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December 20, 2013

Via Email (pgriffin@lsrsg.com)

Mr. Peter H. Griffin Esq.
Managing Partner
Lenczner Slaght Royce Smith Griffin LLP
Suite 2600, 130 Adelaide Street West
Toronto ON M5H 3P5

Dear Mr. Griffin:

Re: 1500 Don Mills

We received your letter this morning and can confirm that Otera would welcome a consensual resolution that avoids a contested motion on December 24, 2013.

With that objective in mind, it appears important to reiterate, once again, the background context and Otera's position (as reflected in the various discussions and communications over the past month):

- Otera is the first mortgagee of 1500 Don Mills Road, Toronto. Monetary and other serious defaults have occurred under the mortgage, above and beyond the further defaults triggered by the "manager" order obtained by your clients without notice to Otera. These serious defaults were outstanding prior to the date of the shareholder manager order.
- The shareholder manager order was obtained in the context of a shareholder dispute and completely disregards Otera's rights as a first mortgagee, whose mortgage is in default. The shareholder manager order was obtained without even the courtesy of prior notice to Otera and, based on the materials provided to the court in support of this highly prejudicial relief, it is questionable whether the court was appropriately informed of the relevant background.
- To the extent that there are legitimate disputes between the shareholders necessitating the appointment of a shareholder "manager" over the relevant shareholder investee entities to protect the respective interests of the competing shareholders, what would have been far more appropriate in Otera's view to balance and respect the rights of the stakeholders, was to seek an order of the following nature:
 - A "manager" appointed of the shareholder investee entity's interests, subject to the rights of prior-ranking creditors (e.g. mortgagees). In other words, the rights of mortgagees would be respected – there would be no "priming" charges and there would be no general stay of proceedings in respect of secured creditors.
 - At most, there would be a limited stay of proceedings in relation to events of default triggered solely by the making of the shareholder manager order itself, but the

shareholder investee entities and the “manager” be directed to comply with mortgages, leases, etc. and exposed to the consequences of any other pre-existing or future defaults unless addressed to the satisfaction of the relevant mortgagee.

- Appropriate “ring-fencing” would be directed and maintained, to respect and protect the interests of each separate group of stakeholders as they relate to specific and very separate properties.
- Notwithstanding the seemingly conscious choice to negatively impact Otera’s clear rights as a first mortgagee by way of the shareholder manager order, Otera approached your clients (through you) and the “manager” (through its counsel), with a proposal for a consensual resolution more than three weeks ago. In doing so, Otera attempted to be flexible and open-minded about finding a consensual path forward, provided that its interests were appropriately protected. In this regard, it even took the initiative, to assist your clients and the manager (given their apparent constraints in terms of their ability to deal with matters promptly), by proposing and drafting the framework to move forward.
- Nearly four weeks have passed since Otera learned of the shareholder manager order and we first contacted you. The fact that your clients and the manager appear not to have been in a position to deal promptly with Otera’s proposal underscores one of the many serious concerns that Otera has had about the way your clients have approached this matter and what can be reasonably expected if the existing regime is allowed to continue.
- Not to put too fine a point on it, but despite various conversations and, even more importantly, draft materials provided to your clients and the manager, it appears that your clients still misapprehend the position of Otera and protections it requires. Further, your clients are well-aware of Otera’s dismay to learn that the manager had taken proceeds from Otera’s property (and three other properties) to pay the manager’s costs in respect of the shareholders dispute generally.

With this important background context in mind, Otera is prepared to proceed on the following basis:

1. The shareholder manager order would be varied, pursuant to an order in the form attached (the “Property-Specific Order”) that, among other things, provides for the following:
 - (i) the stay of proceedings will not apply to Otera in respect of its borrowers and 1500 Don Mills, Toronto;
 - (ii) the “priming” charges are subordinated to Otera’s first mortgage in respect of the property;
 - (iii) appropriate “ring-fencing” is ordered with respect to the receipts from, and expenses relating to the property; and
 - (iv) the manager is directed to consult with Otera relating to material matters affecting the property and to take certain steps, including the continuing engagement of a property manager satisfactory to Otera and the commencement of a sale process acceptable to Otera, with consent rights in favour of Otera (to

the extent that Otera does not exercise its enforcement rights and leaves the shareholder manager in possession and control of the property)

2. Otera would enter into a forbearance agreement with the shareholder manager, agreeing to forebear from exercising its rights in respect of the pre-existing defaults for a limited period of time to enable the shareholder manager to sell the property pursuant to an acceptable sale process with a view to paying out Otera and realizing any surplus proceeds for the benefit of stakeholders.

If this approach is acceptable to your clients, please let us know without delay and we will prepare a simple forbearance agreement. In that regard, you can expect that the draft forbearance agreement will contain terms generally similar to prior draft agreements provided to you (without duplicating the Property-Specific Order).

If acceptable arrangements are not reached with your clients, Otera intends to proceed with its motion on December 24 and at such motion seek two orders:

- (i) a Property-Specific Order; and
- (ii) if that order is made, an order appointing a property-specific receiver, pursuant to a form of court order based very closely on the model receivership order (in this regard, we understand that some stakeholders may have a preference for Otera to proceed by way of a court receivership rather than private receivership and, to accommodate those parties, Otera is content to proceed in this fashion).

Please let us know of your client's decision as soon as possible.

Yours truly,

McCarthy Tétrault LLP



Jamey Gage

JDG/sa

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR
JUSTICE NEWBOULD

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TUESDAY, THE 24TH
DAY OF DECEMBER, 2013

B E T W E E N :

DBDC SPADINA LTD.
AND THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO

Applicants

- and -

NORMA WALTON, RONAULD WALTON,
THE ROSE & THISTLE GROUP LTD. and EGLINTON CASTLE INC.

Respondents

- and -

THOSE CORPORATIONS LISTED ON SCHEDULE B HERETO,
TO BE BOUND BY THE RESULT

**PROPERTY-SPECIFIC ORDER
(1500 Don Mills Road, Toronto)**

THIS MOTION made by Otera Capital Inc. as agent of CDPQ Mortgage Investment Corporation (“**Otera**”) for an order, among other things, varying and/or amending and/or setting aside the order dated November 5, 2013 in these proceedings (the “**Manager Order**”) as it relates to the Property and the Borrower (each as defined herein), subordinating the Manager’s Charge and the Manager’s Borrowing Charge (each as defined in the Manager Order) to the First Mortgage (as defined herein), and granting other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of Otera dated December 12, 2013, the Motion Record of Otera dated December 16, 2013, including the affidavit of Robert Duranceau and the Exhibits attached thereto, and • and on hearing the submissions of counsel for the Schonfeld Inc. Receivers + Trustees (the “**Manager**”), Otera and •, no one appearing for any other party on the service list although duly served as appears from the affidavits of service of Swee Teen Yeoh sworn December •, • and •, 2013,

SERVICE

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

DEFINITIONS AND INTERPRETATION

2. THIS COURT ORDERS that, for the purposes of this Order (and in addition to terms defined elsewhere herein), the following terms shall have the following meanings:

- (a) “**Approved APS**” means an offer to purchase the Property that has been approved by Otera prior to its acceptance by the Manager and any application to the Court by the Manager for approval thereof;
- (b) “**Approved Budget**” means a Cash Flow Budget approved by Otera pursuant to sub-paragraph 4(d)(iv) hereof;
- (c) “**Borrower**” means El-Ad (1500 Don Mills) Limited and Donalda Developments Ltd.;
- (d) “**Cash Flow Budget**” means a rolling 13-week cash flow budget for the Property, together with a variance report in respect of the portion of the Manager Control Period that has passed as of the date of such budget compared to the prior Approved Budget, prepared by the Manager or Property Manager, as the case may be including any updated cash flow budget and variance report delivered to Otera pursuant to sub-paragraph 4(d)(iv) hereof in each case in a form satisfactory to Otera
- (e) “**Court**” means the Ontario Superior Court of Justice, Commercial List;
- (f) “**First Mortgage**” means, collectively:

- (i) the commitment letter between Otera and the Borrower dated November 12, 2012, as amended;
 - (ii) the charge/mortgage in the original principal amount of \$31 million, receipted as AT3195767 on December 12, 2012; and
 - (iii) all other security agreements and other documents in connection therewith;
- (g) **“First Mortgage Obligations”** means all debts, liabilities and other obligations owing to Otera pursuant to the First Mortgage, including all principal, interest and costs;
- (h) **“Manager Control Period”** means the period commencing on the date of this Order and terminating on the date the Property-Specific Receiver requests, by notice in writing, possession and control of the Property from the Manager (such possession and control to be provided in accordance with the terms of the Property-Specific Receivership Order).
- (i) **“Other Properties”** means all of the lands, buildings and other property subject to the Manager Order, other than the Property;
- (j) **“Property”** means the lands municipally known as 1500 Don Mills Road, Toronto, Ontario; the buildings thereon; all personal property of the Borrower located at or relating to such lands and buildings; and all other property subject to the mortgage and security of Otera pursuant to the First Mortgage;
- (k) **“Property Account”** means a separately designated trust bank account, at a financial institution acceptable to Otera, in the name of the Manager, into which all Property Revenues (and only Property Revenues) are deposited and pursuant to which the Manager will hold all Property Revenues in trust, until disbursed from such account in accordance with this Property-Specific Order;
- (l) **“Property Expenses”** means the costs and expenses directly relating to the management, maintenance, operation and sale of the Property, as reflected and approved in the Approved Budget or otherwise approved in writing by Otera, including the Property-Specific Costs (but for greater certainty, excluding any allocation of the fees, costs and expenses associated with the Shareholder Dispute Proceedings or the Other Properties);
- (m) **“Property Manager”** means Briarlane Property Rental Management Inc. or, to the extent a change of property management is necessary or appropriate in the view of Otera, in its discretion, another professional and reputable property manager retained by the Manager pursuant to paragraph 4(c) hereof;
- (n) **“Property Revenues”** means all rent, parking fees, income, receipts, revenues and other proceeds from or in respect of the Property;

- (o) **“Property-Specific Costs”** means the reasonable fees and disbursements of the Manager incurred directly in connection with the management, maintenance, operation and sale of the Property and the performance of its obligations under this Order, including any fees and disbursements of the Property Manager and the Sales Agent (to the extent not paid from the proceeds of sale of the Property);
- (p) **“Property-Specific Receiver”** means FTI Consulting Canada Inc. in its capacity as receiver of the Property (including the Property Revenue) pursuant to the Property-Specific Receivership Order;
- (q) **“Property-Specific Receivership Order”** means an order of the Court made on an application by Otera appointing a receiver over the Property (including the Property Revenue) in a form satisfactory to Otera;
- (r) **“Sale Approval Order”** means one or more orders of the Court, in form and content reasonably satisfactory to Otera, among other things:
 - (i) approving an Approved APS; and
 - (ii) authorizing and directing the Manager to pay the proceeds of sale of the Property firstly to Otera on account of the First Mortgage Obligations until satisfied in full and thereafter, to the extent of any remaining proceeds, to the Manager or as the Court may otherwise direct;
- (s) **“Sale Process”** means a process, approved by Otera pursuant to paragraph 4(e)(ii) hereof, acting reasonably, by which:
 - (i) the Property will be advertised and marketed for sale;
 - (ii) offers for the purchase of the Property will be solicited from potential purchasers;
 - (iii) any such offers are to be submitted and evaluated; and
 - (iv) the successful offer, if any, will be selected and the Sale Approval Order will be sought,with a view to, among other things, realizing sufficient proceeds to repay the First Mortgage Obligations in full, in cash, on the closing of the sale of the Property;
- (t) **“Sales Agent”** is defined in Section 4(e)(i);
- (u) **“Shareholder Applicants”** means DBDC Spadina Ltd. and the other corporate applicants in the application in the Ontario Superior Court having court file no. CV-13-10280-00CL;

- (v) **“Shareholder Dispute Proceedings”** means the court proceedings between the Shareholder Applicants and the Shareholder Respondents, including the proceedings in which the Manager Order was made;
- (w) **“Shareholder Respondents”** means Norma Walton, Ronauld Walton, The Rose & Thistle Group Ltd. and Eglinton Castle Inc.

3. THIS COURT ORDERS that capitalized terms used in this Order and not otherwise defined herein have the meanings given to them in the First Mortgage.

PROPERTY-SPECIFIC MATTERS

4. THIS COURT ORDERS that the Manager Order is hereby amended to provide as follows in respect of and in connection with the Property (including the Property Revenues), the Borrower and Otera, which terms shall govern to the extent of any conflict or inconsistency between these terms and the terms of the Manager Order or any other Order in the Shareholder Dispute Proceedings:

- (a) the stay of proceedings pursuant to the Manager Order in respect of the Borrower and the Property does not apply to Otera, and Otera is permitted to exercise all of its rights and remedies against the Borrower or the Property (including the Property Revenues) pursuant to the First Mortgage, at law and in equity without further notice, including that Otera may accelerate all First Mortgage Obligations not already due and payable and demand payment of all First Mortgage Obligations by notice to the Manager, for and on behalf of the Borrower;
- (b) the Manager’s Charge and the Manager’s Borrowings Charge (each as defined in the Manager Order) will rank subordinate in priority to the First Mortgage in respect of the Property (including the Property Revenue) (in addition to any other charges to which it ranks subsequent in priority as provided in the Manager Order);
- (c) Property Management – With respect to the management of the Property:
 - i. the Manager shall continue to engage Briarlane Property Rental Management Inc. to manage the Property on terms acceptable to Otera or, to the extent a change of

property management is necessary or appropriate in the view of Otera, in its discretion, the Manager shall engage another professional and reputable property manager without delay, such agent and the terms of its engagement to be subject to the prior approval of Otera; and,

- ii. at all times throughout the Manager Control Period, all appropriate efforts shall be taken by the Manager for the purposes of managing and maintaining the Property in a commercially reasonable manner and in a good state of repair in accordance with usual and accepted proper industry practice so as to maintain the value and utility of such assets and to comply with all leases with tenants of the Property.

(d) Treatment of Property Revenues – With respect to treatment of Property Revenue during the Manager Control Period:

- i. the Manager shall establish the Property Account on or prior to December 27, 2013 (to the extent that the account currently being used by the Manager in respect of the Property does not qualify as a “Property Account” to the satisfaction of Otera, acting reasonably);
- ii. the Manager shall determine the amount of, and transfer to the Property Account without delay, all Property Revenues received by it from and after its appointment or of which it has taken control, less only Property Expenses, to the extent that it has not already done so, and the Manager shall provide a full accounting thereof to Otera;
- iii. all Property Revenues shall be deposited directly into the Property Account, and shall not be commingled with any other funds;
- iv. no later than Tuesday of every second week during the Manager Control Period, the Manager shall deliver an updated Cash Flow Budget to Otera in respect of the next 13 weeks (including the then current week) for approval by Otera acting reasonably, with the accompanying variance analysis to include actual results during the Manager Control Period to the prior Friday;

- v. all Property Expenses shall only be incurred, and all disbursements shall only be made from the Property Account, in strict accordance with the Approved Budget;
 - vi. the Manager shall pay when due, from the Property Account, all Property Expenses owing by the Borrower to arm's length creditors on account of taxes or other amounts that, if not paid, would have the benefit of a lien, charge or other encumbrance ranking in priority to the First Mortgage;
 - vii. during the Manager Control Period, the Manager may pay Property Expenses from the Property Account from time to time in accordance with and subject to compliance with the Approved Budget;
 - viii. on the first day of each month (or the first business day thereafter if the first day of the month is not a business day), the Manager shall pay all amounts then in the Property Account to Otera for application to the First Mortgage Obligations, less only a reasonable reserve for future Property Expenses to which Otera has agreed pursuant to the Approved Budget;
 - ix. the Manager shall not withdraw, transfer or otherwise use Property Revenues or amounts in the Property Account except as expressly permitted by paragraph 4(d) hereof;
 - x. without limitation to sub-paragraph 4(d)(ix) hereof, the Manager shall not pay any claims against the Borrower that arose prior to the date of the Manager Order, other than the First Mortgage Obligations, without the consent of Otera; and
 - xi. the Manager shall provide Otera with full particulars of the Property Account and all Property Revenues and Property Expenses from time to time upon request of Otera.
- (e) Sale Process – Throughout the Manager Control Period and so long as the Manager remains in possession and control of the Property, the Manager shall develop and implement a Sales Process as follows and take the steps set out below in relation thereto:

- i. the Manager shall engage one or more professional and reputable agents to conduct the Sale Process (collectively, the “**Sales Agent**”) without delay and in any event on or before January 6, 2014, such agent(s) and the terms of its or their engagement(s) to be subject to the prior approval of Otera and to include the assignment of such retainer to the Property-Specific Receiver at the end of the Manager Control Period;
- ii. the Manager and the Sales Agent shall develop the Sales Process in consultation with and subject to the approval of Otera;
- iii. with the assistance of the Sales Agent, the Manager shall commence the Sale Process without delay, and in any event on or before January 30, 2014;
- iv. unless Otera agrees otherwise in writing, the Manager shall only accept and submit to Court for approval an offer to purchase the Property if the offer meets the following conditions, among other considerations:
 - (a) it results in the payment in full at closing, in cash, of the First Mortgage Obligations;
 - (b) the purchaser provides evidence reasonably satisfactory to the Manager, after consultation with Otera, of the purchaser’s financial ability to make such payment at closing;
 - (c) it has a closing date on or before April 30, 2014 or, if a Sale Approval Order in respect of an Approved APS has been successfully obtained by the Manager prior to that date, June 13, 2014 (or such later date, if any, to which Otera agrees in writing, in its sole and absolute discretion); and,
 - (d) in the reasonable judgment of the Manager, after consultation with Otera, it contains no conditions to closing other than customary closing conditions that are reasonably likely to be satisfied on or before the closing date;

- v. upon approval of an Approved APS by Otera, the Manager shall bring an application to Court for a Sale Approval Order without delay thereafter, on notice to Otera, and will provide Otera with a reasonable opportunity to comment on its proposed motion materials before the application is brought;
 - vi. on a timely basis, the Manager shall provide Otera with regular updates on the status of the Sale Process, including copies of all information, reports and written communications by the Sales Agent to the Manager from time to time and copies of all offers received by the Sales Agent or the Manager; and
 - vii. the Sales Agent is hereby authorized to cooperate fully with Otera and to provide Otera on a timely basis with all information and documentation in its possession from time to time relating to the status of the Sale Process;
- (f) throughout the Manager Control Period, the Manager on behalf of the Borrower will observe and perform all of the terms of the First Mortgage;
 - (g) from time to time, Otera may, on reasonable notice to the Manager (during the Manager Control Period) and Property Manager, inspect the Property during normal business hours or at such other times as may be agreed between Otera, the Manager (during the Manager Control Period) and the Property Manager;
 - (h) during the Manager Control Period, the Manager will give written notice to Otera, without delay, of:
 - i. any material adverse change in the operations, condition or prospects of the Property;
 - ii. any investigation, proceeding, order, claim or notice by any governmental agency with respect to any violation or alleged violation of applicable laws in relation to the Property; and,
 - iii. any default or other event that, with the passage of time or giving of notice or both would constitute a default under the First Mortgage, which notice shall be

provided immediately upon learning of such default or other event and which shall include a description thereof;

- (i) all costs and expenses of Otera, including its legal fees and disbursements incurred to date and to be incurred in connection with this Property-Specific Order and with the Manager Order, will be added to and form part of the First Mortgage Obligations;
- (j) for greater clarity, Otera is not required to deliver a notice under section 244 of the *Bankruptcy and Insolvency Act* (Canada)(the “**BIA**”) to enforce its security as a result of the appointment of the Manager, which is a receiver for purposes of section 244 of the BIA; and
- (k) the Manager may not consent to amendments to the Manager Order that relate to the Property or that affect the rights or interests of Otera in respect of the Property or under this Property-Specific Order or the First Mortgage without, in any such case, not less than seven days’ prior notice to Otera or upon such other notice, if any, as this Court may order.

5. THIS COURT ORDERS that any interested party (including Otera and the Manager) may apply to this Court to vary or amend this Order on not less than seven (7) days’ notice to any other party or parties likely to be affected by the order sought (which shall include Otera and the Manager) or upon such other notice, if any, as this Court may order.

DBDC SPADINA and NORMA WALTON, et And THOSE CORPORATIONS
LTD. et al. al. LISTED ON SCHEDULE B
HERETO

Court File No: CV-13-10280-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

PROPERTY-SPECIFIC ORDER
(1500 DON MILLS ROAD, TORONTO)

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