

**Eighteenth Report of
KSV Kofman Inc.**

April 24, 2019

**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.**

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

and

**Third Report of KSV Kofman Inc. as Receiver
of Certain Property of Textbook (774 Bronson
Avenue) Inc., Textbook Ross Park Inc. and
McMurray Street Investments Inc.**

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COURT FILE NO.: CV-16-11567-00CL
COURT FILE NO: CV-17-11689-00CL
COURT FILE NO: CV-17-589078-00CL
COURT FILE NO.: CV-16-11822-00CL
COURT FILE NO.: CV-18-606314-00CL

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

AND IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK ROSS PARK INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND MCMURRAY STREET INVESTMENTS INC.

**EIGHTEENTH 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.**

AND

**SIXTH REPORT OF KSV KOFMAN INC.
AS RECEIVER AND MANAGER OF CERTAIN PROPERTY OF
TEXTBOOK (445 PRINCESS STREET) INC.**

AND

**THIRD REPORT OF KSV KOFMAN INC. AS RECEIVER
OF TEXTBOOK ROSS PARK INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND
MCMURRAY STREET INVESTMENTS INC.**

APRIL 24, 2019

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as Court-appointed receiver (the "Receiver") of certain assets of the companies listed below (the "Receivership Companies") pursuant to the following orders of the Ontario Superior Court of Justice (Commercial List) (the "Court"):

- a) Scollard Development Corporation, pursuant to an order of the Court dated February 2, 2017;
 - b) 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., pursuant to an order of the Court dated April 28, 2017;
 - c) Textbook (445 Princess Street) Inc., pursuant to an order of the Court dated January 9, 2018; and
 - d) Textbook Ross Park Inc., Textbook (774 Bronson Avenue) Inc. and McMurray Street Investments Inc., pursuant to an order of the Court dated May 30, 2018.
2. Pursuant to an order of the Court dated October 27, 2016, Grant Thornton Limited was appointed trustee (the "Trustee") of eleven entities (collectively, the "Trustee Corporations"), which raised monies from investors through syndicated mortgage investments. Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements between the Trustee Corporations and the Receivership Companies.
 3. On August 30, 2017, the Honourable Justice Myers issued an order (the "Mareva Order") in the civil litigation bearing Court File No. CV-17-11822-00CL (the "Action") against the defendants, John Davies in his personal capacity and in his capacity as trustee of the Davies Family Trust (the "Family Trust") and the Davies Arizona Trust (the "Arizona Trust") (in all such capacities, "Mr. Davies"), Judith Davies in her personal capacity and in her capacity as trustee of the Family Trust (in all such capacities, "Ms. Davies"), Aeolian Investments Ltd. ("Aeolian", and together with Mr. Davies and Ms. Davies, the "Mareva Defendants") and Gregory Harris solely in his capacity as trustee of the Family Trust (in such capacity, "Mr. Harris").
 4. The Mareva Order restricts the Mareva Defendants and Mr. Harris from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of their assets, wherever situate worldwide, including but not limited to the assets and accounts listed in Schedule "A" to the Mareva Order and, in particular (but not limited to) the real estate that was owned by the Arizona Trust located at 35410 North 66th Place, Carefree, Arizona, 85377 (the "Arizona Real Property").

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information with respect to these receivership proceedings;
 - b) summarize the terms of a settlement agreement between the Receiver and the Trustee, on the one hand, and the Mareva Defendants, on the other hand, solely in respect of the Mareva Order (the "Settlement Agreement"); and

- c) recommend that the Court issue an order:
 - i. approving and giving effect to the Settlement Agreement; and
 - ii. authorizing and directing the Receiver and the Trustee to take any and all steps necessary to give effect to the Settlement Agreement.

2.0 Background

1. The background to this Report is set out in the Receiver's previous reports to Court, including its Fourth Report, Sixth Report, Supplement to the Sixth Report and Seventeenth Report, copies of which are respectively attached hereto as Appendices "A", "B", "C" and "D", without attachments. These reports are the most pertinent to this Report. All reports and other materials previously filed in these proceedings can be found on the Receiver's website at <https://www.ksvadvisory.com/insolvency-cases/case/scollard-development-corporation>.
2. On or about November 7, 2018, the Arizona Real Property was sold by the Arizona Trust for USD\$1.65 million along with the furnishings in the Arizona Real Property for a further USD\$150,000. The net proceeds generated from the sale (after paying realtor commissions, a mortgage, a lien on the property and closing costs) total USD\$862,568, which amount has since been reduced by virtue of Mr. Davies accessing living expenses of CDN\$7,500 per month pursuant to an order issued by the Honourable Mr. Justice Myers granting a limited exemption to the Mareva Order. The total amount of proceeds currently remaining is USD\$828,171.71 (the "Proceeds"), of which USD\$580,671.71 is currently being held in the trust account of Dentons Canada LLP ("Dentons"), counsel for the Mareva Defendants, with the balance, being USD\$247,500, currently being held by the United States Internal Revenue Service (the "IRS") in respect of a potential withholding tax obligation.
3. Dentons has provided the Receiver's counsel with information from Mr. Davies' agent in the United States, Mary-Heather Styles of Transatlantic Tax Inc., who has advised that the full amount of USD\$247,500 is likely to be released by the IRS to Dentons as there was a capital loss on the sale of the Arizona Real Property which she advises would eliminate any tax liability arising from the sale of the Arizona Real Property.
4. Dentons has provided an undertaking to the Receiver that none of the Proceeds will be distributed absent a court order authorizing Dentons to do so.
5. The Mareva Defendants have provided financial disclosures to the Receiver during these proceedings. Based on those disclosures, the Proceeds represent most of the Mareva Defendants' apparent assets currently known to the Receiver.
6. On January 19, 2018, Mr. Davies and Aeolian obtained leave to appeal the Mareva Order. The appeal (the "Appeal of the Mareva Order" and, together with the "Mareva Order", the "Mareva Issues") has been consensually adjourned on several occasions and is now adjourned *sine die*, pending the Court's approval of the Settlement Agreement.

3.0 The Settlement Agreement

1. The Receiver, in consultation with the Trustee and their respective counsel, engaged in discussions and negotiations with the Mareva Defendants concerning the Mareva Issues.
2. The negotiations resulted in a settlement (the "Settlement") between the Receiver and the Trustee, on the one hand, and the Mareva Defendants, on the other hand, resolving and settling solely the Mareva Issues on the terms set out in the Settlement Agreement. The Settlement is subject only to Court approval. A copy of the Settlement Agreement is attached as Appendix "E".
3. Pursuant to the Settlement Agreement, all the Mareva Issues will be fully and finally resolved in exchange for, among other things, payment of 72.5% of the Proceeds to the Receiver, with the balance of the Proceeds, amounting to 27.5%, being paid to Mr. Davies. The Receiver and the Trustee will determine the allocation of the Receiver's share of the Proceeds between them, with the majority of the Proceeds flowing to the Trustee.
4. Of the USD\$580,671.71 currently in Dentons' trust account, Mr. Davies will only receive CDN\$150,000 based on the Bank of Montreal conversion rate on the date of the payment (amounting to approximately 20% of the Proceeds currently in Dentons' trust account) and the Receiver will receive the balance, amounting to approximately USD\$467,000 (approximately 80% of the Proceeds currently in Dentons' trust account). Mr. Davies will get a larger share of the Proceeds held back by the IRS. This mitigates some of the risk related to the monies currently held by the IRS.
5. The Settlement is reasonable, particularly considering the ongoing professional costs of dealing with the Mareva Issues and the apparent limited assets of the Mareva Defendants currently known to the Receiver, which have been reviewed through the Receiver's independent investigations (including its review of the bank records of the Mareva Defendants obtained in connection with the Mareva Order) and in sworn disclosure affidavits provided by each of the Mareva Defendants in connection with the Settlement (the "Disclosure Affidavits"). The Settlement will immediately increase the value in the estates of the Receivership Companies and the Trustee Corporations, which will benefit their respective stakeholders. The Settlement also avoids the continued depletion of the Proceeds resulting from the existing exemption to the Mareva Order pursuant to which Mr. Davies has been accessing \$7,500 for living expenses. It also avoids the potential for further depletion resulting from any further exemptions to the Mareva Order, such as for the Mareva Defendants' legal fees. To date, Mr. Davies has made several requests for funding, including for legal representation.
6. Pursuant to the Settlement, the Mareva Order will be lifted and the Appeal of the Mareva Injunction will be dismissed on the consent of the parties. The Settlement avoids protracted and complex litigation with the Mareva Defendants with respect to the Mareva Issues and will also result in legal cost savings that would have otherwise been incurred to defend the Appeal of the Mareva Injunction and otherwise address the Mareva Issues.
7. To the extent it is found that there are any misrepresentations in any of the Disclosure Affidavits which serve, in part, as the basis for lifting the Mareva Order, the Mareva Order will be immediately reinstated, on the consent of the Mareva Defendants.

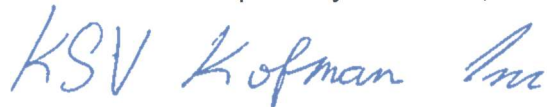
8. Additionally, going forward, the Mareva Defendants will be required to report to the Receiver and the Trustee on a quarterly basis regarding all their respective direct and indirect earnings for the previous quarter. Should any of their earnings, on an individual basis, exceed CAD\$50,000 for any given quarter, the relevant party or parties will be required to provide an accounting to the Receiver and the Trustee describing what they did with all of that quarter's earnings, including, without limitation, details of whether any earnings were sent out of the jurisdiction or used to acquire assets outside of the jurisdiction. The Receiver and/or the Trustee will be entitled to bring a new motion for a new Mareva injunction against any or all of the Mareva Defendants should the information in any of the accounting demonstrate that any of the Mareva Defendants was or is dissipating assets for the purpose of frustrating a potential judgment in the outstanding litigation.
9. The Settlement therefore provides a degree of certainty regarding costs and benefits relating to the Mareva Issues, which cannot be expeditiously or effectively achieved otherwise.
10. Importantly, no releases will be provided to any of the Mareva Defendants in connection with the Settlement. The Receiver and the Trustee will preserve all their rights to continue their claims and pursue recovery against the Mareva Defendants for any and all matters in the Action and in all other proceedings, subject to the terms of the Settlement Agreement. The Receiver and the Trustee will also preserve all claims, rights and remedies they have as against any and all non-Mareva Defendants in the Action and in all other proceedings.
11. The Settlement therefore represents a fair and commercially reasonable compromise in all the circumstances and for the purposes of these proceedings.
12. It is in the best interests of the Receivership Companies and the Trustee Corporations, and their respective stakeholders, that the terms contemplated under the Settlement Agreement be implemented.

4.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Court make an Order granting the relief detailed in Section 1.1 (1)(c) of this Report.

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,
1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS
STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS
STREET) INC., TEXTBOOK ROSS PARK INC., TEXTBOOK (774 BRONSON AVENUE) INC.
AND MCMURRAY STREET INVESTMENTS INC.**

Appendix “A”



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

June 6, 2017

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

FOURTH REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER

JUNE 6, 2017

1.0 Introduction

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

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

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

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

² Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation

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

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

1.1 Purposes of this Report

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

1.2 Restrictions

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

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

1.3 Currency

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

2.0 Background⁴

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

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

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

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

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

2.1 Textbook Entities

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

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

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

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

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

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

2.2 Memory Care Entities

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

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

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

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

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

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

2.3 Scollard

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

2.4 Legacy Lane

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

2.5 McMurray

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

3.0 Review of Receipts and Disbursements

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

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

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

¹³ Defined in Section 3.2 below.

¹⁴ Reflects net payments to shareholders.

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

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

3.1 Property Related Costs

3.1.1 Real Property Transactions

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

3.1.2 Kitchener Property Purchase

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

¹⁶ Defined in Section 3.2 below.

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

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

3.1.3 Development Costs

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

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

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

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

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

3.2 Payments to Shareholders and Affiliates

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

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

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

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

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

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

Disclosure

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

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

Prohibited Payments

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

Payments for which Additional Information is Required

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

3.2.1 Textbook and MCIL

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

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

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

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

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

3.2.2 Davies Entities

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

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

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

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

3.2.3 Singh Entities

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

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

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

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

3.2.4 Thompson Entities

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

3.2.5 Harris Entities

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

3.2.6 Rideau

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

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

3.3 Interest and fees

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

3.4 Brokers

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

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

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

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

3.5 Professional fees

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

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

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

3.6 Traditions Development Company

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

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

4.0 Davies Developer Transactions

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

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

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

5.0 Disposition by Davies of His Cottage and a Home

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

6.0 Conclusion and Recommendation

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

²¹ The selling price is not known to the Receiver.

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

* * *

All of which is respectfully submitted,



KSV KOFMAN INC.

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

Appendix “B”



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

July 12, 2017

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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

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

JULY 12, 2017

1.0 Introduction

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

¹ Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation

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

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

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

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

1.1 Purposes of this Report

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

1.2 Restrictions

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

1.3 Currency

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

2.0 Background

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

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

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

2.1 The Fourth Report

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

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

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

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

3.0 Asset Summaries

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

4.0 Examination

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

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

4.1 The Davies Family Trust

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

4.2 The Davies Arizona Trust

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

⁸ Qs. 137-138, p 31, lines 12-15.

⁹ Q. 141, p 31, lines 20-21.

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

¹¹ Qs. 401-402, p 101, lines 7-23.

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

¹³ Q. 150, p 32, lines 23-25.

¹⁴ Qs. 157-159, p 34, lines 4-14.

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

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

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

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

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

¹⁷ Q. 170, p 36, lines 18-19.

¹⁸ Q. 155, p 33, lines 22-24.

¹⁹ Qs. 171-172, p 36, lines 20-23.

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

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

²² Qs. 356-357, p 91, lines 5-9.

²³ Qs. 464-466, p 115, lines 17-24.

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

4.4 Judith Davies

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

²⁴ Qs. 164-165, p 36, lines 2-5.

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

²⁶ Q. 301, p 77, lines 10-13.

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

4.5 The Davies Children

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

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

²⁸ Qs. 17-22, p 8, lines 7-25.

²⁹ Q. 23, p 9, lines 1-4.

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

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

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

³³ Qs. 63-64, p 15, lines 2-5.

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

³⁵ Q. 298, p 76, lines 3-8.

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

³⁷ Qs. 416-418, p 107, lines 6-17.

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

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

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

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

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

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

⁴⁰ Q. 135, p 30, lines 11-13.

5.0 Review of Aeolian's Receipts and Disbursements

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

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

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

5.1 Receipts

5.1.1 Amounts Received by Aeolian from Davies Developers

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

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

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

5.1.2 TSI, TSSI and MCIL

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

5.2 Disbursements

5.2.1 Judith Davies

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

5.2.2 Arizona Property

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

5.2.3 Amex and Other Personal Payments

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

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

6.0 Conclusion

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

* * *

All of which is respectfully submitted,



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

Appendix “C”



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

August 8, 2017

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

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

AUGUST 8, 2017

1.0 Introduction

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

1.1 Restrictions

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

2.0 Background

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

2. Davies and Aeolian subsequently consented to a further but temporary continuation of the Mareva Order, on a without prejudice basis, to allow for a scheduled hearing process for the Receiver's motion for interlocutory injunctive relief as against Davies and Aeolian.
3. On July 17, 2017, on the consent of the parties, the Court granted an order extending the Mareva Order as against Davies in his personal capacity and Aeolian (the "July 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	11,956	Dec 8, 14	133%
Kitchener	3,950	Feb 25, 14	4,918	Feb 25, 14	125%
Oakville	1,945	Oct 29, 12	2,550	Oct 29, 12	131%
Burlington	2,500	May 17, 13	5,499	May 17, 13	220%
Legacy Lane	650	Oct 2, 12	2,315	Apr 2, 13	356%
	<u>22,445</u>		<u>39,707</u>		<u>177%</u>

6. Attached as Appendix "C" are marketing materials for the Receivership Companies. In promoting the SMIs, the marketing materials indicated that the SMIs were to have first ranking security on the real property, which would only be subordinated to construction financing. Notwithstanding this representation to the public, after raising the SMIs, several of the Receivership 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	17,888

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

- 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 SMLs.

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.

**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**

Appendix “D”



**Seventeenth Report of
KSV Kofman Inc.**

March 18, 2019

**as the Court-appointed 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.**

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COURT FILE NO: CV-17-11689-00CL
COURT FILE NO. CV-17-11822-00CL
DIVISIONAL COURT FILE NO.: 533/77

**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.

**SEVENTEETH REPORT OF KSV KOFMAN INC.
AS COURT-APPOINTED 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.**

MARCH 18, 2019

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as Court-appointed receiver and manager (the "Receiver") of the companies listed below (the "Receivership Companies") pursuant to the following orders of the Ontario Superior Court of Justice (the "Court"):
 - a) Scollard Development Corporation, pursuant to an order dated February 2, 2017; and
 - b) 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., pursuant to an order dated April 28, 2017.
2. Pursuant to an order of the Court dated October 27, 2016, Grant Thornton Limited was appointed Trustee of eleven entities (collectively, the "Trustee Corporations"), which raised monies from investors ("Investors") through syndicated mortgage investments. Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements between the Trustee Corporations and the Receivership Companies, as well as to other entities now in receivership in respect of which KSV is also the Receiver.

1.1 Purpose of this Report

1. The purpose of this Report is to summarize the conduct of John Davies (“Davies”) following the granting of the interlocutory Mareva order on August 30, 2017 (the “Mareva Order”). The Mareva Order enjoins the following parties from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of their assets, wherever situate worldwide, including but not limited to the assets and accounts listed in Schedule “A” to the Mareva Order and, in particular (but not limited to), the real estate owned by the Arizona Trust located at 35410 North 66th Place, Carefree, Arizona, 85377 (the “Arizona Real Property”):
 - a) Davies, in his personal capacity, and in his capacity as the trustee of both the Davies Family Trust (the “Family Trust”) and the Davies Arizona Trust (the “Arizona Trust”);
 - b) Aeolian Investments Ltd. (“Aeolian”);
 - c) Judith Davies in her personal capacity and in her capacity as trustee of the Family Trust; and
 - d) Gregory Harris solely in his capacity as trustee of the Family Trust.
2. This Report is filed by the Receiver in the context of the Receiver’s motion before the Divisional Court of Ontario (the “Divisional Court”) to adduce fresh evidence on Davies’ and Aeolian’s appeal of the Mareva Order, which appeal is currently returnable April 3, 2019.

1.2 Background

1. The Background to this Report is set out in the Receiver’s previous reports to Court, including its Fourth Report, Sixth Report and Supplement to the Sixth Report, all of which were before the Judge of first instance who granted the Mareva Order and all of which form part of the appeal record already before the Divisional Court. Strictly for ease of reference, copies of the Fourth Report, Sixth Report and Supplement to the Sixth Report, all without appendices, are respectively attached hereto as Appendices “A”, “B” and “C”.

2.0 The Arizona Real Property

1. The Receiver and its counsel, Bennett Jones LLP, had an ongoing dialogue with Davies, through his and Aeolian’s counsel, Dentons Canada LLP (“Dentons”), regarding the Arizona Real Property from the time the Mareva Order was granted through to the sale of the Arizona Real Property on November 7, 2018.
2. Following the granting of the Mareva Order, the Receiver regularly inquired with Dentons about the status of the Arizona Real Property. In response to those inquiries, the Receiver learned that the sole mortgage on the property from the Bank of Internet (“BOI”) was in arrears, property taxes were also in arrears and the property was not being maintained. The Receiver raised concerns with Dentons that BOI may commence power of sale proceedings; however, Dentons advised the Receiver that Davies was negotiating with BOI to avoid that outcome, including by trying to find a rent-paying tenant to lease the premises.

3. On October 10, 2018, to the surprise of the Receiver in light of the ongoing discussions with Davies and Dentons concerning the Arizona Real Property, Dentons advised the Receiver that BOI had taken steps to sell the Arizona Real Property through a power of sale process, with a public auction to take place on December 27, 2018, likely one of the worst days of the year for such a sale, it being two days after Christmas. The power of sale notice (the "Notice") was dated September 27, 2018, approximately two weeks before Davies advised the Receiver of the Notice. A copy of the Notice is attached as Appendix "D", along with the cover email from Dentons dated October 10, 2018, which appended the Notice.
4. In order to attempt to deal with BOI's power of sale process, the Receiver discussed possible solutions with Davies, through Dentons. These discussions included having the Receiver bring current the BOI mortgage and funding the costs to maintain the Arizona Real Property in the context of an agreed upon sale process for the Arizona Real Property run collaboratively by Davies and the Receiver.
5. On October 12, 2018, unbeknownst to the Receiver at the time, the Arizona Trust, through Davies, entered into an agreement of purchase and sale ("APS") under which it agreed to sell the Arizona Real Property for US\$1.65 million along with the furnishings in the property for a further US\$150,000 (the two sales are referred to herein as the "Transaction", with the Arizona Real Property and the furnishings in the property referred to as the "Arizona Property"). The APS was not conditional on the Receiver's approval, on Court approval or on any other express condition that would allow Davies to terminate the APS. A copy of the APS is attached as Appendix "E".
6. The Receiver was not notified of the Transaction until October 20, 2018 despite being in a frequent dialogue with Dentons in the days immediately prior to and after the Arizona Trust entered into the Transaction. The discussions following the date the APS was signed (October 12, 2018), are summarized as follows:
 - a) on October 16, 2018, being four days after the APS was executed, Dentons advised the Receiver that Davies was reviewing refinancing options for the Arizona Real Property and that Davies had also spoken to a realtor about finding potential buyers for the property to avoid a sale through an auction process; however, there was no mention that the APS had already been signed by Davies; and
 - b) on October 18, 2018, being six days after the APS was executed, and after being questioned extensively by the Receiver, Dentons provided further details concerning the realtor, advising the Receiver that Davies had "been in touch" with a real estate agent who had previously brought him "unsolicited offers". Dentons further advised the Receiver that Davies had asked the agent to "follow up with those prior parties". Although purportedly "not formally retained", Davies advised the agent he would pay him "a commission of roughly 6%" if the agent could find a buyer willing to pay at least \$1.5 million for the property before the public auction. Once again, there was no mention that the APS had already been signed by Davies.

Copies of these emails, with redactions where necessary, are provided in Appendix "F".

7. The Receiver believes that the Transaction contravenes Davies' obligations under the Mareva Order, which restricted him, and the Arizona Trust, from selling, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets, including the Arizona Property. Despite an ongoing dialogue with the Receiver and Davies' counsel, Davies did not, before signing the APS: i) disclose to the Receiver his informal retention of an agent to sell the Arizona Property; ii) seek the Receiver's consent to the Transaction; or iii) incorporate a provision in the APS requiring an exemption from the Mareva Order. Additionally, Davies misled the Receiver after the APS was signed and did not disclose that he had executed the APS until October 20, 2018, being 8 days after he executed it.
8. After considering the terms of the APS, reviewing comparable sales, the amount of time that the comparable and other properties had been listed for sale and the challenges associated with registering the Mareva Order on title to the Arizona Real Property (which was not possible absent an order from the Arizona court, which could not be easily obtained, or unless Davies consented to its registration, which he refused to do), the Receiver consented to the Transaction provided that: (i) the net proceeds from the Transaction be held in trust by Dentons; and (ii) Dentons provide an undertaking to the Receiver that it would not distribute the net proceeds absent a Court order authorizing it to do so. Davies ultimately agreed to these conditions.
9. The Transaction closed on November 7, 2018. The proceeds of the Transaction were used to pay the BOI mortgage, a lien on the property and realtor commissions, with the majority of the balance (the balance being US\$862,568) (the "Proceeds") deposited into a trust account at Dentons. A portion of the balance, US\$247,500, is currently being held by the United States Internal Revenue Service in respect of a potential withholding tax obligation. Based on information provided to the Receiver by Dentons, the Receiver understands that Davies expects that the withholding tax holdback will eventually be released in full and, if released, it is also to be held by Dentons in trust.
10. At this time, the Proceeds represent most of Davies' assets known to the Receiver.

2.1 Davies Requests for Exemption from the Mareva Order

1. Pursuant to an order of the Court dated September 18, 2018, Davies has been receiving \$7,500 per month as a living allowance since October 1, 2018. This amount is currently being paid from the Proceeds.
2. Davies has made further requests for funding, including for fees for criminal counsel and other legal representation, as well as for tuition and residence costs for his son to attend a music college in the United States. In this regard, on December 14, 2018, Davies brought an urgent motion for an exemption under the Mareva Order so that Davies could pay his son's tuition and residence costs totaling US\$31,205.90. The motion was brought on virtually no notice to the Receiver despite Davies' son applying to the school in March 2018, interviewing with the school in May 2018 and being admitted to the school at that time or shortly thereafter. According to Davies, tuition had to be paid just six days later, by December 20, 2018, for his son to attend the college immediately thereafter. On December 14, 2018, Justice Myers issued an endorsement rejecting the urgency of the motion and requiring counsel to set a schedule in connection with the motion. A copy of Justice Myers' endorsement is attached as Appendix "G" along with an unofficial transcript of the endorsement. On December 21, 2018, counsel for Davies advised the Receiver he was abandoning the tuition motion.

3.0 Conclusion

1. The Receiver submits that the foregoing meets the test for adducing fresh evidence for the reasons noted below, among others.
 - a) None of the foregoing (excluding the evidence in the Introduction and Background sections, which is referenced strictly for context and already forms part of the appeal record) was available at the time of the hearing for the Mareva Order.
 - b) The foregoing is relevant and necessary to the hearing of the appeal of the Mareva Order where Davies takes the position that the lower Court erred in finding that there was a risk of dissipation of assets and that there would be irreparable harm suffered by the Receiver in the absence of a protective order as the foregoing establishes that Davies, in the face of the Mareva Order, without any notice to, or consultation with, the Receiver:
 - i. took steps to market the Arizona Real Property for sale by informally retaining an agent;
 - ii. entered into the APS;
 - iii. did not make the APS subject to the Receiver's consent or Court approval;
 - iv. advised the Receiver that he was looking at refinancing options for the Arizona Real Property - even after he had already entered into the APS; and
 - v. did not disclose that he had entered into the APS until 8 days after it had been executed notwithstanding there was an ongoing dialogue with the Receiver and Davies' counsel at the time.
2. Declining to admit the fresh evidence could lead to a substantial injustice in result as the Divisional Court may hear the issues under appeal on the basis of an incomplete record.

* * *

All of which is respectfully submitted,



KSV KOFMAN INC.

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

Appendix “E”

SETTLEMENT AGREEMENT (this "Settlement Agreement")

AMONGST:

KSV KOFMAN INC., SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER 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., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC., AND NOT IN ITS PERSONAL CAPACITY OR ANY OTHER CAPACITY

(in such capacity, the "**Receiver**")

-and-

GRANT THORNTON LIMITED, SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND NOT IN ITS PERSONAL CAPACITY OR ANY OTHER CAPACITY

(in such capacity, the "**Trustee**")

-and-

JOHN DAVIES, IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST (THE "**FAMILY TRUST**") AND THE DAVIES ARIZONA TRUST (THE "**ARIZONA TRUST**")

(in all such capacities, "**Mr. Davies**")

-and-

JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE FAMILY TRUST

(in all such capacities, "**Ms. Davies**")

-and-

AEOLIAN INVESTMENTS LTD.

("Aeolian", and together with Mr. Davies and Ms. Davies, the "**Mareva Defendants**")

WHEREAS:

- A. Grant Thornton Limited was appointed as the Trustee pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued on October 27, 2016;
- B. KSV Kofman Inc. was appointed as the Receiver pursuant to Orders of the Court issued on February 2, 2017, April 28, 2017, May 2, 2017, January 9, 2018 and May 30, 2018;
- C. The Receiver filed a notice of action in the Court on June 6, 2017, bearing Court File No. CV-17-11822-00CL (the “**Original Action**”), against Mr. Davies (solely in his personal capacity) and Aeolian;
- D. The Receiver filed a statement of claim in the Original Action, which was subsequently amended to name additional defendants, including Mr. Davies (in his additional capacity as trustee of both the Arizona Trust and the Family Trust), Ms. Davies, and Gregory Harris solely in his capacity as trustee of the Family Trust (in such capacity, “**Mr. Harris**”);
- E. On August 30, 2017, the Court granted a Mareva injunction as against the Mareva Defendants and Mr. Harris in the Original Action, which restricts them, including the Arizona Trust, from selling, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with any of their assets, wherever situate worldwide (the “**Mareva Injunction**”);
- F. The Arizona Trust owned real property located at 35411 North 66th Place, Carefree, Arizona, 85377 (the “**Arizona Real Property**”), which, on or about November 7, 2018, was sold by the Arizona Trust for USD\$1,650,000 along with the furnishings situated on the Arizona Real Property for a further USD\$150,000. The net proceeds generated from the sale (after paying realtor commissions and a mortgage and a lien that were registered against the Arizona Real Property) amount to USD\$862,568, which amount has since been reduced by virtue of Mr. Davies accessing living expenses of CDN\$7,500 per month pursuant to a Court-approved exemption to the Mareva Injunction. The total amount of net proceeds currently remaining from the sale amounts to USD\$828,171.71 (the “**Proceeds**”), of which USD\$580,671.71 is currently being held in Dentons Canada LLP’s (“**Dentons**”) trust account, with the balance, being USD\$247,500, currently being held by the United States Internal Revenue Service (the “**IRS**”) in respect of a potential withholding tax obligation. Dentons, counsel for Mr. Davies, has provided the Receiver’s counsel with information from Mr. Davies’ agent in the United States, Mary-Heather Styles of Transatlantic Tax Inc., who has advised that the full amount of USD\$247,500 will ultimately be released by the IRS. The Proceeds represent most of the Mareva Defendants’ assets known to the Trustee and the Receiver;
- G. The Trustee and the Receiver commenced a further action in the Court by the issuance of a statement of claim on October 3, 2018 bearing Court File No. CV-18-606314-00CL (the “**Expanded Action**”) against the Mareva Defendants and the following additional parties: Mr. Harris (in his personal capacity and in his capacity as trustee of the Family Trust), Harris + Harris LLP, Nancy Elliot, Elliot Law Professional Corporation, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, The Traditions

Development Company Ltd., David Arsenault, James Grace, Bhaktraj Singh a.k.a. Raj Singh, RS Consulting Group Inc., Tier 1 Transaction Advisory Services Inc., Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc. and Michael Cane (collectively, in any and all capacities, and together with any and all other parties or potential parties in the Expanded Action and in any other claims and proceedings, the **"Defendants"**);

- H. In the Expanded Action, the Trustee and the Receiver seek an interim, interlocutory and permanent Mareva injunction as against the Mareva Defendants and Mr. Harris in his capacity as trustee of the Family Trust;
- I. The Receiver intends to consolidate the Original Action with the Expanded Action;
- J. On January 19, 2018, the Ontario Superior Court of Justice (Divisional Court) (the **"Divisional Court"**) granted leave to Mr. Davies and Aeolian to appeal the Mareva Injunction;
- K. The appeal of the Mareva Injunction (the **"Appeal of the Mareva Injunction"**) is currently scheduled to be heard on April 17, 2019;
- L. The Trustee and the Receiver, on the one hand, and the Mareva Defendants, on the other hand, wish to resolve solely the Mareva Injunction and the Appeal of the Mareva Injunction (collectively, the **"Mareva Issues"**) in accordance with the terms set out below;

NOW THEREFORE in consideration of the promises set forth herein, the mutual covenants and agreements contained herein, and for further and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- 1. **Recitals.** The above recitals are true and accurate, and form part of this Settlement Agreement.
- 2. **Adjournment of Appeal of the Mareva Injunction.** As soon as possible following the execution of this Settlement Agreement, and in any event prior to April 17, 2019, Mr. Davies and Aeolian shall adjourn the Appeal of the Mareva Injunction on the consent of the Receiver to a mutually agreeable date. If necessary, counsel for Mr. Davies and Aeolian and counsel for the Receiver shall attend at Divisional Court to speak to the adjournment.
- 3. **Court Approval.** Provided that Mr. Davies and Aeolian adjourn the Appeal of the Mareva Injunction in accordance with the terms and timelines provided by paragraph 2 of this Settlement Agreement, then, subject only to paragraph 4 of this Settlement Agreement, the Receiver and the Trustee shall apply forthwith to the Court for and recommend an order approving and giving full effect to this Settlement Agreement (the **"Order"**, and upon such Order being issued by the Court, the **"Effective Time"**).
- 4. **Asset Disclosure.** Prior to the Receiver and the Trustee seeking the Order from the Court, Mr. Davies, Ms. Davies, Aeolian, the Family Trust (through its designated trustee) and the Arizona Trust (through its designated trustee) shall each first swear

affidavits fully and accurately disclosing all of their assets wherever located (the "**Disclosure Affidavits**") and deliver such Disclosure Affidavits to the Receiver and the Trustee. If the assets disclosed by Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust in the Disclosure Affidavits are not limited to what each has previously disclosed to the Receiver, the Receiver and/or the Trustee may, in their discretion, decline to perform their obligations otherwise provided by paragraph 3 of this Settlement Agreement.

5. **Disbursement of the Proceeds.** Provided that the Order is granted by the Court, the parties to this Settlement Agreement (the "**Parties**") shall divide the Proceeds such that the Receiver shall receive 72.5% of the Proceeds and Mr. Davies shall receive 27.5% of the Proceeds. For greater clarity, in monetary terms, the Receiver shall receive USD\$600,424.49 and Mr. Davies shall receive USD\$227,747.22, subject to the Order being granted by the Court and subject to the additional terms set out below:
- (a) **Payment of Proceeds to Mr. Davies.** Mr. Davies shall be paid CAD\$150,000 (the "**Initial Payment**") from the Proceeds currently in Dentons' trust account immediately after the Effective Time, with the balance of Mr. Davies' share of the Proceeds to be paid from the amount currently held back by the IRS upon receipt by Dentons of such amount in compliance with the undertakings previously given to the Receiver regarding payment of this amount directly to Dentons. The exchange rate to be used for calculating the Initial Payment shall be the exchange rate applied by Bank of Montreal on the day the Initial Payment is made;
 - (b) **Payment of the Proceeds to the Receiver.** Following the Initial Payment, the Receiver shall be paid the balance of the Proceeds currently in Dentons' trust account immediately after the Effective Time, and, in any event, within no more than two business days after the Effective Time. Provided that the funds currently held back by the IRS are released in full, the balance of the Receiver's share of the Proceeds shall be paid from the released funds forthwith upon receipt by Dentons of such funds in compliance with the undertakings previously given to the Receiver regarding payment of this amount directly to Dentons and, in any event, within no more than two business days following receipt of such amount;
 - (c) **Authorization and Direction for Dentons Canada LLP.** This Settlement Agreement shall serve as Dentons' formal and irrevocable authorization and direction from Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust to transfer the funds to the Receiver as set out above without any further act, formality or instruction being required from any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust, the Arizona Trust, or any other party;
 - (d) **Pro Rata Distribution.** To the extent the funds currently held back by the IRS are not released in full as expected, the Receiver and Mr. Davies shall divide such proceeds according to their pro rata entitlement, having regard to the amounts already paid to both the Receiver and Mr. Davies on the initial distribution from Dentons' trust account. For greater certainty, the funds released by the IRS shall be divided so that the Receiver and Mr. Davies receive 72.5% and 27.5% of the total net proceeds of sale of the Arizona Real Property (to the extent possible, having regard to the quantum of funds released by the IRS). For further greater certainty, the quantum of the release of the IRS funds shall in no event entitle

either Mr. Davies or the Receiver to demand repayment of the initial payments made out of the proceeds currently held by Dentons contemplated by paragraphs 5(a) and (b) above; and

- (e) **No Admission of Liability.** The payments to be made hereunder shall be without any admission of liability. All liability is expressly denied by Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust.
6. **Lifting of the Mareva Injunction.** Provided that the Order is granted by the Court, then, following the Effective Time and the Receiver's receipt of all payments contemplated in this Settlement Agreement, the Mareva Injunction will be terminated on consent on a without costs basis, subject to the additional terms set out below:
- (a) If any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust or the Arizona Trust is ever found to have made any misrepresentation in any of the Disclosure Affidavits, the Trustee and/or the Receiver shall be entitled to immediately bring a new motion for a Mareva injunction against the Mareva Defendants on the express consent of all of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust. In that regard, Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust each hereby provides such consent and shall each take any and all additional steps as may be necessary or reasonable to give full effect to this subparagraph;
 - (b) Each of Mr. Davies, Ms. Davies, Aeolian, the Family Trust (through its designated trustee) and the Arizona Trust (through its designated trustee) shall report to the Receiver and the Trustee on a quarterly basis regarding all of their respective direct and indirect earnings for the previous quarter. Should any of their earnings, on an individual basis, exceed CAD\$50,000 for any given quarter, the relevant party or parties shall provide a general accounting to the Receiver and the Trustee describing what they did with all of that quarter's earnings, including, without limitation, details of whether any earnings were sent out of the Province of Ontario or used to acquire assets outside of the Province of Ontario. Failure by any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust (through its designated trustee) and the Arizona Trust (through its designated trustee) to provide a quarterly report within 15 calendar days of the end of each quarter (beginning with respect to the quarter ending on June 30, 2019), and to cure such failure within 7 calendar days' notice provided by the Receiver or the Trustee of the failure to report, shall entitle the Trustee and/or the Receiver to immediately bring a new motion for a Mareva injunction on the express consent of all of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust. In that regard, Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust each hereby provides such consent and shall each take any and all additional steps as may be necessary or reasonable to give full effect to this subparagraph. Notwithstanding the obligations in this paragraph, there is no reporting obligation on: (i) any assets, properties or undertakings disclosed in the Disclosure Affidavits, or (ii) Mr. Davies' share of the Proceeds; and
 - (c) The Receiver, the Trustee or both of them shall be able and entitled to bring a new motion for a new Mareva injunction against any or all of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and/or the Arizona Trust should the information in any of the accounting described above demonstrate that any of Mr. Davies, Ms.

Davies, Aeolian, the Family Trust or the Arizona Trust was or is dissipating assets for the purpose of frustrating a potential judgment in any outstanding litigation by the Receiver or the Trustee against any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and/or the Arizona Trust. The evidence to be used on any such motion brought under this subsection 6(c) of this Settlement Agreement will be restricted only to new information acquired after the Effective Time. For greater clarity, any or all of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and/or the Arizona Trust shall be entitled to fully resist any motion brought under this subsection 6(c) of this Settlement Agreement.

7. **Amendment of statement of claim in the Expanded Action.** Provided that the Order is granted by the Court, then, following the Effective Time and the Receiver's receipt of all payments contemplated in this Settlement Agreement, the Receiver and the Trustee shall amend their statement of claim in the Expanded Action (and, if necessary, the Receiver shall also amend its statement of claim in the Original Action) to no longer seek injunctive relief against Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust (including Mr. Harris solely in his capacity as trustee of the Family Trust), and will also remove the related allegations in paragraphs 263-266 of the Expanded Action. Aside from this amendment to the statement of claim in the Expanded Action (and, if necessary, the Original Action), nothing in this Settlement Agreement shall otherwise affect in any way, or be deemed to affect in any way, the Expanded Action or any related or other proceedings. For greater clarity, and regardless of whether the Order is granted by the Court, nothing in this Settlement Agreement shall be construed or deemed in any way to constitute a release of any kind in respect of any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust, the Arizona Trust, Mr. Harris or any of the Defendants.
8. **Withdrawal of Appeal.** Provided that the Order is granted by the Court, then following the Effective Time, Mr. Davies and Aeolian shall forthwith withdraw the Appeal of the Mareva Injunction on the consent of the Receiver, on a without costs basis. For greater clarity, Mr. Davies and Aeolian shall not forego any of their appeal rights unless and until the Order is granted by the Court..
9. **Further Terms.**
 - (a) The Parties hereby declare, represent and warrant that they have each consulted with and been advised by independent legal counsel with respect to the terms of the settlement set forth herein, that they have read and fully understand all of the terms of this Settlement Agreement, and that they enter into this Settlement Agreement freely and voluntarily, without coercion or duress, and without reliance upon any representation, warranty, condition or agreement, whether written or oral, other than as expressly set out or referred to herein.
 - (b) The Parties shall execute all documents and take all steps as are necessary or reasonable to accomplish the objectives of this Settlement Agreement and give full effect to this Settlement Agreement.
 - (c) This Settlement Agreement may not be altered, amended or modified except by written agreement of the Parties. This Settlement Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws

of Canada applicable therein. Any dispute arising out of or in connection with this Settlement Agreement shall be exclusively and finally determined by the Court.

- (d) The terms of this Settlement Agreement shall enure to the benefit of, and be binding upon, the Parties and their respective heirs, successors and assigns, as applicable.
- (e) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all other prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof.
- (f) The Parties acknowledge that KSV Kofman Inc. and Grant Thornton Limited are entering into this Settlement Agreement solely in their respective capacities as the Receiver and the Trustee and shall have absolutely no personal or corporate liability under or as a result of this Settlement Agreement in any respect.
- (g) This Settlement Agreement may be executed in counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

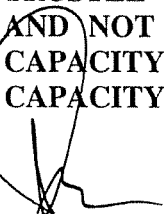
IN WITNESS WHEREOF, the parties hereto have duly executed this Settlement Agreement:

[Remainder of Page Intentionally Left Blank]

GRANT THORNTON LIMITED,
SOLELY IN ITS CAPACITY AS
THE COURT-APPOINTED
TRUSTEE OF TEXTBOOK
STUDENT SUITES (525
PRINCESS STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (555
PRINCESS STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (ROSS
PARK) TRUSTEE
CORPORATION, 2223947
ONTARIO LIMITED, MC
TRUSTEE (KITCHENER) LTD.,
SCOLLARD TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (774
BRONSON AVENUE) TRUSTEE
CORPORATION, 7743718
CANADA INC., KEELE
MEDICAL TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (445
PRINCESS STREET) TRUSTEE
CORPORATION AND
HAZELTON 4070 DIXIE ROAD
TRUSTEE CORPORATION,
AND NOT IN ITS PERSONAL
CAPACITY OR ANY OTHER
CAPACITY



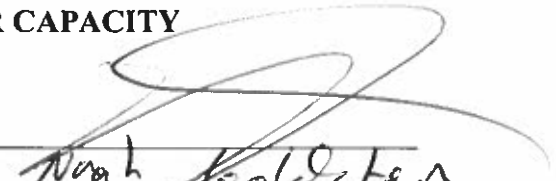
Witness Name: David Goldblatt



Name: J. KNEIBER
Title: Sr. Vice President

**KSV KOFMAN INC., SOLELY IN ITS
CAPACITY AS THE COURT-
APPOINTED RECEIVER 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., TEXTBOOK (445
PRINCESS STREET) INC.,
MCMURRAY STREET INVESTMENTS
INC., TEXTBOOK (774 BRONSON
AVENUE) INC., AND TEXTBOOK
ROSS PARK INC., AND NOT IN ITS
PERSONAL CAPACITY OR ANY
OTHER CAPACITY**

Witness Name:  Jonathan Joffe

Name: 
Title: Managing Director

Witness Name: _____

**JOHN DAVIES, in his personal capacity
and in his capacity as trustee of the
Davies Family Trust and the Davies
Arizona Trust**

Witness Name: _____

**JUDITH DAVIES, in her personal
capacity and in her capacity as trustee of
the Davies Arizona Trust**

AEOLIAN INVESTMENTS LTD.

Witness Name: _____

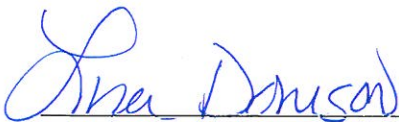
Name: _____
Title: _____
I have authority to bind the corporation.

KSV KOFMAN INC., SOLELY IN ITS
CAPACITY AS THE COURT-
APPOINTED RECEIVER 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., TEXTBOOK (445
PRINCESS STREET) INC.,
MCMURRAY STREET INVESTMENTS
INC., TEXTBOOK (774 BRONSON
AVENUE) INC., AND TEXTBOOK
ROSS PARK INC., AND NOT IN ITS
PERSONAL CAPACITY OR ANY
OTHER CAPACITY

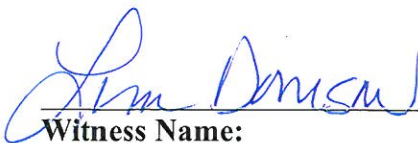
Witness Name:



Witness Name:



Witness Name:



Witness Name:

Name:
Title:

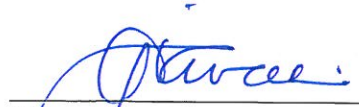


JOHN DAVIES, in his personal capacity
and in his capacity as trustee of the
Davies Family Trust and the Davies
Arizona Trust



JUDITH DAVIES, in her personal
capacity and in her capacity as trustee of
the Davies Arizona Trust

AEOLIAN INVESTMENTS LTD.



Name:
Title:

I have authority to bind the corporation.