



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

May 17, 2018

Contents

	Page
1.0 Introduction	1
1.1 Purpose of this Report	2
1.2 Currency	2
2.0 Kitchener and Burlington	2
3.0 Recommendation	4

Appendices

Appendix	Tab
Amending Agreements	A



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

TWELFTH REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER

MAY 17, 2018

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager (the "Receiver") of the real property registered on title as being owned by Memory Care Investments (Kitchener) Ltd. ("Kitchener") and 1703858 Ontario Inc. ("Burlington"), as well as their assets, undertakings and properties acquired for or used in relation to their real property (the "Property").
2. KSV was appointed as the Receiver of the Property on April 28, 2017 pursuant to an order issued on that date by the Ontario Superior Court of Justice (the "Court"). The order was then further amended on May 2, 2017 to address certain clerical errors (the "Amended and Restated Receivership Order").
3. On June 30, 2017, the Court made an order approving, *inter alia*, a process to solicit offers for the development and/or sale of the Property (the "Strategic Process").¹
4. Pursuant to the Amended and Restated Receivership Order, the Receiver was permitted to borrow under Receiver's Certificates from MarshallZehr Group Inc. ("MZG"). The MZG facility for Kitchener is in the amount of \$1.475 million and the MZG facility for Burlington is in the amount of \$1.775 million. The interest rate on the MZG facilities is 9.5% per annum.

¹ In addition to Kitchener and Burlington, KSV is the receiver of six other affiliated real estate development companies that borrowed monies through syndicated mortgage investments (four others in this proceeding, and two others in separate proceedings). All of the real property owned by the development companies subject to the Strategic Process have been sold, except for Kitchener and Burlington.

5. MZG was granted a first-ranking charge against the assets of each of Kitchener and Burlington for the respective loans, subject only to the Receiver's Charge and certain priority amounts set out in the *Bankruptcy and Insolvency Act (Canada)*.
6. The Kitchener and Burlington MZG facilities expire on the earlier of demand by MZG and May 15, 2018, subject to the Receiver's right to extend the facilities for one year, at its option. Pursuant to the terms of Amending Agreements for each of Kitchener and Burlington (the "Amending Agreements"), the Receiver has elected to exercise the option to extend the termination date of the MZG facilities. MZG has advised that it requires 1% lender fees on all amounts advanced in connection with providing the extension. The lender fees will not be paid in cash at this time; they will be capitalized and added to the loan balances. The lender fees are not contemplated in the MZG commitment letters; however, MZG has advised the Receiver that it is not prepared to execute the Amending Agreements absent the fee, and as discussed below, the Receiver is not in a position to simply extend the term of the loans without entering into the Amending Agreements. The Amending Agreements are subject to Court approval.

1.1 Purpose of this Report

1. The purpose of this Report is to recommend the Court issue an order approving the Amending Agreements and increasing the maximum amount that can be borrowed under the Kitchener and Burlington MZG facilities.

1.2 Currency

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

2.0 Kitchener and Burlington

1. Kitchener and Burlington intended to develop residences for people suffering from various forms of cognitive impairment.
2. As reflected below, the amounts borrowed from MZG were used to repay first ranking mortgages on the Kitchener and Burlington real property at the commencement of the receivership, fund an interest reserve on the MZG facilities and pay the costs of the Kitchener and Burlington receivership proceedings, including professional fees.

(unaudited; \$)	Kitchener	Burlington
Loan proceeds	1,475,000	1,775,000
One-year interest reserve	(140,125)	(168,625)
MZG fees	(29,500)	(35,500)
MZG's legal fees	(5,075)	(5,075)
	1,300,300	1,565,800
Repayment of first mortgages	(1,127,833)	(1,343,622)
Remainder	172,467	222,178
Receivership Costs		
Professional fees		
Receiver (excluding accruals)	(79,136)	(73,851)
Receiver's legal counsel (excluding accruals)	(64,303)	(64,627)
Other costs	(28,671)	(27,164)
	(172,110)	(165,642)
Balance	357	56,536

3. The table reflects that there is presently a negligible balance in the Kitchener bank account and approximately \$57,000 in the Burlington account.
4. In addition to the expenses noted in the table above, the Receiver and its counsel, Bennett Jones LLP, have the following accrued and unpaid professional fees and disbursements (including HST) as of March 31, 2018:

(unaudited; \$)	Kitchener	Burlington
Receiver	41,527	65,998
Receiver's Counsel	52,462	76,211
Total	93,989	142,209

5. The Property has been widely marketed for sale since early in the receivership proceedings. There has been and continues to be significant interest in each property; however, the Receiver has been unable to complete a sale due to, *inter alia*, development issues on each site. Absent Court approval of the Amending Agreements, MZG could enforce on its security, which could result in lower recoveries for the Property than if the Strategic Process is completed. MZG has not chosen to do so and has worked cooperatively with the Receiver throughout these proceedings, as evidenced by its patience in the Strategic Process.
6. The Amending Agreements extend the term of the Outstanding Facilities by one year; and increase the amount of the Receiver's Borrowings Charge for interest that will accrue over the extension period (interest will continue to accrue at 9.5%) and the 1% lender fee. Copies of the Amending Agreements are attached as Appendix "A".
7. A summary of the proposed increase in the Receiver's Borrowing Charge is reflected in the table below.

(unaudited; \$)	Kitchener	Burlington
Current Receiver's Borrowing Charge	1,475,000	1,775,000
One year of interest at 9.5%	140,125	168,625
Subtotal	1,615,125	1,943,625
Lender Fee (1%)	16,151	19,436
Revised Receiver's Borrowing Charge	1,631,276	1,963,061

8. Entering into the Amending Agreements is necessary for the Receiver (as opposed to just exercising its option to extend the termination date) as it does not have sufficient cash to fund ongoing interest to MZG over the course of the next year. The Receiver also does not have the funds to pay the Lender Fee. Accordingly, the facilities need to be increased to allow these amounts to accrue without triggering a default which the Receiver could not remedy.

3.0 Recommendation

1. The Receiver recommends that the Court make an Order approving the Amending Agreements as it will provide the Receiver with additional time to sell the Properties. Absent Court approval, MZG could require that the Receiver enter into a transaction at a lower value than may be realizable through a continuation of the Strategic Process. Alternatively, MZG could seek to terminate these proceedings and commence its own realization process.

* * *

All of which is respectfully submitted,

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

**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF MEMORY CARE INVESTMENTS (KITCHENER) LTD. AND
1703858 ONTARIO INC. AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”

FIRST AMENDMENT AGREEMENT

THIS FIRST AMENDMENT AGREEMENT is dated for reference May 15, 2018.

BETWEEN:

KSV KOFMAN INC., solely in its capacity as Receiver and Manager of certain property of **1703858 ONTARIO INC.**

(hereinafter called the "**Borrower**")

AND:

MARSHALLZEHR GROUP INC.

(hereinafter called the "**Lender**")

WHEREAS:

- A. The parties entered into a letter agreement dated as of April 20, 2017 (the "**Loan Agreement**") pursuant to which the Lender offered financing to the Borrower by way of a loan, subject to the terms and conditions set forth in the Loan Agreement.
- B. The parties have agreed to amend the Loan Agreement as provided in this agreement.

WITNESSETH THAT in consideration of the mutual covenants and agreements herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. INTERPRETATION

1.1 Terms with an initial capital letter which are not otherwise defined in this First Amendment Agreement have the meanings set out in the Loan Agreement.

1.2 Unless otherwise specified all statements of, or references to, dollar amounts in this First Amendment Agreement without currency specification shall refer to Canadian Funds.

1.3 Definitions

Where used in this First Amendment Agreement, the following terms shall have the following meanings:

- i) "**Effective Date**" means May 15, 2018, or such other date as may be agreed between the Borrower and the Lender; and
- ii) "**First Amendment Agreement**" means this first amendment agreement.

1.4 **Successors and Assigns**

The Loan Agreement, as amended by this First Amendment Agreement, shall enure to the benefit of and be binding on each of the parties hereto and their respective successors and permitted assigns.

1.5 **Applicable Law**

This First Amendment Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable in that Province.

2. **AMENDMENT**

If the conditions set forth in Section 3 of this First Amendment Agreement have been met or waived prior to or at the Effective Date, the Credit Agreement shall be amended as follows:

- i) amending the definition of "Term" in the Loan Agreement by deleting the reference to "twelve (12) months from the date of the initial advance" and replacing it with "May 15, 2019"; and
- ii) amending the definition of "Loan" in the Loan Agreement by deleting "\$1,775,000" and replacing it with "\$1,963,061".

3. **CONDITIONS OF LOAN AGREEMENT AMENDMENT**

The Lender shall have no obligation to amend the Loan Agreement by this First Amendment Agreement unless it shall have received the following:

- i) this First Amendment Agreement duly executed by the Borrower;
- ii) payment of a 1% amendment fee equal to \$19,436 (the "**Amendment Fee**"). The Amendment Fee is to be capitalized on the Effective Date and added to the principal amount of the Loan; and
- iii) approval of this First Amendment Agreement by Court order.

4. **GENERAL**

4.1 This First Amendment Agreement and all documents contemplated by or delivered under or in connection herewith may be executed in one or more counterparts or facsimile counterparts, or other electronic means, each of which when executed and delivered shall be deemed to be an original and all of which together shall constitute one document in writing.

4.2 The Borrower will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports

and opinions) and things as the Lender may reasonably require for the purpose of giving effect to this First Amendment Agreement and the Loan Agreement as amended hereby.


4.3 This First Amendment Agreement shall from the Effective Date be read and construed along with the Loan Agreement and be treated as part thereof and for such purposes and so far as may be necessary to effectuate these presents, the Loan Agreement shall be regarded as being hereby amended and the Loan Agreement as so amended shall continue in full force and effect.

4.4 The Borrower hereby ratifies and confirms the Loan Agreement as amended by this First Amendment Agreement.

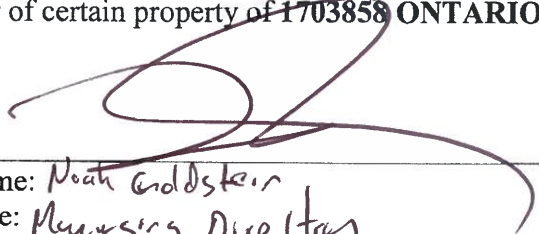
[Signature Page Follows]

IN WITNESS WHEREOF this First Amendment Agreement has been executed as of the date and year first written above.

MARSHALLZEHR GROUP INC.

Per: 
Name: MURRAY SNEDDEN
Title: CFO & PRINCIPAL BROKER
I have authority to bind the Corporation.

KSV KOFMAN INC., solely in its capacity as Receiver and Manager of certain property of ~~1703858~~ **ONTARIO INC.**

Per: 
Name: Noah Goldstein
Title: Managing Director
I have authority to bind the Corporation.

FIRST AMENDMENT AGREEMENT

THIS FIRST AMENDMENT AGREEMENT is dated for reference May 15, 2018.

BETWEEN:

KSV KOFMAN INC., solely in its capacity as Receiver and Manager of certain property of **MEMORY CARE INVESTMENT (KITCHENER) LTD.**

(hereinafter called the "**Borrower**")

AND:

MARSHALLZEHR GROUP INC.

(hereinafter called the "**Lender**")

WHEREAS:

- A. The parties entered into a letter agreement dated as of April 20, 2017 (the "**Loan Agreement**") pursuant to which the Lender offered financing to the Borrower by way of a loan, subject to the terms and conditions set forth in the Loan Agreement.
- B. The parties have agreed to amend the Loan Agreement as provided in this agreement.

WITNESSETH THAT in consideration of the mutual covenants and agreements herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. INTERPRETATION

1.1 Terms with an initial capital letter which are not otherwise defined in this First Amendment Agreement have the meanings set out in the Loan Agreement.

1.2 Unless otherwise specified all statements of, or references to, dollar amounts in this First Amendment Agreement without currency specification shall refer to Canadian Funds.

1.3 Definitions

Where used in this First Amendment Agreement, the following terms shall have the following meanings:

- i) "**Effective Date**" means May 15, 2018, or such other date as may be agreed between the Borrower and the Lender; and
- ii) "**First Amendment Agreement**" means this first amendment agreement.

1.4 **Successors and Assigns**

The Loan Agreement, as amended by this First Amendment Agreement, shall enure to the benefit of and be binding on each of the parties hereto and their respective successors and permitted assigns.

1.5 **Applicable Law**

This First Amendment Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable in that Province.

2. **AMENDMENT**

If the conditions set forth in Section 3 of this First Amendment Agreement have been met or waived prior to or at the Effective Date, the Credit Agreement shall be amended as follows:

- i) amending the definition of "Term" in the Loan Agreement by deleting the reference to "twelve (12) months from the date of the initial advance" and replacing it with "May 15, 2019"; and
- ii) amending the definition of "Loan" in the Loan Agreement by deleting "\$1,475,000" and replacing it with "\$1,631,276".

3. **CONDITIONS OF LOAN AGREEMENT AMENDMENT**

The Lender shall have no obligation to amend the Loan Agreement by this First Amendment Agreement unless it shall have received the following:

- i) this First Amendment Agreement duly executed by the Borrower;
- ii) payment of a 1% amendment fee equal to \$16,151 (the "**Amendment Fee**"). The Amendment Fee is to be capitalized on the Effective Date and added to the principal amount of the Loan; and
- iii) approval of this First Amendment Agreement by Court order.

4. **GENERAL**

4.1 This First Amendment Agreement and all documents contemplated by or delivered under or in connection herewith may be executed in one or more counterparts or facsimile counterparts, or other electronic means, each of which when executed and delivered shall be deemed to be an original and all of which together shall constitute one document in writing.

4.2 The Borrower will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports

and opinions) and things as the Lender may reasonably require for the purpose of giving effect to this First Amendment Agreement and the Loan Agreement as amended hereby.

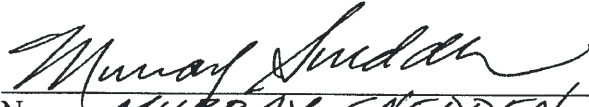
4.3 This First Amendment Agreement shall from the Effective Date be read and construed along with the Loan Agreement and be treated as part thereof and for such purposes and so far as may be necessary to effectuate these presents, the Loan Agreement shall be regarded as being hereby amended and the Loan Agreement as so amended shall continue in full force and effect.

4.4 The Borrower hereby ratifies and confirms the Loan Agreement as amended by this First Amendment Agreement.

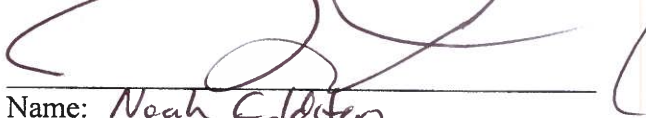
[Signature Page Follows]

IN WITNESS WHEREOF this First Amendment Agreement has been executed as of the date and year first written above.

MARSHALLZEHR GROUP INC.

Per: 
Name: MURRAY SNEDDEN
Title: CEO & PRINCIPAL BROKER
I have authority to bind the Corporation.

KSV KOFMAN INC., solely in its capacity as Receiver and Manager of certain property of **MEMORY CARE INVESTMENT (KITCHENER) LTD.**

Per: 
Name: Noah Goldstein
Title: Managing Director
I have authority to bind the Corporation.