is entitled to recover the entire amount that these Defendants have converted.

Unjust Enrichment

69. By virtue of the facts set out above, some or all of the Defendants and/or parties related to them have been unjustly enriched. The Receivership Companies have suffered a corresponding deprivation, and there is no juristic reason for these Defendants' enrichment or for the Receivership Companies' corresponding deprivation. There is no juristic reason why these Defendants should not be held to account for their enrichment and for the damages they have caused.

Constructive Trust(s)

70. Some or all of the Defendants received and retained the Receivership Companies' funds with full knowledge of the fraud, deceit, conspiracy, conversion and other unlawful acts they had committed, and with full knowledge of Mr. Davies' breach of his fiduciary and other legal duties owed to the Receivership Companies. By virtue of facts described herein, these Defendants hold all assets, properties, and funds that they diverted, misappropriated and improperly received from the Receivership Companies, and all traceable products thereof, as trustees of a constructive trust (or trusts) for the benefit of the plaintiff.

Mr. and Ms. Davies' Liquidation and Alienation of Assets

71. Following their improper conduct as described above, and after the commencement of the receivership proceeding in January 2017, Mr. and Ms. Davies embarked on a course of conduct designed to liquidate their assets and put them beyond the reach of the Receivership Companies and their creditors. Among other things, on April 25, 2017, Mr. Davies sold his family cottage located in Gravenhurst, Ontario for approximately \$3 million.

72. Mr. and Ms. Davies also attempted, and continue to attempt, to sell their personal residence located in King City, Ontario, which they jointly own in their capacities as trustees of the Family Trust.

Losses and Harm

73. The conduct of the Defendants as described above has caused, and is continuing to cause, reasonably foreseeable and proximate damage to the Receivership Companies and their creditors, including financial losses and loss of profitable business opportunities, the full extent of which has not yet fully materialized and is not yet fully known to the plaintiff at this time.

74. The secured debt obligations of the Receivership Companies currently total approximately \$60,243,000, including approximately \$54,231,000 owing to the Trust Companies (being monies raised by the Trust Companies from investors) and the balance owing to other lenders, primarily mortgagees. Virtually the only valuable assets the Receivership Companies currently have to satisfy these secured debt obligations (and all the other debt obligations and

liabilities of the Receivership Companies) are the real properties for which the Receivership Companies collectively paid approximately \$13,455,000.²

75. Some or all of the Defendants not only stripped the Receivership Companies of millions of dollars, and preferred their own interests over those of the Receivership Companies and their creditors (including the investing public), but they also deprived the Receivership Companies of the opportunity to pursue legitimate and profitable real estate development and other revenue-generating business opportunities, causing considerable additional losses and damages to the Receivership Companies.

76. Full particulars of the Receivership Companies' damages will be provided prior to trial.

77. The conduct of the Defendants as described above has also caused, and is continuing to cause, irreparable harm to the Receivership Companies and their creditors. In the absence of relief from this Honourable Court, Mr. and Ms. Davies (and the entities they control, including Aeolian, the Arizona Trust and the Family Trust) will be able to liquidate and alienate assets, and/or continue to liquidate and alienate assets, thereby causing the Receivership Companies and their creditors further harm which would not be compensable in damages alone.

78. The plaintiff has incurred, and is continuing to incur, costs and out-of-pocket expenses relating to investigations into the Defendants' acts and omissions, which special damages shall be particularized prior to trial.

² On August 3, 2017, the Receiver obtained an approval and vesting Order from the Court authorizing the sale of the Scollard property (which was acquired by Scollard for \$9 million). In accordance with the Order, the Receiver subsequently sold the Scollard property, which resulted in an initial distribution from Scollard to the Scollard Trust Co. in the amount of approximately \$5.1 million, thereby reducing the Receivership Companies' secured debt obligations accordingly.

79. Some or all of the Defendants' actions constitute a wanton, callous, high-handed and outrageous disregard for the Receivership Companies' rights and interests, and for the rights and interests of their creditors, including the investing public whose funds they misappropriated. These Defendants deliberately and willfully undertook the fraudulent and unlawful activities described herein in an underhanded manner, knowing that their conduct was wrong and would cause harm to the Receivership Companies and their creditors. The conduct of these Defendants ought to attract the disapproval of this Honourable Court and result in a material award of punitive and/or exemplary damages.

80. Given the duplicitous and deceitful manner in which Mr. Davies, Ms. Davies and Aeolian have acted, together with all the surrounding circumstances, including Mr. Davies' sale of the family cottage and Mr. and Ms. Davies' attempted sale of their personal residence, there is a real and demonstrated risk that Mr. and Ms. Davies as well as Aeolian, the Family Trust and the Arizona Trust (all three of which are controlled by Mr. Davies and/or Ms. Davies) will dissipate assets and/or permanently abscond with the Receivership Companies' funds to avoid enforcement of any judgment the plaintiff may ultimately obtain. In all the circumstances, interim, interlocutory and permanent injunctive relief, *inter alia*, enjoining the Defendants from accessing, liquidating, dissipating, alienating or otherwise dealing with their assets is necessary, just and appropriate.

Place of Trial

81. The plaintiff proposes that the trial of this action take place in the City of Toronto in the Province of Ontario.

August 30, 2017

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**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

**FRESH AS AMENDED STATEMENT OF CLAIM
Notice of Action issued on June 6, 2017**

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Defendant

**ONTARIO
DIVISIONAL COURT
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**MOTION RECORD
(Volume 5 of 5)**

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