

TAB D

This is Exhibit "D" referred to in the  
affidavit of Robert Duranceau  
sworn before me, this 18<sup>th</sup>

LRO # 80 Charge/Mortgage

day of December, Received as AT3195780 on 2012 12 12 at 13:33

The applicant(s) hereby applies to the Land Registrar,

Page 1 of 10

### Properties

PIN 10117 - 0637 LT Interest/Estate Fee Simple  
Description PART LOT 10, CON. 3, EYS (CITY OF NORTH YORK) DESIGNATED AS PARTS 1, 2, 3,  
4, 5, 6, 7 & 8 ON PLAN 66R17662. SUBJECT TO TB981024, NY498108, NY765474,  
TB24553 & TB119624. CITY OF TORONTO  
Address 1500 DON MILLS ROAD  
TORONTO

ACOMMISSIONER FOR TAKING AFFIDAVITS OATHS



### Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name EL-AD (1500 DON MILLS) LIMITED  
Address for Service 30 Hazelton Avenue  
Toronto, ON M5R 2E2

I, Norma Walton, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

### Chargee(s)

Capacity

Share

Name CDPQ MORTGAGE INVESTMENT CORPORATION  
Address for Service 413 St. Jacques Street  
Suite 700  
Montreal, Quebec H2Y 1N9  
Loan No. 2012-0358

### Statements

Schedule: See Schedules

### Provisions

Principal	\$ 31,000,000.00	Currency	CDN
Calculation Period	semi-annually, not in advance		
Balance Due Date	2018/01/01		
Interest Rate	3.85%		
Payments	\$ 160,555.33		
Interest Adjustment Date	2013 01 01		
Payment Date	1st day of each and every month		
First Payment Date	2013 02 01		
Last Payment Date	2018 01 01		
Standard Charge Terms	201202		
Insurance Amount	full insurable value		
Guarantor	Norma Walton and Ronald Walton		

### Additional Provisions

See Schedules

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 10

**Signed By**

Paul Ashley Muchnik

40 King Street West, Suite 2100  
Toronto  
M5H 3C2acting for  
Chargor(s)

Signed

2012 12 11

Tel 4168695300

Fax 4163608877

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

CASSELS BROCK &amp; BLACKWELL LLP

40 King Street West, Suite 2100  
Toronto  
M5H 3C2

2012 12 12

Tel 4168695300

Fax 4163608877

**Fees/Taxes/Payment**

Statutory Registration Fee \$60.00

Total Paid \$60.00

**File Number**

Chargor Client File Number :

42929-41 (PM/PLF)

**SCHEDULE "A"**  
**ADDITIONAL PROVISIONS**

**1. STANDARD CHARGE TERMS**

The terms contained in this schedule are in addition to the terms contained in the Standard Charge Terms. In the event of any conflict between the terms contained in this schedule and those contained in the Standard Charge Terms, the terms contained in this schedule shall, to the extent of the conflict, prevail.

**2. DEFINITIONS**

In this schedule, the following definitions apply:

- (a) **Balance Due Date** means the first day of January, 2018;
- (b) **Beneficial Owner** shall have the same meaning as set out in the Commitment Letter;
- (c) **Charge** means this Charge/Mortgage of Land made pursuant to the *Land Registration Reform Act* and any amendments thereto and including the Standard Charge Terms;
- (d) **Chargee** shall mean CDPQ Mortgage Investment Corporation;
- (e) **Chargor** shall mean El-Ad (1500 Don Mills) Limited;
- (f) **Commitment Letter** means the commitment letter issued by Otera Capital and addressed to Donalda Investments Ltd. dated November 12, 2012 and accepted by the borrower and Guarantor setting out the terms of the loan secured by this Charge, as it may be further amended, modified, renewed, replaced, extended, supplemented and restated from time to time;
- (g) **Costs** shall include but not be limited to all of the fees, costs, charges, losses, damages and expenses incurred by the Chargee as a direct or indirect consequence of granting the loan secured by this Charge including, without limitation, all expenses incurred in the construction, preservation, maintenance, repair, insuring and realization of the security contained herein, and all legal costs incurred by the Chargee as between a solicitor and his own client;
- (h) **Guarantor** shall collectively mean Norma Walton and Ronald Walton;
- (i) **Interest** means interest at the Interest Rate calculated semi-annually not in advance both before and after maturity, default, and judgment;
- (j) **Interest Adjustment Date** means the first day of January, 2013.
- (k) **Interest Rate** means the interest rate of 3.85% calculated semi-annually, not in advance, both before and after maturity, default and judgment;
- (l) **Monthly Payments** means the blended payments of principal and interest of \$160,555.33 made on the first day of each month;
- (m) **Principal Amount** means the principal amount of \$31,000,000.00 in lawful money of Canada as it may be increased or decreased prior to registration of a discharge of this Charge and as set in paragraph 2 herein;
- (n) **Property or Charged Property** means the lands described in the Charge to which this Schedule is attached and all buildings, fixtures and improvements now or hereafter brought or erected thereon; and

- (o) **Standard Charge Terms** means the set of Standard Charge Terms filed as No. 201202.
- (p) **Yield Maintenance Fee** means compensation for the loss on the return of funds allocated to the Principal Amount of the Charge being prepaid, shall be the greatest of the two following amounts between i) and ii) hereafter:
- (i) An amount equal to the amount by which:

The sum of the present value of all blended monthly instalments of principal and interest payable after the prepayment date and until the Balance Due Date and the present value of the principal balance which would be payable on the Balance Due Date, these present values shall be calculated using a discount rate equal to the bid-side yield listed in a Bloomberg screen at 11:00 AM. (Montreal time) on the Business Day immediately preceding the date of prepayment, on non-callable Government of Canada bonds having an equivalent term less 25 basis points; the "bid-side yield on non-callable Government of Canada bonds having an equivalent term" shall mean the bid-side yield to maturity, as determined by the Chargee, expressed as an annual rate of interest calculated semi-annually and not in advance, on a theoretical non-callable Government of Canada bond, payable in Canadian Dollars, obtained from the interpolation between the bid-side yield of a non-callable Government of Canada bond having a maturity closest to but prior to that of the Balance Due Date and of a non-callable Government of Canada bond having a maturity closest to but following the Balance Due Date.

Exceeds the Principal Amount of the Charge prepaid; and

- (ii) An amount equal to interest under the Charge in respect of a three month period calculated at the Interest Rate on the principal amount prepaid.

If, by operation of law or by acceleration of the Charge by the Chargee or for any reason whatsoever, the Chargor shall become entitled or obligated prior to the Balance Due Date, to prepay and does prepay the Charge or any part thereof, the Chargor shall also pay to the Chargee, in addition to all other amounts owing hereunder, the Yield Maintenance Fee described above.

## 2. LOAN AMOUNT

The Principal Amount of the Charge is Thirty-One Million (\$31,000,000.00) Dollars.

## 3. CHARGE

Upon the request of the Chargee, the Chargor hereby gives this Charge and charges the Property as security for full payment to the Chargee of the Principal Amount, Interest and all other amounts payable hereunder and as security for the observance and performance of all of the obligations of the Chargor to the Chargee pursuant to this Charge or otherwise.

## 4. MONTHLY PAYMENTS

Interest on the Principal Amount from time to time advanced prior to the Interest Adjustment Date, computed from the respective dates of such advances to the Interest Adjustment Date, shall, at the option of the Chargee, be deducted from the advances or paid by the Chargor at such time or times as the Chargee may require and such Interest may be so deducted or paid in advance; after the Interest Adjustment Date, the Principal Amount with Interest computed from the Interest Adjustment Date on the Principal Amount outstanding from time to time, shall become due and be paid in Monthly Payments as provided by this Charge and the balance, if any, of the Principal Amount and Interest shall become due and payable on the Balance Due Date. The Monthly Payments, when received, shall be applied firstly to outstanding Costs,

secondly to outstanding interest and the balance, if any, in reduction of the outstanding Principal Amount.

**5. PREPAYMENT**

The Charge is closed to prepayment during the Term of the Charge.

**6. PAYMENTS BY CHARGEÉ**

The Chargee may pay all premiums of insurance and all taxes, rates, levies, charges, assessments, utility and heating charges which shall from time to time fall due and be unpaid in respect of the Property and all costs, charges, legal fees (as between solicitor and his own client) and expenses as deemed necessary by the Chargee to preserve the Property and/or to realize upon the Chargee's security and all such payments shall be deemed Costs hereunder.

**7. COSTS**

Costs shall be forthwith due and payable by the Chargor to the Chargee and shall bear interest until fully paid.

**8. TAXES**

The Chargor shall pay to the Chargee on each date on which a monthly mortgage instalment is payable hereunder an additional amount, as estimated by the Chargee, to pay in full the instalments of Taxes as they fall due. The Chargor shall also pay to the Chargee on demand, from time to time, the amount, if any, by which the actual Taxes exceeds such estimated amounts. Herein, "Taxes" shall mean all taxes, duties, rates, imposts, assessments and other similar charges whether general or special, ordinary or extraordinary, foreseen or unforeseen and all related interest penalties and fines which at any time may be levied, assessed, imposed or be a lien on the Property or any part thereof. The Chargor shall promptly provide the Chargee with any invoices, bills, accounts or any other communication received from the taxing authority. The Chargee shall not be responsible for any late payment of Taxes and any penalties or interest charged by the taxing authority as a result thereof.

**9. INSURANCE PROVISIONS**

(a) In addition to the insurance provided for under the Standard Charge Terms, the Chargor, in accordance with the provisions of this paragraph, shall maintain during the term of the loan the following insurance coverage:

- 1) a broad form "all risks" insurance policy, including flood, earthquake, sewage back-up discharge and any other risks and perils that are generally included in an insurance, without having an exclusion for riot, containing the coverage contemplated in paragraph 4 below, if such coverage is not offered in a separate insurance policy, for an amount equal to the full gross replacement cost of all buildings and improvements located on the property with a "stated amount" clause (such gross replacement cost with a "stated amount" shall be deemed not to be less than the amount of the loan), the whole to the satisfaction of the Chargee. The proceeds payable under such policy shall be payable to the Chargee as first-ranking mortgage creditor, pursuant to a standard mortgage clause approved by the Insurance Bureau of Canada;
- 2) a boiler and machinery insurance policy covering any losses or damages caused by; (a) explosion/breakdown of boilers, of pressure vessels, of the air conditioning equipment, including electrical and mechanical equipments and installations, (b) the leakages of the fire protection system including sprinklers, the whole for an amount equal to the full gross replacement cost of all buildings and improvements located on the Property; such policy shall include rental income (Business interruption) insurance mentioned below if such coverage is not offered in a separate insurance policy. Such policy shall contain a standard mortgage clause approved by the Canadian Boiler and

Machinery Underwriters Association, with proceeds payable thereunder to the Lender as first-ranking mortgage creditor;

- 3) general liability insurance covering damages and injury arising at the Property or in the vicinity of the Property, in an amount satisfactory to the Chargee of not less than \$10,000,000 per occurrence; the Chargee to be named additional insured;
- 4) rental income insurance in an amount of not less than one hundred per cent (100%) of the gross annual rents (net annual rents plus operating costs) for a period of twenty-four (24) months, such gross annual rents estimated to be \$12,950,000; proceeds shall be payable thereunder to the Chargee as first-ranking mortgage creditor;
- 5) the cancellation provisions or alteration clauses in each of the above insurance policies shall require not less than thirty (30) days prior written notice to the Chargee. No co-insurance will be allowed. Save for the general liability insurance, each policy above shall contain a waiver by the insurer of all rights of subrogation or indemnity against the Chargee;
- 6) the Chargor shall provide the Lender, at least thirty (30) days before the expiry of any insurance policy, or before the cancellation notice has been received, with a proof of renewal or replacement of such insurance policy, otherwise the Lender may (without obligations) subscribe to another insurance policy and all the fees, premiums and other amounts payable by the Lender shall be immediately refunded by the Chargor to the Chargee;
- 7) the Chargor shall obtain all further and/or other insurance coverage required by the Chargee acting reasonably; and
- 8) All proceeds of insurance other than liability insurance, shall be paid directly to the Chargee and at the option of the Chargee, may either be applied on account of the Charge, whether or not the same may be due and payable, and interest thereon and any other sums payable in respect thereof, or held by its as part of the Chargee's security and, so long as the charger is not in default, may be subject to withdrawal by the charger in instalments, on a cost to complete basis, as the repair or replacement progresses, subject to the Chargee's receipt of appropriate certificates, opinions and other documents which may include, without limitation, cost consultant report, proof of payments, as required by its and the Chargee's counsel.

#### 10. DUE ON SALE OR CHANGE OF CONTROL

The Chargor and the Beneficial Owner shall not sell, assign, lease in its entirety or otherwise dispose of the legal ownership or title to the Property or its beneficial interest therein or of the personal property related thereto or which is necessary to the use and operation of the Property, without the prior written consent of the Chargee. The Chargor and the Beneficial Owner shall not make any changes to the authorized share capital of the Chargor or allocation or ownership thereof, which would result in a change of voting control or beneficial ownership thereof without the prior written consent of the Chargee. The Guarantor and the Beneficial Owner shall not make any changes to their authorized share capital or allocation or ownership thereof, which would result in a change of voting control without or beneficial ownership thereof without the prior written consent of the Chargee. In any event above, the Chargee may in its sole discretion deny such consent or may require as one of the terms for giving consent that the purchaser/transferee shall execute an assumption agreement in favour of the Chargee. In the event the Chargor is in breach of the foregoing, the Chargee may, in its discretion, demand without limitation to its other recourses, immediate repayment of the Charge in full together with accrued interest and a Yield Maintenance Fee.

#### 11. SUBSEQUENT ENCUMBRANCES

The Chargor covenants and agrees that it shall not, without the prior written consent of the Chargee, which consent may be withheld in the Chargee's sole and absolute discretion, execute, deliver, suffer to exist or permit to be registered any mortgage, charge, lien or other encumbrance on the Property or on any other property which is the subject of any of this Charge, including, without limitation, the leases and the income derived therefrom.

#### 12. RIGHT TO DISTRAIN

The Chargee may distrain for arrears of any portion of the Principal Amount, Interest or any other amounts due and unpaid hereunder. The Chargor waives all rights to claim exemption and confirms that there is no limit in the amount for which the Chargee may distrain.

#### 13. CHARGE NOT A CHARGE IN POSSESSION

It is agreed that the Chargee, in exercising any of its rights under this Charge, shall be deemed not to be a chargee in possession or a chargee in possession of the Property.

#### 14. ADDITIONAL SECURITY

In the event that the Chargee, in addition to the Property, holds or shall hold, in the future, further security on account of the Principal Amount, it is agreed that no single or partial exercise of any of the Chargee's powers under this Charge or any of such further security (this Charge and any such further security are hereinafter together referred to as the "Security"), shall preclude other and further exercise of any other right, power or remedy pursuant to the Security. The Chargee shall at all times have the right to proceed against all, any or any portion of the Security in such order and in such a manner as the Chargee shall, in the Chargee's sole and unfettered discretion, deem fit without waiving any rights which the Chargee might have with respect to the Security and the exercise of any such powers or remedies from time to time shall in no way affect the liability of the Chargor under the remaining Security.

#### 15. PROPERTY MANAGER

The Property shall only be managed by the Chargor, by a corporation that is an affiliate (as this term is defined in the Canada Business Corporations Act) of the Chargor or by a professional arm's length manager approved by the Chargee. No property management fee shall be paid to a manager of the Property other than to a professional arm's length manager approved by the Chargee, such fee not to exceed market rates without the prior written authorization of the Chargee.

Notwithstanding the foregoing, the Chargee confirms that The Rose & Thistle Properties Ltd. is an acceptable property manager and that it may charge a reasonable fee provided the Charge is not in default.

The Chargor will at all times, repair, maintain, restore, amend, keep, make good, finish, add to and put in order the Property and upon the Chargor's failure to repair such failure shall constitute a breach of a covenant and a default under the Charge.

The Chargee or its representative shall have at all times access to the Property for inspection purposes.

#### 16. FINANCIAL STATEMENTS

As long as there is any amount owing by the Chargor to the Chargee pursuant to this Charge, the Chargor and Guarantor shall deliver to the Chargee the following reports, statements and/or notices:

- (a) Annually, (i) financial statements of the Chargor and Guarantor no later than one hundred and eight (180) days after its fiscal year end, (ii) revenue and expense statements and current rent rolls for the Property, (iii) if applicable, retail sales report for the Property for the last fiscal year; (iv) rental arrears report for the



current fiscal year; (v) budget for the current and ensuing fiscal year and, (vi) detail capital expenditures for the previous year and a capital budget for the ensuing fiscal year in each case in accordance with generally accepted accounting principles, consistently applied and in accordance with International Financial Reporting Standards for public companies;

- (b) Within thirty (30) days after written request of the Chargee acting reasonably, the Chargor will provide the Chargee with the following:
- (i) a certified rent roll for the Property dated as of the last day of the preceding calendar quarter identifying all of the leases of the Property by the term, renewal options, space occupied, rental and charges required to be paid;
  - (ii) monthly and year to date operating statements prepared for each calendar month during each calendar quarter, each of which, shall include an itemization of actual capital expenditures during applicable periods;
- in each case prepared in accordance with generally accepted accounting principles, consistently applied;
- (c) Immediate notification of the occurrence of any Event of Default or any event which, with the giving of notice, or passage of time, would become an Event of Default;
- (d) Notification of any material damage or destruction to the building(s) on the Property immediately upon the occurrence of such damage or destruction;
- (e) Notification of a Tenant defaults under its lease; and
- (f) Such information concerning the Property, the Chargor and the Guarantor as the Chargee may reasonably request from time to time.

The Chargor shall keep and maintain proper books of account and records accurately covering all aspects of the business and affairs of the charger relating to the Property and shall, upon reasonable notice being given and during regular hours, permit the Chargee or agents of the Chargee to inspect the same.

The Chargor shall deliver to the Chargee, within 180 days following the Chargor's fiscal year, audited or review engagement financial statements in respect of the Chargor, prepared by a firm of chartered accountants, in accordance with generally accepted accounting principles or in accordance with International Financial Reporting Standards for public companies, consistent with prior years and shall include all appropriate documents, explanatory notes and additional information.

The Beneficial Owner shall deliver to the Chargee, within 180 days following the Beneficial Owner's fiscal year, audited or review engagement financial statements in respect of the Beneficial Owner, prepared by a firm of chartered accountants, in accordance with generally accepted accounting principles and in accordance with International Financial Reporting Standards for public companies, consistent with prior years, and shall include all appropriate documents, explanatory notes and additional information.

The Guarantor shall deliver to the Chargee, within 180 days following the Guarantor's fiscal year: a) if Guarantor is a corporate entity, audited or review engagement financial statements in respect of the Guarantor, prepared by a firm of chartered accountants, in accordance with generally accepted accounting principles and in accordance with International Financial Reporting Standards for public companies, consistent with prior years, and shall include all appropriate documents, explanatory notes and additional information, or b) if Guarantor is an individual, a current, signed and dated personal net worth statement detailing all assets and liabilities with the form of such statement being satisfactory to the Chargee in all respects.

In addition to the above financial statements, the Chargor, the Beneficial Owner and the Guarantor covenant to provide to the Chargee, from time to time, upon request, any

further financial information then still undisclosed, pertaining to the Property, the Chargor, the Beneficial Owner and/or the Guarantor.

The Chargor shall supply the Chargee with reasonable evidence that it has complied with all statutory requirements for deductions at source and has submitted remittances to applicable fiscal authorities, including without limitation those under the Income Tax Act (Canada), GST/HST authorities and other authorities for which a charge or a lien may have priority over the security to be created pursuant to the Commitment Letter.

#### 17. LEASES

The Chargor shall not, without prior written consent of the Chargee, enter into, amend, terminate or accept the surrender/assignment of any Lease:

- (a) in excess of 10,000 sq. ft.;
- (b) which provides for a rental rate which is less than the prevailing market rental rates;
- (c) in a form other than a standard form Commercial Property Officer to Lease/Lease with all material amendments thereof approved by the Chargee; and or
- (d) with a Tenant that is an affiliate, an associate or a subsidiary of the Chargor, as defined in the Canada Business Corporations Act;

It being understood that such consent shall not be unreasonably withheld or delayed.

The Chargor covenants to deliver to the Chargee, within forty-five (45) days following the Chargor's fiscal year and upon demand thereafter, copies of all leases, lease amendments and correspondence regarding termination / surrender / assignment with a rent roll with the name of the tenants, the area rented by each tenant, the term of the Lease and Rent payable by tenants (Basic Rent, Additional Rent) and details of any monetary defaults.

#### 18. SALE BY CHARGOR

No sale or other dealing by the Chargor with the Property or any part thereof shall in any way change or affect the liability of the Chargor hereunder, or in any way alter the rights of the Chargee as against the Property, the Chargor or any other person or persons liable for payment of the Principal Amount, Interest and Costs.

#### 19. PAYMENTS

Any payment made by the Chargor to the Chargee which is received by the Chargee on a non-business day of the Chargee or after 12:00 noon on any business day of the Chargee shall be deemed to have been received by the Chargee on the next business day of the Chargee.

#### 20. CONSENT TO DISCLOSURE

The Chargor and Guarantor consent to and acknowledge that they are aware that credit, financial and inquiries regarding the Chargor and Guarantor may be gathered, made, maintained and/or used at any time in connection with the Loan applied for and/or in connection with any assignment, sell down, syndication, securitization or enforcement of the Commitment and the loan (the "Loan") by the Chargee, and the Chargor and Guarantor consent to the making of any such inquiries by or on behalf of the Chargee and consent to disclosure, without restriction and without notice to or further consent of the Chargor and Guarantor of any such information to any credit reporting service, financial institution, rating agency, participant, investor, certificate holder, assignee or purchaser of all or any part of the Loan or interest therein and any organization maintaining databases on the underwriting and performance of commercial mortgage loans. The Chargor and Guarantor irrevocably waive, to the

extent permitted by applicable law, any and all rights they may have under applicable law to prohibit such disclosure, including, but not limited to, any right of privacy.

**21. CRIMINAL RATE OF INTEREST**

Notwithstanding the provisions of this Charge or in any agreement, instrument or other document held by the Chargee in connection with the Charge, in no event shall aggregate "interest" (as that term is defined in Section 347 of the Criminal Code (Canada)) exceed the effective annual rate of interest on the "credit advanced" (as defined therein) lawfully permitted under the Section. The effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices over the term of the Charge, and in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries selected by the Chargee shall be conclusive for the purposes of such determination.

**22. VALIDITY OF PROVISIONS**

If any provision of this Charge is held to any extent invalid or unenforceable, the remainder of this Charge shall not be affected and shall remain valid and enforceable.

**23. TIME OF THE ESSENCE**

Time shall be of the essence in all matters relating to this Charge.

**24. INTERPRETATION AND HEADINGS**

Wherever in this Charge the singular or masculine is used, the same shall be construed as meaning the plural or the feminine or the neuter where the context or the parties hereto so require. The headings do not form part of this Charge and have been inserted for convenience of reference only.

# Tab E

## GENERAL SECURITY AGREEMENT

THIS AGREEMENT made as of the 10<sup>th</sup> day of December, 2012

BETWEEN:

EL-AD (1500 DON MILLS) LIMITED

(the "Debtor")

and

CDPQ MORTGAGE INVESTMENT CORPORATION

(the "Secured Party")

This is Exhibit "E" referred to in the  
affidavit of Robert Duranseau  
sworn before me, this 16<sup>th</sup>  
day of December, 2013

Linda Pronovost

ACOMMISSIONER FOR TAKING AFFIDAVITS OATHS



WHEREAS the Secured Party has agreed to loan the Debtor the sum of \$31,000,000.00 (the "Loan") pursuant to a commitment letter dated November 12, 2012 between, among others, the Secured Party as lender and the Debtor (the commitment letter, as it may be further amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "Commitment");

AND WHEREAS by a charge/mortgage of land dated as of December 12, 2012, securing the principal sum of \$31,000,000.00 and registered in the Land Titles Division of the Toronto (No. 66) on December 12, 2012, as Instrument No. AT.3195767 (such charge/mortgage as it may be amended, modified, renewed, replaced, extended, supplemented and/or restated from time to time, the "Charge"), the Debtor did mortgage and charge in favour of the Secured Party, all of its right, title and interest in and to the lands municipally known as 1500 Don Mills Road, Toronto, Ontario and described in Schedule "A" attached hereto (the "Property"), together with all property relating thereto including, without limitation, all of its right, title and interest in and to the buildings and appurtenances situate thereon and the rents payable under the leases pertaining thereto, all as security for its obligations pursuant to the Loan;

AND WHEREAS the Debtor agreed to grant, as general and continuing security for the payment and performance of all its obligations to the Secured Party, the security interest granted herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in order to further secure the obligations pursuant to the Loan, and in consideration of the advance of the Loan secured by the Charge, and in future consideration of the payment of the sum of ten

dollars (\$10.00) by the Secured Party to the Debtor (the receipt and sufficiency of all of which is hereby acknowledged) the Debtor covenants and agrees as follows:

## 1. Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith, the following words and phrases shall have the following respective meanings:

- (a) **"Agreement"** means this agreement and all amendments made thereto by written agreement between the Secured Party and the Debtor, and the terms **"this Agreement"**, **"thereof"**, **"hereunder"** and similar expressions refer to this Agreement and not to any particular section, subsection or other portion hereof and include any agreement supplemental hereto;
- (b) the terms **"accessions"**, **Account**, **"Chattel Paper"**, **"Documents of Title"**, **"Equipment"**, **"Goods"**, **"Instrument"**, **"Intangible"**, **"Inventory"**, **"Money"**, **"Proceeds"** and **"Security"** whenever used herein shall have the meanings given to those terms in the PPSA, provided always that the term **"Goods"** when used herein shall not include **"consumer goods"** of the Debtor as the term is defined in the PPSA;
- (c) **"Books and Records"** means all books, papers, accounts, invoices, documents and other records in any form evidencing or relating to any of the Collateral, and all contracts, securities, instruments and other rights and benefits in respect thereof;
- (d) **"Collateral"** means all of the present and future undertaking and personal property of the Debtor located at, relating to, or used in connection with, the Property, or which is necessary to the use and operation of the Property including, without limitation, all right, title and interest that the Debtor now has or may hereafter have, be possessed of, be entitled to or which may hereafter be acquired by the Debtor in Accounts, Goods, Inventory, Equipment, Chattel Paper, Documents of Title, Securities, Intangible, Money, Books and Records, Controls, Insurance Policies and Licenses and Permits and all replacements of, substitutions for and increases, additions and accessions to the foregoing, together with all Proceeds thereof, and any reference to **"Collateral"** shall be deemed a reference to Collateral or any part thereof;
- (e) **"Contracts"** means all present and future contracts, professional contracts, management contracts and sub-contracts entered into on behalf of the Debtor for the

supply of services or material for the Property and the operation of any business thereon;

- (f) **"Event of Default"** shall have the meaning ascribed thereto in the Charge, subject to all provisions of the Charge relating thereto including, without limitation, all notice requirements and curative provisions and for greater certainty but without in any way limitation the generality of the foregoing, an Event of Default shall be deemed to have occurred if the Debtor fails to perform any covenant contained in this Agreement or if any of the representations or warranties of the Debtor contained in this Agreement are incorrect, untrue, inaccurate or misrepresented in any material respect when given or made or deemed to have been given made or repeated after the passage of 15 Business days after such default has occurred;
- (g) **"Insurance Policies"** means all present and future builder's risk, hazard, damage rental or business income loss and public liability policies of insurance now or hereafter maintained in connection with the Property;
- (h) **"Obligations"** means all debts and liabilities of the Debtor to the Secured Party present and future, direct and indirect, absolute and contingent, matured or not, in any currency at any time owing by the Debtor to the Secured Party pursuant to the Commitment and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred by the Debtor alone or with another or others and whether as principal or surety, including all interest, commissions, legal and other costs, charges and expenses;
- (i) **"Person"** means any natural person or artificial body (including, among others, any firm, corporation or government);
- (j) **"PPSA"** means the *Personal Property Security Act* (Ontario) as now enacted and as the same any be amended, re-enacted or replaced from time to time, and all regulations thereunder;
- (k) **"Property"** shall have the meaning ascribed thereto in the recitals hereof; and
- (l) **"Receiver"** means a receiver, receiver and manager or any similar Person appointed in accordance with Section 5(b)(ii) hereof.

Unless otherwise defined herein or the context otherwise requires, all capitalized terms used therein which are defined in the Charge shall have the meanings ascribed thereto in the Charge.

## **2. Security Interest**

As general and continuing security for the payment and performance of the Obligations, the Debtor hereby grants to the Secured Party a security interest in the Collateral and assigns transfers, mortgages and charges to and in favour of the Secured Party all of the Debtor's rights, title and interest in the Collateral. For greater certainty, the security interest created hereby shall be operative as a present attached mortgage and charge of and security interest in any and all of the Collateral now owned by the Debtor and with respect to any and all of the Collateral acquired by the Debtor after the date hereof, shall be operative as a present mortgage and charge of and security interest in such Collateral which shall attach as a first fixed and specific mortgage and charge of and security interest in such Collateral as of the moment the Debtor acquires any rights or interest therein. The security interest granted hereby shall not extend or apply to and Collateral shall not include the last day of the term of any lease or agreement therefore, but upon the enforcement of the security interest created hereby, the Debtor shall stand possessed of such last day in trust to assign the same to any person acquiring such term.

## **3. Representations, Warranties and Covenants or Debtor**

The Debtor hereby represents, warrants and covenants to and with the Secured Party as follows:

- (a) the Debtor represents and warrants that it is a limited partnership, created, organized and subsisting under the laws of the Province of Ontario, with the power to enter into this Agreement, that this Agreement has been duly authorized by all necessary action on the part of the Debtor and constitutes a legal and valid agreement binding upon the Debtor enforceable in accordance with its terms, and that the making and performance of this Agreement will not result in the breach of, constitute a default under, contravene any provision of, or result in the creation of, any lien, charge, security interest, encumbrance or any other right of others upon any property of the Debtor pursuant to any agreement, indenture or other instrument to which the Debtor is a party or by which the Debtor or any of its property may be bound or affected;
- (b) the Debtor represents and warrants that, except as otherwise provided in the Charge or disclosed herein, all of the Collateral is the sole property of the Debtor, free from all liens, charges, security interests, leases, encumbrances and any rights



of others which rank prior to or *pari passu* or subsequent with the security interest granted hereby;

- (c) the Debtor represents and warrants that the Debtor's principal place of business and the location of the office where it keeps its records respecting the Accounts is :

30 Hazelton Avenue  
Toronto, On  
M5R 2E2

- (d) and all of the Collateral is located either at that address or at the Property;
- (e) the Debtor covenants that it shall not, without prior written notice to the Secured Party, change its principal place of business or the location of the office where it keeps its records respecting the Accounts;
- (f) the Debtor covenants that it shall maintain, use and operate the Collateral and carry on and conduct its business in a lawful, prudent and business-like manner;
- (g) the Debtor covenants that it shall defend the Collateral against all claims and demands respecting the Collateral made by all Persons at any time and, except as otherwise provided herein, shall keep the Collateral free and clear of all security interests, mortgages, charges, liens and other encumbrances or interests except Permitted Encumbrances and except those hereafter approved in writing by the Secured Party prior to their creating or assumption;
- (h) the Debtor covenants that it shall pay all rents, taxes, levies, assessments and government fees or dues lawfully levied, assessed or imposed in respect of the Collateral or any part thereof as and when the same shall become due and payable, and shall exhibit to the Secured Party, when required, the receipts and vouchers establishing such payment;
- (i) the Debtor covenants that it shall from time to time forthwith at the reasonable request of the Secured Party furnish to the Secured Party in writing all documents and information relating to the Collateral, and the Secured party shall be entitled from time to time, at any reasonable time, to inspect the Collateral and make copies of all information relating to the Collateral and subject to the provisions of the leases in respect of the Property, for such purposes the Secured Party shall, subject to the rights of all Property tenants, have access to all premises occupied by the Debtor or where the Collateral may be found;

- (j) the Debtor covenants to keep the Collateral in good order, condition and repair and not to use the Collateral in violation of the provisions of this Agreement, the Charge, the Commitment or any other agreement now or hereafter in effect between the Debtor and the Secured Party with respect to the Loan and any agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- (k) the Debtor covenants to keep the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Secured Party shall reasonably direct and in conformity with the insurance requirements contained in the Charge, with loss payable in the manner specified in the Charge, and to pay all premiums therefore;
- (l) the Debtor covenants that it shall from time to time forthwith at the reasonable request of the Secured Party execute and deliver all such financing statements, schedules, assignments and documents, and do all such further acts and things as may be reasonably required by the Secured Party to effectively carry out the full intent and meaning of this Agreement and/or to better evidence and perfect the security interest granted hereby and the Debtor hereby irrevocably constitutes and appoints the Secured party, or any Receiver appointed by the court or the Secured Party, following the occurrence of an Event of Default and only for so long as such Event of Default shall be continuing, the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever the secured Party or any such Receiver may consider it to be necessary or expedient;
- (m) the Debtor covenants that it shall not change its name unless it provides the Secured Party with not less than ten (10) days prior written notice thereof and, if the Debtor is a corporation, shall not amalgamate with any other corporation without obtaining the Secured Party's prior written consent thereto (such consent may be arbitrarily withheld);
- (n) the Debtor covenants that it shall pay to the secured Party forthwith upon demand all reasonable costs and expenses (including, without limitation, all costs and expenses incurred by and in connection with a Receiver, all accounting fees and expenses and all legal costs (on a solicitor and own client basis)) incurred by or on behalf of the Secured Party in connection with the preparation, execution and perfection of this Agreement and the carrying out of any of the provisions of this Agreement including, without limitation, protecting and preserving the security interest granted hereby and enforcing by legal process or otherwise the remedies

provided herein, and agrees that all such costs and expenses shall be added to and form part of the Obligations secured hereunder; and

- (o) the Debtor covenants that it shall ensure that the representation and warranties set forth in this Section 3 shall be true and correct in all material respects at all times while the charge is in force.

#### **4. Dealing with Collateral**

- (a) **Dealing with Collateral by the Debtor.** The Debtor shall not sell, lease or otherwise dispose of any of the Collateral: (i) without the prior written consent of the Secured Party; or (ii) except as expressly permitted under the Charge or the Commitment; or (iii) except in the ordinary course of its business and subject to the terms of the Charge and the Commitment; and all proceeds of any such sale, lease or disposition shall form part of the Collateral and shall continue to be subject to the security interest granted hereby;
- (b) **Notification of Account Debtor.** Either after or before an Event of Default occurs, the Secured Party may give notice of this Agreement and the security interest granted hereby to any Account Debtors of the Debtor or to any other person liable to the Debtor and further the Secured Party may, in its sole discretion, give notice at any time after the occurrence of any Event of Default which is continuing to any such Account Debtors or other person to make all further payments to the secured party, and any payment or other proceeds of Collateral received by the Debtor from account debtors or from any other person liable to the Debtor, whether before or after any notice is given by the Secured Party, shall be held by the Debtor in trust for the Secured Party and paid over to the Secured Party on request provided an Event of Default shall have occurred and be continuing. In addition to and notwithstanding the foregoing the Secured Party shall have the rights referred to in the Charge;
- (c) **Purchase-Money Security Interest.** The Debtor shall not, except as specifically permitted by and subject to the terms of the Charge, or except in the ordinary course of its business in connection with the purchase or lease of Inventory or Equipment, be permitted to grant purchase money security interest;
- (d) **Application of Funds.** All money collected or received by the Secured Party in respect of the Collateral may be applied on account of such parts of the Obligations as the Secured Party in its sole discretion sees fit, or may be held unappropriated in a collateral account as ongoing security for the Obligations, or in the discretion of the

secured Party may be released to the Debtor, all without prejudice to the Secured Party's rights against the Debtor;

## 5. Default and Remedies

(a) **Events of Default.** The Debtor shall be in default under this Agreement upon the occurrence of any Event of Default, subject to all curative rights of the Debtor under the Charge;

(b) **Remedies.** Upon the occurrence of any Event of Default that is continuing and at any time thereafter, any or all of the Obligations shall, at the option of the Security Party, become immediately due and payable or be subject to immediate performance, as the case may be, without further demand or notice, both of which are expressly waived; the obligations, if any, of the Secured Party to make further advances to the Debtor shall cease; any or all security granted hereby shall immediately become enforceable at the option of the Secured Party, and the Secured Party shall have the rights and remedies set out below, all of which rights and remedies shall be enforceable successively, concurrently and/or cumulatively at the option of the Secured Party, subject to the provisions of the Charge relating to any of such rights and remedies of the Secured Party:

(i) the Secured Party may cease to make any further advances or disbursements of money or other credit, including, without limitation, letters of credit, letters of guarantee or indemnities, available to the Debtor; further, the Secured Party shall not be under any obligation to recommence advancing money or make available other credit until the Secured party shall have received such assurances as, in its sole discretion, it may require;

(ii) the Secured Party may appoint, by an instrument in writing delivered to the Debtor, a Receiver of the Collateral, and remove any Receiver so appointed and appoint another or others in his stead, or institute proceedings in any court of competent jurisdiction for the appointment of a Receiver, it being understood and agreed that:

(A) the Secured Party may appoint any Person as receiver, including an officer or employee of the Secured Party;

(B) such appointment may be made at any time either before or after the Secured Party has taken possession of the Collateral;

- (C) the Secured Party may from time to time fix the remuneration of the Receiver and direct the payment thereof out of the Collateral; and
- (D) the Receiver shall be deemed to be the agent of the Debtor for all purposes and, for greater certainty, the Secured Party shall not be, in any way, responsible for any actions, whether willful, negligent or otherwise, of any Receiver, and the Debtor hereby agrees to indemnify and save harmless the Secured Party from and against any and all claims, demands, actions, costs, damages, expenses or payments which the Secured party may hereafter suffer, incur or be required to pay as a result of, in whole or in part, any action taken by the Receiver or any failure of the Receiver to do any act or thing;
- (iii) the Secured Party may, in accordance with its rights under the Charge, take possession of the Collateral and retain it for so long as the Secured Party or a Receiver considers appropriate, receive any rents or profits from the Collateral, and require the Debtor to assemble the Collateral and deliver or make the Collateral available to the Secured Party at such place or places as may be specified by the Secured Party;
- (iv) the Secured Party may require the Debtor, by notice in writing given by the Secured Party to the Debtor, to disclose to the Secured Party the location or locations of the Collateral and the Debtor agrees to make such disclosure when so required by the Secured Party;
- (v) the Secured Party may carry on or concur in the carrying on of all or any part of the business of the Debtor, in accordance with its rights under the Charge;
- (vi) the Secured Party may enforce any rights of the Debtor in respect of the Collateral by any manner permitted by law;
- (vii) the Secured Party may repair the Collateral, process the Collateral and prepare the Collateral for sale, lease or other disposition, whether on the premises of the Debtor or otherwise;
- (viii) the Secured Party may sell, lease or otherwise dispose of or realize upon the Collateral at public auction, by public or private tender, by private sale or otherwise, either for cash or upon credit, upon such terms and conditions as the Secured Party may determine, and whether or not the Secured Party has taken possession of the Collateral, and without notice, advertisement or other formality, all of which are hereby waived by the Debtor; any such sale may be made with or

without any special condition as to the upset price, reserve bid, title or evidence of title or other matter and from time to time as the Secured Party in its sole discretion thinks fit, with power to vary or rescind any such sale or by in at any public sale and resell without being answerable for any loss; the Security Party may sell the Collateral for a consideration either with or without taking security for the payment of such installments and may make and deliver to any purchaser thereof good and sufficient deeds, assurances and conveyances of the Collateral and give receipts for the purchase money, and any such sale shall be a perpetual bar, both at law and in equity, against the Debtor and all those claiming an interest in Collateral by, from, through or under the Debtor;

(ix) the Security Party or the Receiver may make any sale, lease or other disposition of the Collateral in the name of and on behalf of the Debtor or otherwise;

(x) the Secured Party may retain the Collateral or any part thereof irrevocably by giving notice thereof to the Debtor, it being agreed that to the extent permitted by law such retention shall reduce the amount of the Obligations by an amount equal to the fair market value, as reasonably determined by the Secured Party, of the Collateral so retained;

(xi) the Secured Party may borrow money on the security of the Collateral for the purpose of the carrying on of the business of the Debtor or for the maintenance, preservation, protection or realization of the Collateral, which security may rank either prior or subsequent in priority to the security interest granted by this Agreement;

(xii) the Secured Party may file such proofs of claim or other documents as may be necessary or desirable to have its claim lodged in any bankruptcy, winding-up, liquidation, dissolution or other proceedings (voluntary or otherwise) relating to the Debtor; and

(xiii) the Secured Party may take any other action, suit, remedy or proceeding authorized or permitted by this Agreement, the PPSA or by law or equity.

**(c) Additional Provisions on Realization.** The Debtor further agrees with the Secured Party that:

(i) for the purpose of Section 5 of this Agreement, a reference to the "Secured Party" shall, where the context permits, include any Receiver appointed in

accordance with Subdivision 5(b) hereof and the agents, officers and employees of such Receiver;

- (ii) the Secured Party shall not be liable or responsible for any failure to seize, collect, realize, sell or obtain payment of the Collateral and shall not be bound to institute proceedings or to take other steps for the purpose of seizing, collecting, realizing or obtaining possession or payment of the Collateral or for the purpose of preserving any rights of the Secured Party, the Debtor or any other Person in respect of the Collateral;
- (iii) the Secured Party may grant extensions of time, take, abstain from taking and perfecting and give up securities, accept compositions, grant releases and discharges, release any part of the Collateral and otherwise deal with the Debtor, debtors of the Debtor, sureties and others and with the Collateral and other securities as the Secured Party may see fit without prejudice to the liability of the Debtor to the Security Party or the Secured Party's rights hereunder;
- (iv) to facilitate the realization of the Collateral, the Secured Party may, to the exclusion of all others but subject to the prior rights of the space tenants of the Property under their leases, including the Debtor, enter upon, occupy and use all or any of the premises, buildings, plant and undertaking of or occupied by the Debtor and use all or any of the Equipment and other property of the Debtor for such time as the Secured Party requires, free of charge, and the Secured Party shall not be liable to the Debtor for any neglect in so doing or in respect of any rent, charges, depreciation or damages in connection with such actions;
- (v) the Secured Party may charge on its own behalf and pay to others all reasonable amount for expenses incurred and for services rendered in connection with the retaking, holding, operation, repairing, processing, preparing for disposition and disposing of the Collateral including, without limitation, legal costs on a solicitor and own client basis, Receiver and accounting fees and expenses, and in every such case the amounts so paid together with all costs, charges and expenses incurred in connection therewith shall be payable by the Debtor to the Secured Party and be added to and form part of the Obligations hereby secured as of the date incurred and shall bear interest at the highest rate of interest charged by the Secured Party at that time in respect of any part of the Obligations until payment thereof;
- (vi) the Secured Party may discharge any claim, lien, mortgage, charge, security interest, encumbrance or any rights of others that may exist or be threatened

against the Collateral, and in every such case the amounts so paid together with costs, charges and expenses incurred in connection therewith shall be added to the Obligations hereby secured; and

(vii) any proceeds of realization of the Collateral may be applied by the Secured Party to the payment of expenses in connection with the preservation and realization of the Collateral as above described and any balance of such proceeds shall be applied by the Secured Party in the manner provided for in the Charge.

## **6. General Provisions**

- (a) **Benefit of the Agreement.** This Agreement shall be binding upon the successors and the permitted assigns of the Debtor and shall benefit the successors and assigns of the Secured Party;
- (b) **No Waiver.** No delay or failure by the Secured Party in the exercise of any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude the other or further exercise thereof or the exercise of any other right;
- (c) **Severability.** If any provision contained in this Agreement is, to any extent determined to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect to the extent permitted by applicable law. The parties hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect;
- (d) **Notices.** All notices, directors, service, correspondence and other communications ("Notice") between the parties to this Agreement shall (unless otherwise required under law) be given or made in writing and may be delivered to the parties hereto by telecopier or other electronic communication which results in written or printed Notice being given, or delivered or sent by prepaid registered mail to the addresses/fax numbers set out below:



(i) in the case of the Debtor:

30 Hazelton Avenue  
Toronto On M5R 2E2

By Facsimile: (416) 489-9973  
Attention: Norma Walton

(ii) in the case of the Security Party:

CDPQ Mortgage Investment Corporation  
413 St-Jacques Street, Suite 700  
Montreal, Quebec, Canada H2Y 1N9

Attention: Corporate Secretary

and any Notice mailed as aforesaid shall be deemed to have been received on the third (3<sup>rd</sup>) business day following the date of mailing, notwithstanding the date of actual receipt or the fact that it may not have been received, except in the event of an interruption of postal service during which period Notices shall not be sent by prepaid registered mail. Any Notice delivered or sent by telecopier or other electronic communication with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the business day it was delivered or given, provided it is delivered or given before 4:00 p.m. (Montreal time), failing which it shall be deemed to have been given and received on the next following business day. Any party may give Notice as aforesaid of a change of that party's address/fax number, in which event this Section shall apply with respect to the new address/fax number;

(e) **Modification and Assignment.** This Agreement may not be amended or modified in any respect except by written instrument signed by both parties. The rights of the Secured Party under this Agreement may be assigned by the Secured Party without the prior consent of the Debtor. The Debtor may not assign its obligations under this Agreement, except in accordance with the terms of, and concurrently with, an assignment of the Charge;

(f) **Additional Continuing Security.** The Agreement and the security interest granted hereby are in addition to and not in substitution for any other security now or hereafter held by the Secured Party, and this Agreement is a continuing agreement and security that shall remain in full force and effect until discharged by the Secured Party;

- (g) **Headings.** The division of this Agreement into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (h) **Gender.** In this Agreement words importing the singular number only shall include the plural and vice versa, words importing any gender shall include all genders, and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations;
- (i) **Release.** Upon payment of all monies secured by the Charge and registration of the discharge/cessation of the Charge, this Agreement shall be deemed to be released, provided further that the Assignee shall provide to the Assignor, forthwith upon request and at the cost of the Assignor, a release of this Agreement and all related PPSA financing statements;
- (j) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws in effect within the Province of Ontario and, by execution and delivery of this Agreement, the Debtor accepts for itself and in respect of its property, generally, and unconditionally, the non-exclusive jurisdiction of the courts having jurisdiction in the said province. The Debtor hereby waives, and agrees not to assert, by way of motion, as a defense or otherwise, in any action or proceeding, any claim that it is not personally subject to the jurisdiction of the said courts of the Province of Ontario located in the City of Toronto, that the action or proceedings is brought in an inconvenient forum, that the venue of the action or proceeding is improper or that this Agreement or the subject-matter hereof may not be enforced in such courts. Nothing herein shall limit the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction;
- (k) **Executed Copy.** The Debtor acknowledges receipt of a fully executed copy of this Agreement;
- (l) **Non-Merger** The Secured Party's rights hereunder shall in no way merge with or be affected by any proceedings that the Secured Party may initiate pursuant to the Charge and/or the Additional Security. The rights, remedies and security given to the Secured Party hereunder are cumulative and not in substitution for any rights, remedies or security to which the Secured Party may be entitled, either under the Charge or under any other security or at law. The Secured Party shall not be required to take any proceedings pursuant to the Charge or pursuant to the

Agreement before initiating proceedings pursuant to this Agreement. Conversely, no proceedings hereunder shall affect the rights of the Secured Party pursuant to the Charge and/or Additional Security, and the Secured Party shall not be required to take any proceedings pursuant to any other security before initiating proceedings pursuant to the Charge and/or any Additional Security;

**(m) Joint and Several Liability.** In the event that the term "Debtor" includes more than one Person, each of them shall be jointly and severally liable to the Secured Party for all of the Debtor's obligations hereunder;

**(n) Recourse.** Intentionally Deleted.

***[Signature Page Follows]***

IN WITNESS WHEREOF the Debtor has executed this Agreement as of the date first set out above.

EL-Ad (1500 DON MILLS) LIMITED

Per: 

Name: Norma Walton

Title: President

I have authority to bind the Corporation

**SCHEDULE "A" TO  
GENERAL SECURITY AGREEMENT**

**LEGAL DESCRIPTION**

Municipal Address: 1500 Don Mills Road, Toronto, Ontario

Legal Description: PART LOT 10, CON. 3, EYS (CITY OF NORTH YORK)  
DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7 & 8 ON PLAN  
66R17662. SUBJECT TO TB981024, NY499108, NY765474,  
TB24553 & TB119624. CITY OF TORONTO

PIN No. 10117-0637 (LT)

Registry Office: Land Titles Division of Toronto (No. 66) Toronto, Ontario

Tab F

**ACKNOWLEDGEMENT**

This is Exhibit "F" referred to in the  
Affidavit of Robert Duranceau  
Sworn before me, 16th  
day of December 2013  
Linda Pronovost  
A COMMISSIONER FOR TAKING AFFIDAVITS  
ON THE 5

TO: CDPQ Mortgage Investment Corporation (the "Chargee")

RE: Chargee first mortgage to El-Ad (1500 Don Mills) Limited (the "Chargor") on the security of 1500 Don Mills Road, Toronto (the "Property") and Norma Walton and Ronauld Walton (collectively the "Guarantor") and Donald Development Ltd. (the "Beneficial Owner")  
Loan Number 2012-0358



THE UNDERSIGNED hereby acknowledges receipt of a copy of Standard Charge Terms No. 201202 prior to the execution of the Charge on the above-noted Property.

This Acknowledgement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall be deemed to constitute one and the same instrument.

**[Signature Page Follows]**

DATED at Toronto, this 10<sup>th</sup> day of December, 2012.

**EL-AD (1500 DON MILLS) LIMITED**

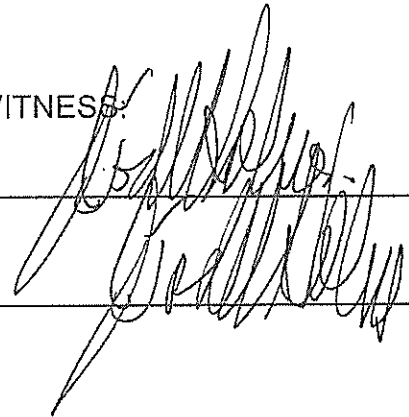
Per: 

Name: Norma Walton

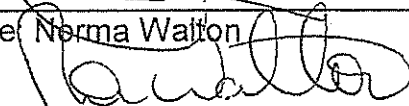
Title: President

I have authority to bind the Corporation

WITNESS:



  
Name: Norma Walton

  
Name: Ronauld Walton



LAND REGISTRATION REFORM ACT  
SET OF STANDARD CHARGE TERMS

STANDARD CHARGE TERMS  
CLAUSES TYPES DE CHARGE

Filing No. 2012 02 Cote  
Filing Date JAN 30<sup>th</sup> 2012 Date de Dépôt  
Page 1 of 26 Pages

DIRECTOR OF TITLES  
DIRECTRICE DES DROITS IMMOBILIERS

Filed By: CDPQ Mortgage Investment Corporation

Filing Number: \_\_\_\_\_

Filing Date: \_\_\_\_\_

The following set of Standard Charge Terms shall be deemed to be included in every Charge in which the set is referred to by its filing number, as provided in Section 9 of the Land Registration Reform Act R.S.O. 1990, c.L.4 (the "Land Registration Reform Act") irrespective of whether the Charge is registered using a paper-based system of registration or if it is registered electronically, except to the extent that the provisions of this set of Standard Charge Terms are modified by additions, amendments or deletions in any schedule forming part of the Charge.

1. STATUTORY COVENANTS

The covenants deemed to be included in a Charge by subsection 7(1) of the Land Registration Reform Act shall, to the extent that they are inconsistent with any of the provisions of this set of Standard Charge Terms, be and are hereby expressly excluded from the terms of the Charge.

2. RIGHT TO CHARGE LANDS

The Chargor now has good right, full power and lawful and absolute authority to charge the Lands and to give this Charge to the Chargee upon the covenants contained in this Charge.

3. GOOD TITLE

The Chargor covenants that it has good title in fee simple to the Lands free and clear of all encumbrances.

4. PROVISO FOR REDEMPTION

Provided this Charge shall be void upon payment of the principal sum herein (together with any and all amounts provided for herein to be added from time to time to the principal sum), in lawful money of Canada with interest as herein provided and taxes and performance of statute labour and performance of all covenants in this Charge. The principal sum secured hereunder together with interest thereon and all other sums payable by the Chargor hereunder shall collectively be referred to as the "Indebtedness".

5. RELEASE

The Chargor does release to the said Chargee all its claims upon the Lands, subject to the proviso for redemption herein.

6. INTEREST PRIOR TO AND AFTER MATURITY AND DEFAULT

Interest at the rate set out in the Charge is payable as well after as before maturity and both before and after default.

7. CHARGOR'S COVENANTS

- (a) The Chargor covenants with the Chargee that the Chargor will pay the principal sum herein and interest and observe the proviso for redemption herein.
- (b) The Chargor further covenants with the Chargee that the Chargor will pay all amounts which are payable hereunder or which are capable of being added to the principal sum herein pursuant to the provisions of this Charge, including, without limiting the generality of the foregoing: all servicing or other fees, costs or charges provided for herein; all insurance premiums; the amount paid for the supply of any fuel or utilities to the Lands; all costs, commissions, fees and disbursements incurred by the Chargee in constructing, inspecting, appraising, selling, managing, repairing or maintaining the Lands; all costs incurred by the Chargee, including, without limitation, legal costs on a substantial indemnity basis, with respect to the Charge or the enforcement thereof or incurred by the Chargee arising out of or in any way related to this Charge; any amounts paid by the Chargee on account of any encumbrance, lien or charge against the Lands and any and all costs incurred by the Chargee arising out of, or in any way related to, the Chargee realizing on its security by sale or lease or otherwise.

- (c) The Chargor has not at any time done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the Lands, or any part or parcel thereof, is or shall or may be in any way impeached, charged, affected or encumbered in title, estate or otherwise, except as may have been agreed to in writing by the Chargee.

8. COMPOUND INTEREST

It is agreed that if default is made in the payment of any amount to become due for interest at any time appointed for payment thereof, compound interest shall be payable and the amount in arrears for interest from time to time, as well after as before maturity, shall bear interest at the rate provided for in the Charge, and in case the interest and compound interest are not paid on the next instalment payment date after the date of default a rest shall be made, and compound interest at the rate provided for in the Charge shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the Lands and shall be secured by the Charge.

9. OBLIGATION TO ADVANCE

The Chargor agrees that neither the preparation, execution nor registration of this Charge shall bind the Chargee to advance the monies hereby secured, nor shall the advance of a part of the principal sum herein bind the Chargee to advance any unadvanced portion thereof, but nevertheless the estate hereby charged shall take effect forthwith upon the execution of this Charge by the Chargor, and any and all costs of any nature whatsoever incurred or to be incurred by the Chargee in connection with the transaction reflected in the Charge, including without in any way limiting the generality of the foregoing, any costs expressly provided for elsewhere in the Standard Charge Terms, together with all of the expenses of the examination of the title and of this Charge and valuation are to be secured hereby in the event of the whole or any balance of the principal sum herein not being advanced, the same to be charged hereby upon the Lands, and shall be, without demand thereof, payable forthwith with interest at the rate provided for in this Charge, and in default the remedies herein shall be exercisable.

10. INSURANCE

The Chargor covenants and agrees that it will insure and keep insured during the term of this Charge the buildings on the Lands (now or hereafter erected) on an all-risk basis in an amount of not less than the greater of the full replacement value of the buildings located thereon from time to time, or the principal money secured herein, with no co-insurance provisions and with the Chargee's standard mortgage clause forming part of such insurance policy and with such insurance to include liability insurance and business interruption insurance if required by the Chargee. Notwithstanding anything contained in the Charge, the proceeds of any insurance policies may be applied by the Chargee, at its sole option, against any indebtedness then outstanding. All such policies shall provide for loss payable to the Chargee and contain such clauses, coverages and provisions as the Chargee or its insurance consultant may require from time to time, whether or not consistent with or supplemental to the provisions set forth in these Standard Charge Terms. An original of all insurance policies and endorsements from the insurer to the effect that coverage has been initiated and/or extended for a minimum period of at least one year and that all premiums with respect to such term of coverage have been paid for in full, shall be produced to the Chargee prior to any advance and at least thirty (30) days before expiration of any term of any such respective policy, failing which the Chargee may provide therefor and charge the premium paid therefor and interest thereon at the aforesaid rate to the Chargor and any amounts so paid by the Chargee shall be payable forthwith to the Chargee and shall also be a charge upon the Lands secured by this Charge.

11. REPAIR

The Chargor covenants and agrees that it will keep the Lands in good condition and repair according to the nature and description thereof, and the Chargee may, whenever it deems necessary, enter upon and inspect the Lands, and the cost of such inspection shall be added to the indebtedness and if the Chargor neglects to keep the Lands in good condition and repair, or commits or permits any act of waste on the Lands (as to which the Chargee shall be sole judge) or makes default as to any of the covenants or provisos herein contained, the Charge shall, at the option of the Chargee, forthwith become due and payable in full, and all remedies provided for in the Charge or otherwise available to the Chargee at law may be exercised forthwith and the Chargee may make such repairs as it deems necessary, and the costs, charges and expenses including servicing fees for the time and services of any employee of the Chargee with interest at the rate provided for in the Charge aforesaid shall be added to the monies hereby secured and shall be payable forthwith and be a charge upon the Lands prior to all claims thereon subsequent to this Charge.

12. ALTERATIONS OR ADDITIONS

The Chargor covenants and agrees that it will not make or permit to be made any alterations or additions to the Lands without the prior written consent of the Chargee, which consent may be withheld in the Chargee's sole discretion or may be given only subject to the compliance with such terms and conditions at the cost of the Chargor as the Chargee may impose.

13. LANDS INCLUDE ALL ADDITIONS

The Lands shall include all structures and installations brought or placed on the Lands for the particular use and enjoyment thereof or as an integral part of or especially adapted for the buildings thereon whether or not affixed (in law) to the said lands, including, without limiting the generality of the foregoing, piping, plumbing, electrical equipment or systems, aerials, refrigerators, stoves, clothes washers and dryers, dishwashers, incinerators, radiators and covers, fixed mirrors, fitted blinds, window screens and screen doors, storm windows and storm doors, shutters and awnings, floor coverings, fences, air conditioning, ventilating, heating, lighting, and water heating equipment, cooking and refrigeration equipment, elevators, electric light fixtures and all component parts of any of the foregoing and it is understood and agreed that the same shall become fixtures and an accession to the freehold and a part of the realty.

14. FURTHER ASSURANCES

The Chargor covenants that it will execute such further assurances of the Lands as may be requisite.

15. QUIET POSSESSION

On default, the Chargee shall have quiet possession of the Lands free from all encumbrances.

16. CHANGE OF USE

The Chargor covenants and agrees that it will not change or permit to be changed the use of the Lands without the prior written consent of the Chargee and, further, at no time shall the Lands be used in a manner that would contravene the legislation, laws, rules, requirements, orders, directions, ordinances and regulations of any applicable governmental authority in force from time to time.

17. CONSTRUCTION LIENS

- (a) Provided also that upon the registration of any lien against the Lands which is not discharged within a period of ten (10) days after the date of registration thereof, or in the event of any buildings being erected thereon being allowed to remain unfinished or without any work being done on them for a period of ten (10) days, the portion of the principal sum then outstanding and interest and all other amounts secured by the Charge shall, at the option of the Chargee, forthwith become due and payable. In the event that a construction lien is registered against title to the Lands, the Chargee shall have the right, but not the obligation, to pay such amounts as may be required to remove such lien from title to the Lands to either the lien claimant or to a court of competent jurisdiction, at the sole option of the Chargee. Any amounts so paid by the Chargee, together with all costs, charges, and expenses incurred by the Chargee in connection therewith, including all solicitor's charges (on a substantial indemnity basis) or commission, shall be added to the principal sum secured by the Charge and shall bear interest at the rate provided for in the Charge and shall, with such interest, be a charge on the Lands prior to all claims thereon subsequent to the Charge and shall be payable forthwith on demand.
- (b) The Chargor covenants that it will pay all utility and fuel charges related to the Lands as and when they are due and that he will not allow or cause the supply of utilities or fuel to the said Lands to be interrupted or discontinued and that, if the supply of fuel oil or utilities is interrupted or discontinued, it will take all steps that are necessary to ensure that the supply of utilities or fuel is restored forthwith. It is specifically agreed that the failure to pay all fuel and utility charges as and when they are due or the interruption or discontinuing of the supply of fuel or utilities to the said lands shall constitute a default by the Chargor within the meaning of this Charge and, in addition to all other remedies provided for herein or otherwise at law, the Charge shall, at the sole option of the Chargee, forthwith become due and payable in full.

18. TAXES

With respect to all taxes, rates and assessments, whether municipal, local, parliamentary or otherwise, including school taxes and local improvement rates and charges (hereinafter collectively referred to as "taxes") chargeable or levied against the Lands, the Chargor covenants and agrees with the Chargee that:

- (a) the Chargee may deduct from any advance of the monies secured by this Charge an amount sufficient to pay the taxes which have become due and payable during any calendar year;
- (b) the Chargee may at its sole option estimate the amount of taxes chargeable against the Lands and payable in each year and the Chargor shall forthwith upon the demand of the Chargee pay to the Chargee one-twelfth (1/12) of the estimated annual amount of such taxes on each monthly payment date during the term of this Charge. The Chargee shall apply such payments to the taxes so long as the Chargor is not in default, but nothing herein contained shall obligate the Chargee to apply such payments on account of taxes more often than yearly; provided, however, that if the Chargor shall pay any sum or sums to the Chargee to apply on account of taxes, and if before such payments have been so applied by the Chargee there shall be default by the Chargor hereunder, the Chargee may at its option apply such sum or sums in or towards curing the default. In no event shall the Chargee be liable for any interest on any amount paid to it and the monies so received may be held with its own funds pending payment or application thereof;
- (c) in the event that the taxes actually charged in a calendar year, together with any interest and penalties thereon, exceed the amount estimated by the Chargee as aforesaid, the Chargor shall pay to the Chargee, on demand, the amount required to make up the deficiency;
- (d) the Chargor shall transmit to the Chargee the assessment notices, tax bills and other notices affecting the imposition of taxes upon the Lands together with such receipts or evidence of payment of taxes as the Chargee may require from time to time;
- (e) the Chargor shall pay to the Chargee, in addition to any other amounts required to be paid hereunder, the amount required by the Chargee in its sole discretion for a reserve on account of future tax liabilities; and
- (f) the Chargor shall in all instances be responsible for the payment of any and all penalties resulting from any late payment of current tax instalments or any arrears of taxes, and at no time shall such penalty be the responsibility of the Chargee.

19. COMPLIANCE WITH LAWS

The Chargor covenants and agrees that it will promptly observe, perform, execute and comply with all laws, rules, requirements, orders, directions, ordinances and regulations of every governmental authority or agency concerning the Lands and further covenants and agrees at its cost and expense to take any and all steps or make any improvements or alterations thereto, structural or otherwise, ordinary or extraordinary, which may be required at any time hereafter by any such present or future laws, rules, requirements, orders, directions, ordinances or regulations.

20. ENVIRONMENTAL COMPLIANCE

- (a) The Chargor expressly covenants and represents to the Chargee that the Lands do not contain, nor will in the future contain any Hazardous Substances (as hereinafter defined). Neither the Chargor nor any lessee, licensee or any other party acting at the direction of or with the consent of the Chargor or said lessee or said licensee, has manufactured, treated, stored or disposed of Hazardous Substances on the Lands. The Property has never been used as a land fill site or to store Hazardous Substances either above or below ground, in storage tanks or otherwise, unless noted in the Environmental Report obtained by the Chargee. No Hazardous Substances have been released into the environment or deposited, discharged, placed or disposed of at or on the Property, nor have migrated from the Property, as a result of the conduct of the business on the Property or otherwise; and other than in strict compliance with Hazardous Substance Laws. The Chargor covenants that it is in compliance with and

maintains compliance with all of the provisions of the Environmental Protection Act, R.S.O. 1990, c.E.19 (the "Environmental Protection Act") and all other applicable federal, provincial and local laws, administrative rulings, and regulations of any court, administrative agency or other governmental or quasi-governmental authority relating to the protection of the environment and any workplace health and safety legislation (collectively referred to as the "Hazardous Substances Laws"). For purposes hereof, the term "Hazardous Substances" means any one or more of the following: (i) any substance deemed hazardous under the Environmental Protection Act or any of the Hazardous Substances Laws; (ii) any other substance deemed hazardous by the Ministry of the Environment (Ontario); (iii) petroleum (including crude oil or any fraction thereof); or solution, element, pollutant or waste regulated under any federal, provincial or local statute, ordinance or regulation, including without limiting the generality of the foregoing, urea formaldehyde foam insulation, lead asbestos (whether or not friable or not), toxic mould (or like conditions), all contaminants, pollutants, substances and materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances and/or materials are or shall become prohibited, controlled or regulated pursuant to Hazardous Substance Laws and shall include "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic Substances", all as defined in, referred to, and/or contemplated in Hazardous Substance Laws.

- (b) The Chargor shall immediately advise the Chargee in writing of: (i) any and all enforcement, clean-up, removal, or other governmental or regulatory actions instituted, completed, or threatened pursuant to any Hazardous Substances Laws; (ii) all claims made or threatened by any third party against the Chargor or the Lands relating to damage, contribution, cost recovery compensation, loss or injury (the matters set forth in subsections (i) and (ii) are collectively referred to herein as the "Hazardous Substances Claims"); and (iii) the Chargor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Lands that could cause the Lands to be subject to any restriction on the ownership, occupancy, transferability, or use of the Lands under any Hazardous Substances Laws.
- (c) The Chargee shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Substances Claims and to have its solicitor's fees and costs (at all trial, appellate and bankruptcy levels) in connection therewith paid by the Chargor.
- (d) The Chargor shall not, without the Chargee's prior written consent, take any remedial action in response to the presence of any Hazardous Substances on, under or about the Lands, nor enter into any settlement agreement, or other compromise in respect to any Hazardous Substances Claims, which remedial action, settlement, consent or compromise might, in the Chargee's sole judgment, impair the value of the Chargee's security under this Charge; provided, however, that the Chargee's prior written consent shall not be necessary in the event that the presence of Hazardous Substances on, under or about the Lands either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not possible to obtain the Chargee's consent before taking such action, provided that in such event the Chargor shall notify the Chargee as soon as practicable of any action so taken. The Chargee agrees not to withhold its consent, when such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, or (ii) the Chargor establishes to the satisfaction of the Chargee that such remedial action would not result in the impairment of the Chargee's security under this Charge or any other loan documents and there is no reasonable alternative to such proposed remedial action.
- (e) The Chargor shall be solely responsible for, and shall fully and promptly pay, perform, discharge, defend and indemnify and hold harmless the Chargee, its directors, officers, employees, agents, successors and assigns, from and against all loss, damage, claims, liabilities, orders, demands, actions, proceedings, or suits, and all losses, costs, fines, penalties, charges, damages or expenses

(including, but not limited to, court costs, technical consultant fees and expenses, and solicitor's fees and expenses at all trial, appellate and bankruptcy levels) arising directly or indirectly, in whole or in part, out of: (i) the presence on or under the Lands of any Hazardous Substances; (ii) any activity carried on or undertaken on or off the Lands, whether prior to or during the terms of this Charge, and whether by the Chargor or any predecessor in title, or third persons at any time occupying or present on the Lands, in connection with the use, generation, treatment, decontamination, handling, removal, storage, clean-up, transport or disposal of any Hazardous Substances at any time located or present on or under the Lands; and (iii) any act, occurrence, or omission in violation of or contrary to the covenants, representations and warranties made herein.

- (f) The Chargor agrees at all times to comply fully and in a timely manner with, and to cause all tenants, employees, agents, contractors, and subcontractors of the Chargor and any other persons occupying or present on the Lands to comply with the Hazardous Substances Laws applicable to the use, generation, handling, storage, treatment, transport and disposal of any Hazardous Substances now or hereafter located or present on or under the Lands, and the Chargor agrees to indemnify and hold harmless the Chargee from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, solicitor's fees and expenses through all appellate levels), arising directly or indirectly, in whole or in part, from any failure of the Chargor, its employees, agents, tenants, contractors, subcontractors, or other such persons, to comply with the Hazardous Substances Laws.
- (g) The foregoing environmental obligations of the Chargor shall survive the term of this Charge and the repayment of the Indebtedness, any foreclosure of this Charge or any transfer of the Lands, and shall be enforceable against the Chargor in addition to all other obligations of the Chargor hereunder.
- (h) Each of the Chargor hereby agrees that it shall, at its sole cost and expense, remove or take remedial action or cause to be removed or cause remedial action to be taken with regard to any Hazardous Substance released in the environment at, on or near the Lands for which remedial action is required pursuant to Hazardous Substances Laws and each shall indemnify and save harmless the Chargee and its officers, directors, employees, agents and shareholders and their respective heirs, executors, administrators, successors and assigns from and against any and all losses, claims, costs, expenses, damages, or liabilities (including, without limitation, all legal fees and disbursements) which at any time may be paid or incurred by or claimed against any of them for or directly or indirectly arising out of, resulting from or attributable to the use, generation, storage, escape, seepage, leakage, spillage, release, disposal or presence, on, from and under the Lands of any Hazardous Substance, and such indemnification shall survive the satisfaction or release of the mortgage debt or extinguishment of the mortgage debt in the event the Chargee or a third party becomes owner of the Lands upon default of the Chargor. The Chargor acknowledges that the Chargee shall hold the benefit of this indemnity in trust for those indemnified persons who are not a party hereto. Amounts payable by the Chargor under this indemnity shall be immediately due and payable to the Chargee by the Chargor, shall be a charge on the Lands, shall be added to the principal sum hereby secured, shall bear interest at the interest rate provided for in this Charge and, in default of payment, at the sole option of the Chargee, the powers of sale and other remedies under this Charge, at law or in equity, may be exercised.
- (i) The Chargor and Covenantors (as hereinafter defined) covenant and agree that, if requested by the Chargee, the Chargor and Covenantors shall forthwith on their own behalf and in their own names commission an inspection, audit, review, assessment or report of the Lands by a qualified environmental consultant acceptable to the Chargee and the Chargor and Covenantors shall be solely responsible for the costs of same and the Chargee shall be entitled to a copy of all such audits, reviews or assessments as and when they are prepared. In the event that the Chargor does not commission such inspection, audit, review, assessment or report within thirty (30) days of being requested to do so by the

Chargee, the Chargee shall have the right to commission such inspection, audit, review, assessment or report in the name of the Chargor and add the costs thereof to the Indebtedness.

21. EVENTS OF DEFAULT

Without limiting any of the provisions of this Charge, each of the following events shall be considered events of default hereunder upon the happening of which the whole of the principal sum outstanding and all interest accruing thereon shall, at the Chargee's option, immediately become due and payable without notice or demand:

- (a) failure of the Chargor or any covenantor in respect of the Chargor's obligations under the Charge (hereafter referred to as a "Covenantor" or "Covenantors") or any of them to pay any instalment of principal, interest and/or taxes under this Charge or under any charge or other encumbrance on the Lands (but without hereby deeming the Chargee to have implicitly permitted or subordinated to any such encumbrance), on the date upon which any of the payments for same become due;
- (b) failure of the Chargor or Covenantors to strictly and fully observe or perform any condition, agreement, covenant or term set out in the application for this Charge or the letter of commitment for the loan secured by this Charge, the provisions of this Charge, or any other document giving contractual relationship as between the Chargor and Chargee herein, or if it is found at any time that any representation, covenant and warranty to the Chargee with respect to the loan secured by this Charge or in any way related thereto is incorrect or misleading;
- (c) default by the Chargor in the observance or performance of any of the covenants, provisos, agreements or conditions contained in any charge or other encumbrance affecting the Lands, whether or not it has priority over this Charge (but without hereby deeming the Chargee to have implicitly permitted or subordinated to any such encumbrance);
- (d) the registration of any construction lien against the Lands which is not discharged within a period of ten (10) days after the date of registration thereof, or the filing of a writ of execution in the hands of the sheriff in the judicial district where the Lands are situate;
- (e) the Lands are abandoned, any act of waste is committed as to all or any part of the Lands, or any building or other structure now or later being erected on the Lands remains unfinished and without any work being done on it for a period of ten (10) consecutive days;
- (f) the Chargor sells, transfers, encumbers, leases (save for any permitted leasing activity as provided for in the Charge or any other loan document) or otherwise disposes of all or any part of the Lands or any lease or any interest in any of the foregoing, or agrees to do so, without the Chargee's prior written consent;
- (g) the Lands are used for a use other than the use to which the Lands are currently used as of the execution of the Charge (whether or not such changed use is consistent with uses of the Lands permitted by applicable zoning by-laws);
- (h) in the opinion of the Chargee, there is a change in effective control of the Chargor (if the Chargor is a corporation);
- (i) any order is made or resolution passed for the winding-up, liquidation or other dissolution of the Chargor (if the Chargor is a corporation), or there is a change in the membership or a dissolution of the Chargor (if the Chargor is a partnership);
- (j) the Chargor or Covenantor makes an assignment for the benefit of creditors or any proceedings or other action shall be instituted by or against the Chargor or Covenantor seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding-up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or other similar law or seeking the appointment of a monitor, receiver, interim receiver, receiver and manager, trustee, custodian or other similar official for it or for any of its Lands (excluding proceedings or actions which are being contested by the Chargor in good faith, which have been outstanding for fewer than thirty (30) days and in respect of which any enforcement proceedings are stayed), or the Chargor or Covenantor is declared bankrupt or a monitor, receiver, interim receiver, receiver and manager,

trustee, custodian or other similar official is appointed of it or in respect of all or any part of the Lands, or power of sale actions or foreclosure proceedings are commenced against all or any part of the Lands;

- (k) another encumbrancer takes possession of all or any part of the Lands or a distress or execution or other similar process is brought against the Lands or any such part (but without hereby deeming the Chargee to have implicitly permitted or subordinated to any such encumbrance);
- (l) all or any part of the Lands is expropriated (including, without limitation, the passing of any legislation or other governmental action that has substantially the same effect as an expropriation); or
- (m) the Chargee determines, acting reasonably in all of the circumstances, that the ability of the Chargor to repay the Indebtedness has been or will be impaired in a material manner or that the value or the marketability of its security held with respect to the Indebtedness is or will be impaired in a material manner;
- (n) the Chargor shall have failed to comply with the provisions of any applicable condominium legislation or registered condominium documents relating to the Lands.

## 22. EXERCISE OF CERTAIN REMEDIES

If any of the events or circumstances contemplated in paragraph 21 (including without limitation, events or circumstances incorporated by reference therein) has occurred and is continuing, the Chargee may (but shall have no obligation to), from time to time and in any order, separately or in combination, and after giving the minimum notice, if any, required by applicable law and obtaining court approval where necessary, enforce any remedy available to it at law, including without limitation, any one or more of the following remedies:

- (a) sue the Chargor for all or any part of the Indebtedness;
- (b) distrain for arrears of all or any part of the Indebtedness;
- (c) take judicial proceedings to foreclose the Chargor's and/or any other person's interest in all or any part of the Lands or any lease, to take possession of it and/or to sell, lease or otherwise deal with it;
- (d) enter on and take possession of all or any part of the Lands;
- (e) sell and/or lease all or any part of the Lands or sell the unexpired term of years demised by any lease;
- (f) assign any lease and sell the last day of the term granted by the lease and/or remove the Chargor or any other person from being a trustee of the last day of the term of any lease and appoint a new trustee or trustees in its place;
- (g) appoint in writing a receiver (which term as used herein includes a receiver and manager) of all or any part of the Lands and the rents and other income thereof and from time to time remove any receiver and appoint another in its place, or in the alternative appoint a property manager;
- (h) exercise in respect of each insurance policy, insurance trust agreement, lease, rent and benefit assigned to the Chargee the remedies exercisable by the Chargee in respect of all (or any part of the Lands); and
- (i) exercise any other rights or remedies which the Chargee may have, whether pursuant to the charge, at law, in equity, by contract or otherwise.

## 23. DEFAULT

- (a) Provided that the Chargee may, on default of payment or default in the performance of any covenant in this Charge contained or implied by law or statute for fifteen (15) days, on thirty-five (35) days, notice, enter on and lease the Lands or in default of payment or in default in performance of any covenant in this Charge contained or implied by law or statute for at least fifteen (15) days may, on at least thirty-five (35) days, notice sell the Lands. Such notice shall be given to such persons and in such manner and form and within such time as provided under the Mortgages Act R.S.O. 1990, c.M.40, as amended from time to time. In the event that the giving of such notice shall not be required by law, or to the extent that such requirements shall not be applicable, it is agreed that



notice may be effectually given by leaving it with an adult person on the Lands, if occupied, or by placing it on the Lands, if unoccupied or, at the option of the Chargee, by mailing it in a registered letter addressed to the Chargor at his last known address, or by publishing it once in the newspaper published in the county or district in which the Lands are situate; and such notice shall be sufficient although not addressed to any person or persons by name or designation; and notwithstanding that any person who may be affected thereby may be unknown, unascertained, or under disability. If there be legal personal representatives of the Chargor on the death of the Chargor, such notice may, at the option of the Chargee, be given in any of the above modes or by personal service upon such representatives.

(b) Provided further, without prejudice to the statutory powers of the Chargee under the preceding proviso, that in case default be made in payment or the performance of any covenant contained in the Charge and such default continues for two (2) months, the Chargee may exercise the powers given under the preceding proviso with or without entry on the Lands without any notice, it being understood and agreed, however, that if the giving of notice by the Chargee shall be required by law, then notice shall be given to such persons and in such manner and form and within such time as so required by law. That the Chargee may sell the whole or any part of the Lands by public auction or private contract, or partly one or partly the other; and that the proceeds of any sale hereunder may be applied in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the Lands by reason of non-payment or procuring payment of monies secured hereby or otherwise; and that the Chargee may sell the whole or any part of the Lands on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence of commencement of title or otherwise which it shall deem proper; and may buy in or rescind or vary any contract for the sale of the whole or any part of the Lands and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit the Chargee shall be bound to pay the Chargor only such monies as have been actually received from purchasers after the satisfaction of the claims of the Chargee and for any of the said purposes the Chargee may make and execute all agreements and assurances as it shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder and the title of a purchaser or lessee upon a sale or lease made in professed exercise of the above power shall not be liable to be impeached on the ground that no cause had arisen to authorize the exercise of such power or that such power had been improperly or irregularly exercised, or that such notice had not been given, but any person damaged by an unauthorized, improper or irregular exercise of the power shall have his remedy against the person exercising the power in damages only.

(c) And it is hereby agreed between the parties hereto that the Chargee may pay all premiums of insurance and all taxes and rates which shall from time to time fall due and be unpaid in respect of the Lands, and that such payments together with all costs, charges and legal fees (between a solicitor and his own client), and expenses which may be incurred in taking, recovering and keeping possession of the Lands, and of negotiating this loan, investigating title, and registering the Charge and other necessary deeds, and generally in any other proceedings taken in connection with or to realize this security (including legal fees, real estate commissions, appraisal costs and other costs incurred in leasing or selling the Lands or in exercising the power of entering, leasing and selling herein contained) shall be, with interest at the rate aforesaid, a charge upon the Lands in favour of the Chargee and it is hereby agreed that the Chargee may pay or satisfy any lien, charge or encumbrance now existing or hereafter created or claimed upon the Lands, and that any amount paid by the Chargee shall be added to the monies hereby secured and shall be payable forthwith with interest at the rate herein, and in default this Charge shall immediately become due and payable at the option of the Chargee, and all powers in this Charge conferred shall become exercisable. In the event of the Chargee paying the amount of any such encumbrance, lien or charge, taxes or rates, either out of the money advanced on the security of this Charge or otherwise, the Chargee shall be entitled to all the rights, equities and securities of the person or persons, company, corporation or government so paid and is hereby authorized to obtain

an assignment or discharge thereof, and to retain same, for whatever period the Chargee shall deem it proper to do so.

- (d) Provided that wherever a power of sale is hereby conferred upon the Chargee, all provisions hereof relating to exercising such power, including, without in any way limiting the generality of the foregoing, the persons to whom notice of exercising such power shall be given and the manner of giving such notice shall be deemed to have been amended so as to comply with the requirements of law from time to time in force with respect to exercising such power of sale, and wherever there shall be a conflict between the provisions of this Charge relating to exercising such power of sale and the requirements of such law, the provisions of such law shall govern. Insofar as there is no conflict, the provisions of this Charge shall remain unchanged.
- (e) Provided that the Chargee may lease or sell as aforesaid without entering into possession of the Lands.
- (f) Provided that in default of payment of the Indebtedness, the Chargee may distrain for payment of same upon the Lands any part thereof and all chattels situated thereon and by distress warrant recover, by way of rent reserved from the Lands so much monies as shall from time to time be or remain in arrears and all costs, charges and expenses incurred by or on behalf of the Chargee with respect to or in connection therewith as in like cases of distress for rent. The Chargor waives the right to claim exceptions and agrees that the Chargee shall not be limited in the amount for which it may distrain.
- (g) Provided that in default of the payment of the interest hereby secured, the principal sum herein shall become payable at the option of the Chargee, together with interest thereon.
- (h) Provided that upon default of payment of instalments of the principal sum as same become due, the balance of the principal and interest shall immediately become due and payable at the option of the Chargee.
- (i) Provided that, until default hereunder, the Chargor shall have quiet possession of the Lands.
- (j) Provided that the Chargee may in writing at any time or times after default waive such default and upon such waiver the time or times for payment of the principal secured herein shall be as set out in the proviso for redemption herein. Any such waiver shall apply only to the particular default waived and shall not operate as a waiver of any other or future default. No waiver shall be effective or binding on the Chargee unless made in writing.
- (k) And it is further agreed by and between the parties that the Chargee may at its discretion at any time release any part or parts of the Lands or any other security or any surety for the money hereby secured either with or without any sufficient consideration therefor, without responsibility therefor, and without thereby releasing any other part of the Lands or any person from this Charge or from any of the covenants herein contained, it being especially agreed that every part or lot into which the Lands are or may hereafter be divided does and shall stand charged with all of the monies hereby secured and no person shall have the right to require the principal secured hereunder to be apportioned; further, the Chargee shall not be accountable to the Chargor for the value thereof, or for any monies except those actually received by the Chargee. No sale or other dealing by the Chargor with the equity of redemption in the Lands or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any other person liable for payment of the monies hereby secured.
- (l) It is further agreed that the Chargee may exercise all remedies provided for in this Charge concurrently or in such order and at such times as it may see fit and shall not be obligated to exhaust any remedy or remedies before exercising its right under any other provisions contained in this Charge.

24. RECEIVER

- (a) It is declared and agreed that at any time and from time to time when there shall be default under the provisions of this Charge, the Chargee may at such time and from time to time and with or without entering into possession of the Lands

appoint in writing a receiver, or a receiver and manager, or a receiver-manager, or a trustee (the "Receiver") of the Lands, or any part thereof, and of the rents and profits thereof, if any, and with or without security and may from time to time by similar writing remove any such Receiver and appoint another in its place and stead, and in making any such appointment or removal, the Chargee shall be deemed to be acting as the agent or attorney for the Chargor. The Chargor hereby irrevocably agrees and consents to the appointment of such Receiver of the Chargee's choice and without limitation whether pursuant to this Charge, the Mortgages Act R.S.O. 1990, c.M.40, the Construction Lien Act, R.S.O. 1990, c.30 (the "Construction Lien Act") or pursuant to the Trustees Act, R.S.O. 1990, c.T.23 (as the Chargee may at its sole option require). Without limitation, the purpose of such appointment shall be the orderly management, administration and/or sale of the Lands or any part thereof and the Chargor hereby consents to a court order for the appointment of such Receiver, if the Chargee in its discretion chooses to obtain such order, and on such terms and for such purposes as the Chargee in its sole discretion may require, including, without limitation, the power to manage, charge, pledge, lease and/or sell the said Lands and/or complete or partially complete any construction thereon and to receive advances of monies pursuant to any charges, pledges and/or loans entered into by the Receiver or the Chargor, and if required by the Chargee, in priority to any existing encumbrances affecting the Lands, including without limitation, charges and construction lien claims.

- (b) Upon the appointment of any such Receiver from time to time, the following provisions shall apply:
- (i) a statutory declaration of the Chargee or an officer of the Chargee as to default under the provisions of this Charge shall be conclusive evidence thereof;
  - (ii) every such Receiver shall be the irrevocable agent or attorney of the Chargor for the collection of all rents falling due in respect to the Lands, or any part thereof, whether in respect of any tenancies created in priority to this Charge or subsequent thereto and with respect to all responsibility and liability for its acts and omissions;
  - (iii) the Chargee may from time to time fix the remuneration of every such Receiver which shall be a charge on the Lands, and may be paid out of the income therefrom or the proceeds of sale thereof;
  - (iv) the appointment of every such Receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the Receiver in any respect and such appointment or anything which may be done by any such Receiver or the removal of any such Receiver or the termination of any such receivership shall not have the effect of constituting the Chargee a mortgagee in possession in respect of the Lands or any part thereof;
  - (v) the Receiver shall have the power to rent any portion of the Lands for such term and subject to such provisions as it may deem advisable or expedient and shall have the authority to execute any lease of the Lands or any part thereof in the name and on behalf of the Chargor and the Chargor undertakes to ratify and confirm, and hereby ratifies and confirms whatever acts such Receiver may do on the Lands;
  - (vi) in all instances, the Receiver shall be acting as the attorney or agent of the Chargor;
  - (vii) every such Receiver shall have full power to complete any unfinished construction upon the Lands or to commence any new construction upon the Lands;
  - (viii) such Receiver shall have full power to manage, operate, amend, repair, or alter the Lands or any part thereof in the name of the Chargor;
  - (ix) the Receiver shall have full power to do all acts and execute all documents which may be considered necessary or advisable in order to protect the Chargee's interest in the Lands including, without limiting the generality of the foregoing, increasing, extending, renewing or amending all charges which may be registered against the Lands from time to time,

whether or not such charges are prior to the interest of the Chargee in the Lands (but without hereby deeming the Chargee to have implicitly permitted or subordinated to any such encumbrance); sale of the Lands; borrowing money on the security of the Lands; applying for and executing all documents in any way related to any re-zoning applications, severance of Lands pursuant to the provisions of the Planning Act, R.S.O. 1990, c.P.13, as amended, subdivision agreements and development agreements and agreements for the supply or maintenance of utilities or services to the Lands, including grants of Lands or easements or rights of way necessary or incidental to any such agreements; executing all grants, documents, instruments and agreements related to compliance with the requirements of any competent governmental authority, whether pursuant to a written agreement or otherwise and applying for and executing all documents in any way related to registration of the Lands as a condominium; completing any application for first registration pursuant to the provisions of the Land Titles Act, R.S.O. 1990, c.L.5 or any other relevant legislation and for all of the purposes aforesaid the Chargor does hereby give and grant unto the Receiver full and absolute power and authority to do and execute all acts, deeds, matters and things necessary to be done as aforesaid in and about the Lands, and to commence, institute and prosecute all actions, suits and other proceedings which may be necessary or expedient in and about the Lands, as fully and effectually to all intents and purposes as the Chargor could do if personally present and acting therein; and

- (x) the Receiver shall not be liable for any loss howsoever arising and the Receiver shall not be liable to the Chargor to account for monies received other than cash received by it in respect to the Lands or any part thereof and out of such cash so received, every such Receiver shall pay any and all of the following, in such order, and at such times as the Receiver may see fit:
  - (A) its remuneration;
  - (B) all payments made or incurred by it in the exercise of its powers hereunder; and
  - (C) any payment of interest, principal and other money which may from time to time be or become charged upon the Lands in priority to the monies owing hereunder and all taxes, insurance premiums and every other proper expenditure made or incurred by it in respect to the Lands or any part thereof.

The Chargor hereby irrevocably appoints the Chargee and the Receiver as its attorney to execute such consent or consents and all such documents as may be required in the sole discretion of the Receiver and the Chargee and/or their solicitors so as to give effect to the foregoing provisions and the signature of such attorney shall be valid and binding on the Chargor and all parties dealing with the Chargor, the Chargee and/or the Receiver and/or with respect to the Lands in the same manner as if such documentation was duly executed by the Chargor itself.

#### 25. CHARGEES RIGHT OF ACCESS AND INSPECTION

The Chargee shall have access to and the right to inspect the Lands at all reasonable times.

#### 26. TAKING OF JUDGEMENT NOT A MERGER

The taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Chargee's right to interest at the rate and times herein provided; and, further, the said judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.

#### 27. RENEWAL OR EXTENSION OF TIME

No renewal or extension of the term of this Charge given by the Chargee to the Chargor, or anyone claiming under him, or any other dealing by the Chargee with the owner of the equity of redemption of the Lands shall in any way affect or prejudice the rights of the Chargee against

the Chargor or any person liable for the payment of the monies hereby secured, and this Charge may be renewed by an agreement in writing at maturity for any term with or without an increased rate of interest, or amended from time to time as to any of its terms, including, without limitation, an increase of interest rate or principal sum, notwithstanding that there may be subsequent encumbrancers. It shall not be necessary to register any such agreement in order to retain priority for this Charge so altered over any instrument registered subsequent to this Charge.

- (i) provided that nothing contained in this paragraph shall confer any right of renewal upon the Chargor;
- (ii) provided further that the terms of this Charge may be amended or extended from time to time by mutual agreement between the Chargor and the Chargee and the Chargor hereby further covenants and agrees that, notwithstanding that the Chargor may have disposed of his interest in the Lands hereby secured, the Chargor and Covenantors will remain liable as principal debtor and not as a surety for the observance of all of the terms and provisions herein and will in all matters pertaining to this Charge well and truly do, observe, fulfill and keep all and singular the covenants, provisos, conditions, agreements and stipulations in this Charge or any amendment or extension thereof, notwithstanding the giving of time for the payment of the Charge or the varying of the terms of the payment thereof or the rate of interest thereon or any other indulgence by the Chargee to the Chargor; and
- (iii) The Chargor covenants and agrees with the Chargee that no agreement for renewal hereof or for extension of the time for payment of any monies payable hereunder shall result from or be implied from any payment or payments of any kind whatsoever made by the Chargor to the Chargee after the expiration of the original term of this Charge or of any subsequent term agreed to in writing between the Chargor and the Chargee, and that no renewal hereof or extension of the time for payment of any monies hereunder shall result from, or be implied from, any other act, matter or thing, save only by express agreement in writing between the Chargor and the Chargee.

28. **BUILDING MORTGAGE**

- (a) Unless expressly set out in the Charge or any other loan document the Chargor and Chargee hereby acknowledge, confirm and agree that the funds committed by the Chargee to the Chargor pursuant to this loan shall be deemed not intended to be utilized for the purposes of securing financing of any improvements whatsoever with regard to the Lands on the security of which the funds shall be advanced pursuant to this Charge, nor for the purposes of repaying any financing, charge or otherwise, which was utilized or intended for the financing of an improvement with regard to the Lands, and accordingly, it is not the intention for the security to be taken pursuant to the letter of commitment to be a "Building Mortgage" within the definition of the Construction Lien Act or a charge taken out to repay a "Building Mortgage" within the meaning of the Construction Lien Act.
- (b) In the event that the Charge or any other loan document expressly states that the funds committed by the Chargee to the Chargor pursuant to this loan are intended to be utilized for the purpose of securing financing of an improvement with regard to the Lands, then the following provisions shall apply:
  - (i) The Chargee may, at its option, withhold from any advances for which the Chargor may have qualified, such holdbacks as the Chargee, in its sole discretion, considers advisable to protect its position under the provisions of the Construction Lien Act, so as to secure its priority over all liens, until the Chargee is fully satisfied that all lien periods have expired and that there are no preserved or perfected liens outstanding. Nothing in this clause shall be construed to make the Chargee an "owner" or "payer", as defined under the Construction Lien Act, nor shall there be, or be deemed to be, any obligation by the Chargee to retain any holdback which may be required by the said legislation. Any holdback which may be required to be made by the owner or payer shall remain solely the Chargor's obligation. The Chargor hereby covenants and agrees to comply in all respects with the provisions of the Construction Lien Act.

29. **EXPROPRIATION**

If the Lands or any part thereof shall be expropriated by any government, authority, body or corporation clothed with the powers of expropriation, the principal sum herein remaining unpaid shall, at the option of the Chargee, forthwith become due and payable together with interest thereon at the rate provided for in the Charge to the date of payment together with a bonus to be determined by the Chargee which shall not be limited to, but may, at the option of the Chargee, be equal to the aggregate of (a) three (3) months, interest at the said rate calculated on the amount of the principal sum remaining unpaid; and (b) the sum of the present value of all blended monthly instalments of principal and interest payable after the prepayment date and until the Maturity Date and the present value of the principal balance which would be payable on the Maturity Date, these present values shall be calculated using a discount rate equal to the bid-side yield listed in a Bloomberg screen at 11:00 A.M. (Montreal time) on the Business Day immediately preceding the date of prepayment, on non-callable Government of Canada bonds having an equivalent term less 25 basis points; the "bid-side yield on non-callable Government of Canada bonds having an equivalent term" shall mean the bid-side yield to maturity, as determined by the Lender, expressed as an annual rate of interest calculated semi-annually and not in advance, on a theoretical non-callable Government of Canada bond, payable in Canadian Dollars, obtained from the interpolation between the bid-side yield of a non-callable Government of Canada bond having a maturity closest to but prior to that of the Maturity Date and of a non-callable Government of Canada bond having a maturity closest to but following the Maturity Date, exceeds the principal amount of the Loan prepaid.

30. **PRE-AUTHORIZED CHEQUE PLAN**

Provided that all payments made under this Charge by the Chargor shall be made by pre-authorized cheque payment plan as approved by the Chargee or at the Chargee's option by post-dated cheques which shall be provided annually for the next ensuing twelve (12) payments and thereafter on each anniversary date thereon in each year for the duration of the term of his Charge. The Chargee shall not be obligated to accept any payment excepting payment made by pre-authorized cheque or post-dated cheque. Failure to make all payments in the manner required by the Chargee shall be an action of default and the Chargee shall be entitled to pursue any and all of its remedies herein and/or at law as it may deem necessary at its option.

31. **PAYMENTS**

- (a) All payments of principal, interest and other monies payable hereunder to the Chargee shall be payable at par in lawful money of Canada at such place as the Chargee shall designate in writing from time to time. In the event that any of the monies secured by this Charge are forwarded to the Chargee by mail or any other means of delivery (but without in any way implying consent by the Chargee to such method of payment in lieu of the pre-authorized cheques or post-dated cheques contemplated by Section 30 of these Standard Charge Terms), payment will not be deemed to have been made until the Chargee has actually received such monies and the Chargor shall assume and be responsible for all risk of loss or delay.
- (b) Any payment received after 1:00 p.m. on any date shall be deemed, for the purpose of calculation of interest, to have been made and received on the next bank business day and the Chargee shall be entitled to interest on the amount due to it and including the date on which the payment is deemed by this provision to have been received.

32. **NO DEEMED RE-INVESTMENT**

The parties hereto agree that the Chargee shall not be deemed to re-invest any monthly or other payments received by it hereunder excepting only blended monthly payments, if applicable.

33. **ABANDONMENT**

In the event that any buildings now or hereafter in the course of erection on the Lands remain unfinished and without any work being done on them for a period of ten (10) consecutive days, the Chargee may enter in and upon the Lands and do all work necessary to protect the same from deterioration and to complete the buildings so remaining unfinished in such manner as the Chargee may see fit. It is hereby agreed that any monies expended by the Chargee pursuant to this provision shall be immediately due and payable, shall be added to the principal sum of this Charge and shall be a charge upon the Lands and shall bear interest at the same rate as the other monies secured by this Charge and in default of payment, at the sole option of

the Chargee, the power of sale and other remedies under this Charge, at law or in equity, may be exercised.

34. DISCHARGE

The Chargee shall have a reasonable period of time after payment in full of the monies hereby secured within which to prepare and execute a discharge of this Charge; and interest as aforesaid shall continue to run and accrue until actual payment in full has been received by the Chargee; and all legal and other expenses for the preparation and execution of such discharge shall, together with the Chargee's fee for providing same, be borne by the Chargor. The discharge shall be prepared and executed by such persons as are specifically authorized by the Chargee and the Chargee shall not be obligated to execute any discharge other than a discharge which has been so authorized.

35. DISHONoured CHEQUES

In the event that any of the Chargor's cheques is not honoured when presented for payment to the drawee, the Chargor shall pay to the Chargee for each such returned cheque a servicing fee to cover the Chargee's administration costs with respect to same. In the event that the said cheque which has not been honoured by the drawee is not forthwith replaced by the Chargor, the Chargee shall be entitled to a further servicing fee for each written request therefor which may be necessitated by the Chargor not forthwith replacing such dishonoured cheque.

36. SERVICING FEES

All servicing fees as herein provided are intended to compensate the Chargee for the Chargee's administrative costs and shall not be deemed a penalty. The amount of such servicing fees, if not paid, shall be added to the principal sum secured hereunder and shall bear interest at the rate provided in the Charge and the Chargee shall have the same rights with respect to the collection of same as it does with respect to the collection of principal and interest hereunder or at law. Servicing fees or charges owing to or collected by any servicer selected by the Chargee shall be treated in the same manner as if paid to the Chargee itself.

37. NON-MERGER

Notwithstanding the registration of this Charge and the advance of funds pursuant hereto the terms and/or conditions of the letter of commitment issued by the Chargee pertaining to the loan transaction evidenced by this Charge (the "Commitment Letter") shall remain binding and effective on the parties hereto, and shall not merge in this Charge nor in any document executed and/or delivered on the closing of this transaction, and the terms thereof are incorporated herein by reference. In the event of any inconsistency between the terms of the Commitment Letter and this Charge, the Chargee shall determine in its sole discretion which provisions shall prevail.

38. CONSENT OF CHARGE

Wherever the Chargor is required by this Charge to obtain the consent or approval of the Chargee, it is agreed that subject to any other specific provision contained in this Charge to the contrary, the Chargee may give or withhold its consent or approval for any reason that it may see fit in its sole and absolute discretion and the Chargee shall not be liable to the Chargor in damages or otherwise for its failure or refusal to give or withhold such consent or approval, and all costs of obtaining such approval shall be for the account of the Chargor.

39. REMEDIES CUMULATIVE

This Charge is in addition to and not in substitution for any other security held by the Chargee for all or any of the monies secured hereunder. The Chargee may follow its remedies thereunder, hereunder and under any security evidencing the amount advanced under this Charge, concurrently or successively, at its option.

40. NO RELEASE

Provided that no sale or other dealing by the Chargor with the Lands or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any other person liable for payment of the amounts secured by the Charge.

41. NO PREPAYMENT OR PARTIAL DISCHARGE

Unless expressly stipulated otherwise in the Charge, there is no prepayment privilege in respect of the principal sum secured by the Charge. In the event that the Chargee accepts any prepayment of the principal sum, the Chargee shall not be obligated to provide any partial

discharge of the Charge or any other security so long as any part of the Indebtedness is outstanding.

42. **COSTS OF RENEWAL**

The Chargor will pay the costs, charges and expenses of and incidental to the taking, preparation, execution, registration of this Charge and other instruments connected herewith, and of every renewal thereof.

43. **COVENANTORS**

In consideration of the Chargee advancing to the Chargor the principal sum or any part thereof, at the request of the Covenantor, which the Covenantor acknowledges by execution of the Charge and/or by the delivery of separate instruments, the Covenantor as principal debtor and not as surety covenants to pay the principal sum and interest secured by the Charge as and when the same become due and payable and covenants to carry out and observe the provisions contained in the Charge and agrees to indemnify the Chargee against any breach by the Chargor of any of the covenants or provisions contained in the Charge.

44. **RESIDENCY**

The Chargor represents and warrants that it is not a non-resident of Canada within the meaning of Section 116 of the Income Tax Act (Canada), as amended, and agrees that it shall take all steps necessary to ensure that it retains such status of not a non-resident of Canada within the meaning of Section 116 of the Income Tax Act (Canada), as amended, until this Charge is fully paid or otherwise satisfied. The Chargor agrees that the Chargee may rely on this representation, warranty and covenant in order to give assurances to any purchaser under power of sale as to the residency of the Chargor.

45. **PROPERTY MANAGER**

- (a) As an alternative to the appointment of a receiver provided in these Standard Charge Terms, the parties agree that the Chargee shall be entitled at any time and from time to time to appoint in writing a property manager (the "Property Manager") and representative of the Chargee for the purposes of management, leasing and operation for the Chargee's account of the Lands.
- (b) Upon the appointment of the Property Manager, the following provisions shall apply:
  - (i) a statutory declaration of the Chargee or a representative of the Chargee as to default under the provisions of this Charge shall be conclusive evidence thereof;
  - (ii) the Chargee may from time to time fix the remuneration of the Property Manager which shall be a charge on the Lands and may be paid, together with interest thereon, out of the income from the Lands or the proceeds of sale thereof;
  - (iii) the Property Manager shall have full power to do all acts and execute all documents which may be considered necessary or advisable in order to protect the Chargee's interest in the Lands; and
  - (iv) the Chargor acknowledges and agrees that the appointment of the Property Manager shall not constitute the Chargee a mortgagee in possession.
- (c) In the event that the Chargee chooses not to appoint a Property Manager as aforesaid and nonetheless attends to the management, leasing and operation of the Lands for its own account, the Chargee shall be entitled to a management fee equal to no less than 4% of the gross receipts for the Lands and shall also be entitled to a commission for all leases entered into at a rate to be established by the Chargee in its discretion and the management fee and commission shall be added to the principal sum secured hereunder and bear interest at the rate provided for herein.

46. **ASSIGNMENT OF RENTS**

- (a) Provided further that the Chargor hereby assigns and transfers unto the Chargee, its successors and assigns as security for the principal and interest and all other amounts secured by said Charge, all rents and other monies (herein called the "rents") which now are or which may at any time hereafter become due



or owing under or by virtue of any lease or licence whether written or verbal, or any letting of, or of any agreement for the use and occupancy of the whole or any portion of the Lands or premises which may have been heretofore or may be hereinafter made or agreed to by the Chargor, it being the intention of the parties to establish an absolute assignment of all such rents under such leases, licences and agreements and the Chargor hereby authorizes the Chargee to collect, sue for, recover, receive, and give receipts for the rents and to enforce payment thereof in the name of the Chargor and, where applicable, his heirs, executors, administrators, successors and assigns.

- (b) The Chargor further covenants and agrees that: (a) it has not and will not do any act or omission having the effect of terminating, cancelling, or accepting surrender of any existing or future lease or licence or of waiving, releasing, reducing or abating any rights or remedies of the Chargor or obligations of any other party thereunder or in connection therewith without the written consent of the Chargee; (b) none of such rights, remedies and obligations are or will be affected by any other agreement, document or understanding, or by any reduction, abatement, defence, set-off or counterclaim; (c) none of the leases or licences or the Chargor's rights thereunder, including the right to receive the rents, has been or will be amended, assigned, encumbered, discounted or anticipated; (d) none of the rents has been or will be paid in advance (save for the first and last month's rent due under a lease and save as expressly permitted in the Charge or any other loan document) and none of the remainder of the rents has been or will be paid prior to the due date for payment thereof; (e) there has been no default under any of the leases or licences by any of the parties thereto and there is no outstanding dispute under any of the leases or licences between the Chargor and any other party thereto; (f) the Chargor will observe and perform all of its obligations under each of the leases or licences and the Chargee shall not be liable or accountable for any failure to collect, recover, distrain for, or receive the rents or any part of them or for the performance of any of the obligations or conditions under or in respect of the leases or licences or any of them to be observed and performed by the Chargor and the Chargee shall not by virtue of this assignment be deemed a mortgagee in possession of the Lands and the Chargee shall not be under any obligation to take any action or exercise any remedies in the collection or recovery of the rents or any of them or to see to or enforce the performance of the obligations and liabilities of any person under or in respect of the leases or licences or any of them, and the Chargee shall be liable to account only for such monies as shall actually come into its hands, less proper collection charges, and such monies may be applied on account of any indebtedness of the Chargor to the Chargee; (g) all rents collected or received by the Chargor in respect of the Lands shall be received as trustee for the Chargee and shall be paid over to the Chargee; and (h) any waiver by any party hereto of any breach of any of the covenants or provisions contained herein, whether expressed or implied or negative or positive in form or any failure to enforce any of its rights contained herein shall extend only to the particular breach so waived or particular failure and shall not limit or affect the rights of any party hereto with respect to any other or future breach.
- (c) The Chargor further covenants and agrees to execute and deliver at the request of the Chargee, all such further assurances and assignments with respect to such existing or future rents, leases and licences as the Chargee shall from time to time require and shall do all other acts with respect to such rent, leases and licences as requested by the Chargee within five (5) days from receipt of request and at no expense to the Chargee.
- (d) The Chargor covenants and agrees that all leases, licences, offers to lease and agreements to lease shall be bona fide and shall be at rates, on terms and conditions and to tenants which are not less favourable or desirable to the Chargor than those which a prudent landlord would expect to receive for the premises to be leased or licensed and provided further that the Chargor shall obtain the consent of the Chargee prior to the execution of any lease, licence or offer or agreement to lease provided that the Chargor shall not accept any prepaid rents from any tenant with the exception of first and last month's rent (save for any permitted leasing or prepayment of rents provided for in the Charge or any other loan document).

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47. **COSTS AND EXPENSES**

The Chargor covenants and agrees that it will immediately pay to the Chargee all amounts the Chargee is permitted to pay under the Charge or at law and all costs, expenses and damages of, relating to or resulting from inspecting, protecting, repairing, completing, insuring, taking and keeping possession of and managing all or any part of the Lands, preparing it for sale or lease, selling or leasing it, renewing any leasehold interest, collecting any part of the Indebtedness, the exercise of any of the rights of a Receiver appointed pursuant to the Charge, such Receiver's fees and expenses, agents' costs and expenses, legal fees and expenses on a substantial indemnity, the use, occupation or operation of the Lands, the breach of any of the Chargor's representations, warranties or agreements herein, and any other costs and expenses of exercising or protecting the Chargee's rights (hereunder or otherwise) or all or any part of the Lands. Without limiting the Chargee's right to interest provided for herein, it is expressly agreed that the Chargor shall pay interest at the interest rate provided for herein on such amounts, costs and expenses (and on all other costs and expenses payable by the Chargor pursuant to the charge) from the date they are paid by the Chargee until they have been repaid by the Chargor, which interest shall be paid, calculated and compounded as provided for herein.

In this Charge the word "cost" shall be extended to and include legal costs incurred by the Chargee on a substantial indemnity basis.

The "cost" shall include, as set out in paragraph 36 above, any costs, expenses and charges incurred by the servicer of the charge and loan account, as selected the Chargee.

48. **NOTICE**

Whenever a party to this Charge desires to give any notice to another, it shall be sufficient for all purposes if such notice is personally delivered or sent by registered or certified mail, postage prepaid, addressed to the intended recipient at the address noted on the Charge document to which these Standard Charge Terms form a part or such other address communicated in writing by the addressee in a written notice to the sender.

49. **CHARGEES FEES**

- (a) Without limiting the generality of any of the foregoing provisions, it is understood and agreed that the Chargor shall pay to the Chargee the then current fee of the Chargee or its selected servicer for the following matters:
- (i) providing and preparing mortgage statements;
  - (ii) amending its records to reflect the assumption of this Charge;
  - (iii) endeavouring to collect any money overdue under this Charge, including without limiting the generality of the foregoing, an allowance for time and service of any employee of the Chargee or other person appointed for such purpose;
  - (iv) executing any cessation or discharge of this Charge, notwithstanding that said cessation or discharge may have been prepared by the Chargor;
  - (v) entering into an agreement to amend the interest rate or any other provision in the Charge;
  - (vi) entering into an agreement to extend the maturity date of this Charge;
  - (vii) handling any dishonoured cheque;
  - (viii) placing insurance on the Lands and on the buildings thereon and administering the proceeds of insurance paid, including supervision of repair or reconstruction as a result of an insurance claim;
  - (ix) preparing an amortization schedule showing the principal and interest components of payments due under this Charge;
  - (x) such other administrative matters as the Chargee may perform with regard to the Charge or with regard to any collateral security; and
  - (xi) the fee charged by the Chargee's insurance consultant to review the Chargor's policy of insurance for the Lands, including business interruption insurance if required by the Chargee.

- (b) The charges contained in this clause shall be forthwith payable to the Chargee and shall become part of the debt secured hereby and shall bear interest at the rate of interest expressed in this Charge.

50. CONTINUING SECURITY

The Charge shall, whether or not it secures a current or running account, be a general and continuing security to the Chargee for payment of the Indebtedness and performance of the Chargor's other obligations under the Charge notwithstanding any change or fluctuation in the amount, nature or form of the Indebtedness or in the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Chargee representing all or part of the Indebtedness or in the names of the parties to such bills, notes and/or other obligations or that there is no Indebtedness outstanding at any particular time; and the Charge will not be deemed to have been redeemed or become void as a result of any such event or circumstance.

51. DELAY, RELEASES, PARTIAL DISCHARGES, WAIVERS AND AMENDMENTS

The Chargee may release others from any liability to pay all or any part of the Indebtedness without releasing the Chargor. The Chargee may release its interest under the Charge in all or any part of the Lands or any lease (or any other collateral) whether or not the Chargee receives any value and shall be accountable to the Chargor only for monies which the Chargee actually receives. If the Chargee releases its interest in part of the Lands or any lease, the remainder of the Lands and each other lease shall continue to secure the Indebtedness and the Chargor's obligations under the Charge will continue unchanged. The Chargee may grant extensions of time or other indulgences, take and give up securities, accept compositions and proposals, grant releases and discharges and otherwise deal with the Chargor and other persons (including, without limitation, any person to whom all or any part of the Lands is transferred) and with any securities as the Chargee may see fit without affecting any of the Chargee's rights or remedies (herein or otherwise) or the Chargor's liability under the Charge (including without limitation, the Chargor's liability to pay the Indebtedness). The Chargee may delay enforcing any of its rights under the Charge or any other document under the Charge or any such document without affecting the Chargee's rights in respect of any other existing breach or any subsequent breach of the same or a different nature. No such waiver shall be effective unless made in writing and signed by an officer of the Chargee. No sale or other dealing with all or any part of the Lands or any lease, and no amendment of the Charge or any other security, agreement or other instrument relating to the Indebtedness, will in any way affect the obligation of the Chargor or any other person to pay the Indebtedness.

52. MAINTENANCE AND INSPECTION

- (a) If any part of the Lands is farm land, the Chargor covenants and agrees to in each year notify the Chargee of the use of the Lands as a farm and either put into crop or summer fallow in a proper manner every part thereof which has been or may in the future be brought under cultivation. The Chargor shall also keep such Lands clean and free from all noxious weeds and generally see that it does not depreciate in any way as farm land.
- (b) Any entry which may be made by the Chargee pursuant to any provision of the Charge may be made by any of the Chargee's agents, employees and/or contractors and shall not constitute the Chargee a mortgagee in possession.

53. IMPROVEMENTS

- (a) In these Standard Charge Terms, the term "Improvement" has the meaning given to it in the Construction Lien Act or replaced from time to time, and includes any alteration, addition or repair to, and any construction, erection, remodelling, rebuilding or installation on or of, any part of the Lands and the demolition or removal of any building or part of any building on the Lands.
- (b) The Chargor covenants and agrees that no Improvement to or on the Lands will be commenced or made by the Chargor or any other person unless the Chargor first provides a copy of all proposed plans, blueprints, contracts and specifications to the Chargee and obtains the Chargee's written consent thereto. The Improvement shall form part of the Lands but, nevertheless, it is expressly agreed that the Charge is not and shall not be a building mortgage as defined under the Construction Lien Act.

STANDARD CHARGE TERMS  
CLAUSES TYPES DE CHARGE  
Filing No. 201202 Cote

54. **FURTHER ENCUMBRANCE, PERMITTED SALE AND YIELD MAINTENANCE**

- (a) In the event of a further encumbrance or a sale, conveyance or transfer of the Lands or any portion thereof, or a change in control of the Chargor, or a change in the beneficial ownership of the Lands or any portion thereof, or a lease of the whole of the Lands, all sums secured hereunder shall, at the Chargee's option, become due and payable forthwith unless the written consent of the Chargee has been first obtained. The rights of the Chargee pursuant to this provision shall not be affected or limited in any way by the acceptance of payments due under the Charge from the Chargor or any person claiming through or under him and the rights of the Chargee hereunder shall continue without diminution for any reason whatsoever until such time as the Chargee has consented in writing as required by this provision.
- (b) Provided that no permitted sale or other dealing by the Chargor with the Lands or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any other person liable for payment of the monies hereby secured.
- (c) A "Yield Maintenance Fee", being compensation for the loss on the return of funds allocated to the principal amount of the Loan being prepaid, shall be the greatest of the two following amounts between (i), and (ii) hereafter:

- (i) An amount equal to the amount by which:

The sum of the present value of all blended monthly instalments of principal and interest payable after the prepayment date and until the Maturity Date and the present value of the principal balance which would be payable on the Maturity Date, these present values shall be calculated using a discount rate equal to the bid-side yield listed in a Bloomberg screen at 11:00 A.M. (Montreal time) on the Business Day immediately preceding the date of prepayment, on non-callable Government of Canada bonds having an equivalent term less 25 basis points; the "bid-side yield on non-callable Government of Canada bonds having an equivalent term" shall mean the bid-side yield to maturity, as determined by the Lender, expressed as an annual rate of interest calculated semi-annually and not in advance, on a theoretical non-callable Government of Canada bond, payable in Canadian Dollars, obtained from the interpolation between the bid-side yield of a non-callable Government of Canada bond having a maturity closest to but prior to that of the Maturity Date and of a non-callable Government of Canada bond having a maturity closest to but following the Maturity Date,

Exceeds the principal amount of the Loan prepaid; and

- (ii) An amount equal to interest under the Loan in respect of a three month period calculated at the Interest Rate on the principal amount prepaid.

If, by operation of law or by acceleration of the Loan by the Chargee or for any reason whatsoever, the Chargor shall become entitled or obligated prior to the Maturity Date, to prepay and does prepay the Loan or any part thereof, the Chargor shall also pay to the Chargee, in addition to all other amounts owing hereunder, the Yield Maintenance Fee described above.

55. **REORGANIZATION PROCEEDINGS**

The Chargor represents and warrants that the Lands are of such a unique nature that, in the event the Chargor sought to reorganize its affairs under any of the laws of Canada (or any province) which provides the ability of a debtor to reorganize its affairs with its creditors (including, without limitation, under the Companies' Creditors Arrangement Act, R.S.C., 1985, c.C-36, s.1 (the "CCAA"), the Bankruptcy and Insolvency Act, R.S., 1985, c.B-3, s.1, 1992, c.27, s.2 (the "BIA") or any other statute), the Chargee would not have a sufficient commonality of interests with any other creditor of the Chargor such that the Chargee would be required to vote on any reorganization, arrangement, compromise or other transaction in a class with any other creditors of the Chargor and, in that regard, covenants and agrees that the Chargee will be treated in its own exclusive class of creditors for such purpose. Without limiting the generality of the foregoing, the Chargor covenants and agrees that:

- (i) it will give the Chargee not less than ten (10) days, written notice prior to the commencement of any proceedings under any of the CCAA, the BIA

or any other similar or analogous legislation (such proceedings being referred to as "Reorganization Proceedings");

- (ii) in no circumstances will the Chargor seek, suffer or permit the right of the Chargee to be stayed or otherwise affected in any Reorganization Proceedings; and
- (iii) in the event that Reorganization Proceedings are commenced, the Chargor will consent to an order directing that all rents or other revenues generated or received in respect of the Lands will forthwith be deposited into a segregated trust account under the sole control of the Chargee and that same shall not constitute the Chargee to be a mortgagee in possession of or in control or management of the Lands or result in an acceleration of amounts secured hereunder unless so designated by the Chargee.

56. **INVALIDITY**

If any of the covenants or conditions in this Charge inclusive of all schedules forming a part hereof shall be void for any reason, it shall be severed from the remainder of the provisions hereof and the remaining provisions shall remain in full force and effect notwithstanding such severance.

57. **BENEFICIAL OWNERSHIP**

The Chargor warrants that the Chargor is the registered and beneficial owner of the Lands. The Chargor expressly waives any right of prepayment which he may have or may hereafter have pursuant to Section 10 of the Interest Act (Canada), as amended, and/or similar federal or provincial legislation.

58. **ADJACENT LANDS**

Any lands adjacent to the Lands owned by the Chargor are hereby charged to the Chargee and the Chargor hereby authorizes the Chargee to register this Charge against all such adjacent lands. No such adjacent lands shall be acquired by the Chargor without the Chargee registering this Charge on the title thereto in equivalent priority to the priority of the Charge on the Lands.

59. **BINDING EFFECT**

Provided and it is hereby agreed that in construing this Charge, everything herein contained shall extend to and bind and may be enforced or applied by the respective heirs, executors, administrators, successors in office, successors and assigns, as the case may be, of each and every one of the parties hereto, and where there is more than one Chargor or Chargee or more than one Covenantor, or there is a female party or a corporation or there is one Covenantor or no Covenantor, the provisions hereof shall be read with all grammatical changes thereby rendered necessary, and all covenants shall be deemed to be joint and several.

60. **SHORT FORM OF MORTGAGES ACT**

If any of the forms of words contained herein is substantially in the form of words contained in Column One of Schedule B of the Short Form of Mortgages Act, as amended, and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column Two of Schedule B of the said Act distinguished by the same number, and this Charge shall be interpreted as if the Short Form of Mortgages Act (Ontario) was still in force and effect.

61. **PAYMENT ON DEFAULT**

Upon default of payment of any of the principal sum secured and payable hereunder, or in the event prepayment of any part of the principal monies is made prior to the maturity date whether by reason of payment after acceleration upon the occurrence of any event of default, or otherwise (unless otherwise permitted herein), the Chargee shall be entitled to require payment, in addition to all monies hereby secured or payable hereunder, of a bonus equal to the greater of three (3) months' interest in advance at the rate aforesaid upon the principal sum hereby secured or at the Chargee's sole option, the Yield Maintenance Fee. Nothing herein shall permit prepayment unless specifically set out in this Charge or specifically set out in writing by the Chargee.

62. **FAMILY LAW ACT**

Immediately after any change or happening affecting any of the following, namely (a) the spousal status of the Chargor (b) the qualification of the Land as a matrimonial home within the meaning of Part II of the Family Law Act, R.S.O. 1990, c.F.3, or any Act substituted therefor, and (c) the ownership of the Lands, the Chargor will advise the Chargee accordingly and furnish the Chargee with full particulars thereof, the intention being that the Chargee shall be kept fully informed of the names and addresses of the owner or owners for the time being of the Lands and of any spouse who is not an owner but who has a right of possession in the Lands by virtue of the said Family Law Act, R.S.O. 1990, c.F.3. In furtherance of such intention, the Chargor shall furnish the Chargee with such evidence in connection with any of (a), (b) and (c) above as the Chargee may from time to time request.

63. **PROHIBITED ACTIVITIES**

The Chargor shall not permit or accept any prepayment of rents or variation or cancellation or surrender of any lease of the Lands or any part thereof or of the terms, covenants, provisions and conditions of such lease without the prior consent in writing of the Chargee (save for any such permitted activity as set out in the Charge or any other loan document), provided that nothing herein contained shall prevent the Chargor from accepting in advance a payment equal to the rent for the first and last months of such lease and regular monthly payments as they fall due in accordance with the terms of any such lease.

64. **INTEREST ACT**

It is expressly declared that the Charge is not intended to violate any provisions of the Interest Act, R.S.C., 1985, c. I-15 (the "Interest Act") or any act substituted therefor, the Criminal Code, R.S. 1985, c.46 or any act substituted therefor, or any other statute dealing with permitted rates of interest in the Province of Ontario or in Canada. Notwithstanding any provisions set out herein, in no event shall the "interest" (as that term is defined in the said Criminal Code, as amended, replaced or re-enacted from time to time) exceed the "criminal rate" (as defined therein) of interest on the "credit advanced" (as defined therein) lawfully permitted under the said legislation, and in the event that it is determined at any time, that by virtue of the Charge or any other document given as security for the loan, the payments of interest required to be made by the Chargor exceed the "criminal rate", then the Chargor shall only be required to pay interest at the highest rate permitted by law. Nothing herein shall invalidate any requirements for payment pursuant to the Charge, and any excess interest paid to the Chargee shall be refunded to the Chargor and the provisions of the Charge shall in all respects be deemed to be amended accordingly.

65. **SUBDIVISION CONTROL**

The Charge has been entered into subject to the express condition that the Charge is to be effective only if the provisions of any applicable subdivision control legislation (including without limitation Section 50 of the Planning Act, R.S.O. 1990, c.P.13, or any Act substituted therefor) are complied with. The Chargor covenants that it shall commence and diligently prosecute an application for any requisite consent under the applicable legislation, as soon as possible after it becomes aware of any non-compliance.

66. **INDEPENDENT LEGAL ADVICE**

The Chargor and Covenantor(s) acknowledge that they have full knowledge of the purpose and essence of this transaction and that, if required, they have been appropriately and independently legally advised in that regard or have been advised of their right to independent legal advice and have declined same. Such parties agree to provide to the Chargee a certificate of independent legal advice as and when same may be required regarding their knowledge and understanding of this transaction.

67. **FINANCIAL REPORTING**

- (a) The Chargor covenants and agrees to maintain proper records and books of account with respect to the revenues of and expenditures arising from or out of the Lands and shall permit the Chargee or any person appointed by the Chargee for that purpose to examine such books at all reasonable times and to make copies of extracts therefrom and shall give the Chargee all information with regard to the incomings and outgoings of the Lands which the Chargee may request. The Chargor shall, not more often than once each year upon receiving seven (7) days, notice from the Chargee, sign and transmit to the Chargee a just and true statement of such revenues and expenditures or other information which

the Chargee may request with regard to the Lands and, if requested, verify the same by statutory declaration of an officer of the Chargor.

- (b) The Chargor covenants that, within one hundred ten (110) days after the end of each fiscal year of operation of the Lands or of the relevant party, as the case may be, or within such other period of time as may be required by the Chargee, acting reasonably, the Chargor shall deliver or cause to be delivered to the Chargee the following:
- (i) confirmation of payment of taxes for the preceding year, evidence of insurance coverage as required by the Chargee and proof of payment of premiums in respect thereof;
  - (ii) a current rent roll in form satisfactory to the Chargee, and an annual operating statement in respect of the Lands setting forth the gross rents and other income derived from the Lands, the cost and expenses of operation and maintenance of the Lands and such other information and explanations in respect of the same as may be required by the Chargee for the immediately preceding fiscal period;
  - (iii) with respect to each Chargor and Covenantor which is a corporation, the annual financial statements of each such corporation including, without limitation, the balance sheet of the corporation as at its immediately preceding completed fiscal year end with comparative figures for prior years, statements of earnings, retained earnings and changes in financial position as at the said fiscal year end with comparative figures for prior fiscal years, any supporting schedules and notes thereto and such other information and explanations as may be required by the Chargee; and
  - (iv) with respect to each Chargor and Covenantor who is an individual, an annual updated net worth statement of each such individual in such form and including such content and other information and explanations as may be required by the Chargee.
- (c) All such operating and financial statements shall be prepared at the expense of the Chargor and in accordance with generally accepted accounting principles applied on a consistent basis by a duly qualified chartered accountant or certified public accountant which is acceptable to the Chargee, and shall be submitted in audited form if so required by the Chargee at its option, and the completeness and correctness of such statements shall be supported by an affidavit of an authorized officer of the Chargor or Covenantor, as the case may be.

68. APPLICATION OF PAYMENTS

The instalments payable under the Charge are to be applied firstly to life or life and disability insurance premiums payable by the Chargor in respect of the Charge, if any, secondly to bring into good standing any amounts paid by the Chargee to any third party pursuant to this Charge, including tax accounts, if any, thirdly to interest at the rate provided for in the Charge on the outstanding principal sum, and unless the Charge is indicated to be payable with instalments of interest only until the end of the Term, the balance of the instalments shall be applied on account of the outstanding principal sum. If the Chargor has defaulted under the Charge, then the Chargee may apply any payments received during the period of any default in whatever order it may elect as between the outstanding principal sum, interest, taxes, repairs, insurance premiums or any other amounts payable by the Chargor under the Charge.

69. INFORMATION

The Chargor hereby acknowledges and agrees that the Chargee may collect, use and maintain the personal information contained in this Charge and as may be contained in any mortgage application and supporting material provided therewith, and in any credit reports about the Chargor and the subject Charge (the "Credit Material"), for the purposes of ongoing credit review while monies remain owing under the Charge, and the provision of Credit Material to any transferee of the Charge or to any credit rating agency or to any party involved with the securitization of this Charge and ancillary security. The Chargor further agrees that the Chargee may disclose the Credit Material to any transferee of the Charge or to any credit rating agency or to any party involved with the securitization of this Charge and ancillary security. This consent shall enure to the benefit of any transferee of this Charge in due course. This consent shall be the Chargee's and any transferee's good and sufficient authority for its collection, use, maintenance and disclosure of the Chargor's Credit Material as set out above. The Chargor represents that all personal information provided to the Chargee is accurate and correct in all

material respects. Any updates or corrections to the Chargor's Credit Material and any questions or issues regarding the collection, use, maintenance or disclosure of the Chargor's Credit Material must be made in writing addressed to the Chargee at the address given for the Chargee or transferee on the registered documents herein, or to such other address and contact as the Chargee or transferee may advise.

70. CONDOMINIUM CLAUSES

- (a) The Chargor and Chargee covenant and agree that in the event that the security for the within Charge shall be a condominium unit, the following provisions shall apply:
- (i) the Chargor does hereby assign to the Chargee all of its rights to vote or consent in the affairs of the Condominium Corporation having jurisdiction over the Lands and the Chargee may, at its option, exercise the right of an owner of a condominium unit to vote or consent in the affairs of the Condominium Corporation in the place and stead of such owner, without in any way consulting the owner as to the manner in which the vote shall be exercised or not exercised, and without incurring any liability to the owner or anyone else because of the manner in which such vote or right to consent in the affairs of the Condominium Corporation was exercised;
  - (ii) the Chargor shall pay promptly, when due, any common expenses, assessments, instalments, or payments due to the Condominium Corporation;
  - (iii) the Chargor shall observe and perform the covenants and provisions required to be observed and performed under or pursuant to the provisions of the Condominium Act 1998, S.O. 1998, c.19 (or the governing Condominium legislation in any other province), all amendments thereto, and any legislation passed in substitution thereof, and the declaration of any by-laws of the Condominium Corporation and any amendments thereto;
  - (iv) where the Chargor defaults in the Chargor's obligation to contribute to the common expenses assessed or levied by the Condominium Corporation, or any authorized agent on its behalf, or any assessment, instalment of payment due to the Condominium Corporation, upon breach of any of the foregoing covenants or provisions in this paragraph contained, regardless of any other action or proceeding taken, or to be taken by the Condominium Corporation, the Chargee, at its option and without notice to the Chargor, may deem such default to be a default under the terms of this Charge and proceed to exercise its rights therein and the Chargee shall be entitled at its option to pay all common expense amounts as they come due and these amounts so paid together with legal fees shall form part of the indebtedness; and
  - (v) The Chargor shall ensure that prudent and reasonable insurance is maintained on the condominium unit and on the common elements both by itself and the Condominium Corporation. There shall be no amendment to any insurance trust agreement without the consent of the Chargee. The Chargor hereby assigns all its interest in any policy of insurance relating to the condominium to the Chargee.

71. INTERPRETATION

- (a) The word "Lands" means the lands and premises described in this Charge, or any part thereof, and shall have the meaning assigned to "land" in section 1 of the Land Registration Reform Act, which, for greater certainty, shall include and be deemed to incorporate by reference everything which is said to be included in a conveyance of land by virtue of Section 15(1) of the Conveyancing and Law of Property Act, R.S.O. 1990, c.C-34 or any similar legislation now or hereafter in force and shall be deemed to include any collateral security as well as structures or installations included as part of the Lands by virtue of Section 13 of these Standard Charge Terms; and
- (b) The words "Charge", "Chargee", "Chargor" and "Successor" shall have the meanings respectively assigned to charge, chargee, chargor and successor in Section 1 of the Land Registration Reform Act and the personal pronouns "he" and "his" relating thereto and used therewith, shall be read and construed as



"Chargor" or "Chargors", "Chargee" or "Chargees", and "he", "she", "they" or "it", "his", "her", "their" or "its", respectively, as the number and gender of the parties referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word and pronoun so substituted. The word "costs" shall extend to and include legal costs incurred by the Chargee on a substantial indemnity basis. All rights, advantages, privileges, immunities, powers and things hereby secured by the Chargor or Chargors, Chargee or Chargees, shall be equally secured to and exercisable by him, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be. All covenants, liabilities and obligations entered into or imposed hereunder upon the Chargor or Chargors, Chargee or Chargees, shall be equally binding upon his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be, and that all such covenants and liabilities and obligations shall be joint and several. The headings beside each paragraph herein are for reference purposes only and do not form part of the covenants herein contained. Any reference to "this Charge" shall be deemed to include any security interest created by any collateral security taken with this Charge. Any reference to "including" shall mean "including, without limitation", whether or not expressly provided.

72. **CONFLICT**

Where these Standard Charge Terms and the provisions of the Charge or any other loan document (including without limitation any assignment of rents or assignment of leases) deal with the same subject matter, the provisions of the Charge or the other loan document shall prevail to the extent of any conflict.

73. **ELECTRONIC REGISTRATION**

The delivery of the Charge for registration by direct electronic transfer shall have the same effect for all purposes as if such Charge were in written form, signed by the parties thereto and delivered to the Chargee. Each of the Chargor and, if applicable, the spouse of the Chargor and any other party to the Charge agrees not to raise in any proceeding by the Chargee to enforce the Charge any want or lack of authority on the part of the person delivering the Charge for registration to do so.

74. **SALE BY CHARGE**

The Chargee may from time to time assign or otherwise transfer its legal or beneficial interest in the Charge, or any fractional interest therein, all without any consent of or notice to the Chargor, and the Chargor agrees to execute such documentation and do such things as may be requested of it upon any such assignment, to more effectively attorn to any such assignee or successor of the Chargee.

75. **CONSENT TO RELEASE AND DISCLOSE**

Each of the Chargor and Covenantor acknowledges and agrees that the information set out herein constitutes its consent and prior written notice of the collection, use and disclosure of his or her or its personal information. In addition, each of the Chargor and Covenantor acknowledges and agrees that the Charge (or securities or certificates backed by or representing any interest in the Charge, or a pool of charges which includes the Charge) may be sold or securitized into the secondary market without further notice to, or the consent of, the Chargor or the Covenantor. The Chargee, or its servicer, may from time to time release, disclose, exchange, share, transfer and/or assign, at its sole discretion, all information and materials (including financial statements and information concerning the status of the Charge, such as existing or potential defaults or other facts or circumstances which might affect the performance of the Charge) provided to, or obtained by the Chargee, relating to the Chargor, the Covenantor, the Lands or the Charge (both before and after the initial advance of monies under the Charge and/or default) without restriction and without notice to, or the consent of, the Chargor or the Covenantor, to:

- (a) the Chargee's third party advisors and/or agents, such as lawyers, accountants, consultants, appraisers, credit verification sources and services,
- (b) any subsequent or proposed purchaser of the Charge and/or their party advisors,
- (c) the public or any private group in any offering memorandum, prospectus or other disclosure document (including all initial and continuing disclosure requirements), regardless of format or scope of distribution,

- (d) the public or other interested persons, directly or indirectly through information service providers or other market participants, for the purpose of providing market information from time to time relating to the status of the Charge or loan pools in which the Charge forms part, or any interest therein regardless of format or scope of distribution,
- (e) any governmental authority having jurisdiction over such sale or securitization of the Charge or loan pool in which the Charge forms a part or any trade of interest in the Charge or loan pool in which the Charge forms a part, and
- (f) any other person, including rating agencies, in connection with the sale, assignment or securitization of the Charge or in connection with any collection or enforcement proceedings taken under or in respect of the Charge and/or this Charge and documents entered into with respect thereto.

Each of the Chargor and Covenantor irrevocably consents to the collection, obtaining, release, disclosure, exchange, sharing, transfer and assignment of all such information and materials.

#### 76. RELEASE OF INFORMATION

The Chargor hereby irrevocably consents to the Chargee releasing and disclosing to any other parties, or their authorized agents or solicitors requesting the same, any and all information, whether confidential or not, in its possession regarding the Lands or the Charge, including, without limitation, details of the balance outstanding on the Charge, the terms of the Charge, any present or past defaults under the Charge, and like matters.

The Chargor hereby confirms and agrees that the release and disclosure of any such information by the Chargee constitutes the release and disclosure of such information with the full knowledge and consent of the Chargor within the meaning of the Personal Information Protection and Electronic Documentation Act (Canada) as amended.

The Chargor hereby irrevocably consents to the provision by any other parties, their authorized agents or solicitors, of information to the Chargee regarding the status of any encumbrance in favour of such parties, on the Lands, or any other real or personal property either owned by the Chargor, or upon which it has entered into any obligation with any such parties.

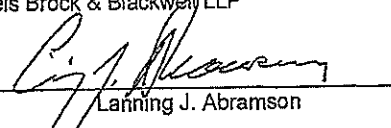
The Chargor hereby confirms and agrees that the release and disclosure of any such information by any such parties constitutes the release and disclosure of such information with the full knowledge and consent of the Chargor within the meaning of the Personal Information Protection and Electronic Documentation Act (Canada) as amended.

#### 77. GOVERNING LAW

This transaction and all agreements between the parties hereto in connection therewith shall be governed by the laws of the Province of Ontario.

DATED the 17<sup>th</sup> day of January, 2012.

CDPQ MORTGAGE INVESTMENT CORPORATION  
By Its Solicitors  
Cassels Brock & Blackwell LLP

Per:   
Lanning J. Abramson

STANDARD CHARGE TERMS  
CLAUSES TYPES DE CHARGE  
Filing No. 2012-02 Cote

Tab G

This is Exhibit "G" referred to in the  
affidavit of Robert Durancieu  
sworn before me, this 16<sup>th</sup>  
December 13.

**BENEFICIAL OWNER DIRECTION AND ACKNOWLEDGEMENT**

Linda Pronovost

THIS DIRECTION AND ACKNOWLEDGEMENT made as of the 10<sup>th</sup> day of December, 2012. A COMMISSIONER FOR TAKING AFFIDAVITS

AMONG:

DONALDA DEVELOPMENTS LTD.

(the "Beneficial Owner")

OF THE FIRST PART

- and -

EL-AD (1500 DON MILLS) LIMITED

(the "Nominee")

OF THE SECOND PART

IN FAVOUR OF:

CDPQ MORTGAGE INVESTMENT CORPORATION

(the "Chargee")

OF THE THIRD PART

WHEREAS the Beneficial Owner is the beneficial owner of an undivided 100% fee simple interest of the Nominee in certain lands in the City of Toronto, Province of Ontario, legally described in Schedule "A" attached hereto, and municipally known as 1500 Don Mills Road, Toronto, Ontario (the "Property");

AND WHEREAS the Nominee holds registered title to the Property for and on behalf of the Beneficial Owner in its role as general partner;

AND WHEREAS the Beneficial Owner has entered into a commitment letter with the Chargee dated November 12<sup>th</sup>, 2012 as it may be amended from time to time (the "Commitment Letter") pursuant to which certain credit facilities have been made available to the Beneficial Owner and pursuant to which the Beneficial Owner is obligated to grant or cause to be granted to the Chargee certain security, all as more particularly described in the Commitment Letter;

AND WHEREAS the Beneficial Owner is required to execute and deliver or cause the execution and delivery of the loan documents (the "Loan Documents") contemplated by the Commitment Letter and grant the security, as contemplated by the Commitment Letter (hereinafter referred to as the "Security"), applicable to the Property.

NOW THEREFORE that in consideration of the premises, of \$1.00 paid by each party hereto to each of the other parties hereto and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each of the parties hereto), the parties hereto hereby covenant and agree with each other and the Chargee as follows:

1. The Nominee acknowledges and declares that it will hold title to the Property for and on behalf of the Beneficial Owner.
2. The Beneficial Owner hereby in accordance with the Nominee Agreement dated December 11, 2012, unconditionally and irrevocably authorizes and directs the Nominee to execute and deliver to the Chargee, the Loan Documents and the Security required to be delivered pursuant to the Commitment Letter, including, without limitation a Charge, General Assignment of Rents and all other Security required.
3. The Beneficial Owner hereby in accordance with the Nominee Agreement dated December 11, 2012 unconditionally and irrevocably directs and authorizes the Nominee to execute and deliver to the Chargee at all times in the future such further



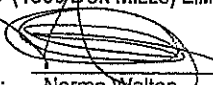
agreements or documents or such amendments, modifications, supplements, deletions and revisions as may be required in connection with the Security or the Loan Documents or such further agreements or documents as may be executed by the Nominee pursuant to paragraph 2 hereof, and the Beneficial Owner does hereby agree that all of its right, title and interest in and to the Property shall be bound by any such amendments, modifications, supplements, deletions or revisions which may be made or done by the Nominee, as general partner.

4. The Beneficial Owner acknowledges that the Security stands as security for the performance of the covenants and the obligations of the Nominee for and on behalf of the Beneficial Owner under or with respect to the Security and the Loan Documents, that its ownership interest in the Property is charged by the Security and the Partnership covenants with the Chargee to do, observe, keep and perform every covenant, act, proviso, condition or stipulation contained respectively therein on the part of the Nominee to be done, observed, kept and performed.
5. The Beneficial Owner and the Nominee represent and warrant to the Chargee that they are not non-residents within the meaning of the *Income Tax Act* (Canada).
6. The Beneficial Owner and the Nominee represent and warrant to the Chargee that the recitals contained in this Agreement are true and accurate.
7. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
8. The parties hereto shall make, execute or deliver all such further acts, documents and things as may be necessary or desirable to implement the true intent of this Agreement.
9. This Agreement shall be governed by, and shall be construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.
10. This Agreement may be executed in counterparts and such counterparts shall constitute one agreement.

*[Signature Page Follows]*

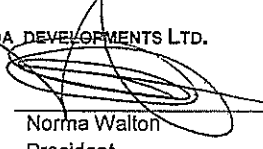
IN WITNESS WHEREOF the Beneficial Owner and the Nominee have executed this Indenture on the day and year first written above.

~~FLAD~~ (1500 DON MILLS) LIMITED

Per:   
Name: Norma Walton  
Title: President

I have authority to bind the Corporation

~~DONALDA~~ DEVELOPMENTS LTD.

Per:   
Name: Norma Walton  
Title: President

I have authority to bind the Corporation

SCHEDULE "A"

(Property)

Municipal Address: 1500 Don Mills Road, Toronto, Ontario

Legal Description: PART LOT 10, CON. 3, EYS (CITY OF NORTH YORK)  
DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7 & 8 ON PLAN  
66R17662. SUBJECT TO TB981024, NY499108, NY765474,  
TB24553 & TB119624. CITY OF TORONTO

PIN No. 10117-0637 (LT)

Registry Office: Land Titles Division of Toronto (No. 66) Toronto, Ontario

Tab H



**Meredith, Heather L.**

**From:** Mark Goldberg <mGoldberg@roseandthistle.ca>  
**Sent:** Monday, November 11, 2013 6:27 PM  
**To:** Jones, Lynda; Chin, Paul  
**Cc:** Norma Walton  
**Subject:** Rose and Thistle

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

This is Exhibit "H" referred to in the  
affidavit of Robert Duranceau  
sworn before  
day of December 16th 2013

Linda Pronovost

A COMMISSIONER FOR TAKING AFFIDAVITS OATHS



Dear Lynda and Paul. There is lots of talk in the marketplace over events that have happened within our organization over the month or so, so we wanted to be proactive let you know first-hand what is going on.

Over the past few years we have enjoyed getting to know you and it has been and continues to be our absolute pleasure to do business with you.

After establishing our own profitable portfolio and excellent business relationships with the brokerage community, we entered into a separate, new partnership with a private investor which allowed us to grow our portfolio by purchasing 34 new properties together.

We have been very fortunate such that this joint portfolio comprised of attractive assets to which we have created considerable value. 33 of 34 properties are tracking to be very profitable with an internal rate of return across the entire 34-property portfolio tracking north of 20%.

Despite the portfolio's success, in the past month our business relationship with this partner has unfortunately become acrimonious.

As is warranted in such a situation when resolution is not possible, Schonfeld & Associates has been appointed the manager/receiver of these properties. Harlan Schonfeld and James Merryweather are good people and we are working with them across the portfolio to complete these projects to maximize value.

It is important to stress that this is a partnership dispute as opposed to anything else. There is no need to liquidate properties to pay debts as all assets are performing according to plan and no debts are in jeopardy or needing to be paid.

Part of our strategy is to sell, at premium prices, the portfolio over the next six months. In that pursuit, we have already put under contract and closed two sales with four more property sales scheduled to close before the year end. We have 28 assets to go and are seeking attractive offers at market rates.

We look forward to continuing to work together in future.

Regards

Mark

**Mark Goldberg**

Executive Vice President, Real Estate

**THE ROSE AND THISTLE GROUP LTD.**

30 Hazelton Avenue

Toronto, Ontario

Canada

M5R 2E2

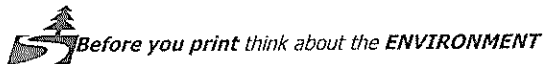
Tel: (416) 489-9790 ext. 215

Cell: (647) 296-5864

Fax: (416) 489-9973

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

*The Rose and Thistle Group Ltd. is a privately held asset management company that is the parent company of Rose and Thistle Properties, Rose and Thistle Construction, Rose and Thistle Homes, Rose and Thistle Media, Plexor Plastics Corp., Handy Home Products Inc., Palmer Productions Inc., Corporate Communications Interactive Inc., Urban Amish Interiors Inc., Loft Raum Inc. and is affiliated with the law firm of Walton Advocates.*



**Mark Goldberg**

Executive Vice President, Real Estate

**THE ROSE AND THISTLE GROUP LTD.**

30 Hazelton Avenue

Toronto, Ontario

Canada

M5R 2E2

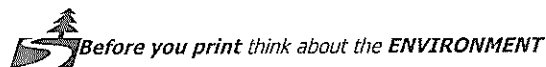
Tel: (416) 489-9790 ext. 215

Cell: (647) 296-5864

Fax: (416) 489-9973

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

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TAB I

Goodman's

Barristers & Solicitors

Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211  
Facsimile: 416.979.1234  
goodmans.ca

Direct Line: 416.849.6895  
mdunn@goodmans.ca

This is Exhibit "T" referred to in the  
affidavit of Robert Durancreau  
sworn before me, 16<sup>th</sup>  
day of December 20 13

Linda Pronovost

A COMMISSIONER FOR TAKING AFFIDAVITS OATHS

November 19, 2013

Delivered via courier

CDPQ MORTGAGE INVESTMENT CORPORATION  
413 St. Jacques Street  
Suite 700  
Montreal, Quebec H2Y 1N9  
Loan No. 2012-0358

Dear sirs/mesdames:

Re: Order dated November 5, 2013 in respect of the companies listed at  
Schedule "B" thereto

We are the lawyers for Schonfeld Inc. Receivers + Trustees (the "Manager") in its capacity as Manager of certain companies (the "Companies") listed at Schedule "B" to the Order of Justice Newbould dated November 5, 2013 (the "Order").<sup>1</sup> The Order is attached.

We are writing because we have been advised that your company may have advanced funds to one or more of the Companies and taken mortgage security against its real property. The Manager has not examined the validity or priority of any mortgages registered against the Companies' property and it reserves all rights in this regard.

The Manager was appointed by the Court to ensure that all interested parties are treated fairly and to establish and execute a fair process to deal with the Companies' assets, including the collateral pledged to third party mortgagees. The Manager's mandate is to, among other things, carry out the management, preservation and disposition of the Companies' property in a transparent and accountable manner. As part of this mandate, the Manager will keep all stakeholders informed of its activities and seek court approval, on notice to all interested parties, before selling the Companies' real estate assets.

<sup>1</sup> Justice Newbould appointed the Manager effective November 5, 2013. The terms of the Order were finalized on November 15, 2013 and the Order could not be issued and entered until November 18, 2013 because Justice Newbould asked counsel to hold it in escrow pending the resolution of a related motion between the parties.



The Order may affect rights that your company may otherwise have against the Companies or their property. Among other things:

- paragraph 12 of the Order provides that no legal proceeding may be commenced or continued against the Companies without the permission of the Manager or leave of the Court;
- paragraph 13 of the Order suspends and stays enforcement of remedies that might exist against the Companies<sup>2</sup> without the permission of the Manager or leave of the Court; and
- paragraphs 21 and 24 of the Order provide for certain charges that rank ahead of pre-existing security interests in the Companies' property.

The Manager is empowered to, among other things, undertake sole and exclusive authority to manage and control the Companies' property and operate each Company's business. We ask that you or your legal counsel direct any inquiries relating to the Order to Harlan Schonfeld (who is the principal of the Manager), James Merryweather of the Manager, Fred Myers (who is the partner at our office having carriage of this matter)<sup>3</sup> or myself. Contact information for Mr. Schonfeld, Mr. Merryweather and Mr. Myers is below:

S Harlan Schonfeld CPA CIRP  
 James Merryweather CGA  
 SCHONFELD INC. Receivers & Trustees  
 438 University Avenue, 21st Floor  
 Toronto, ON M5G 2K8  
 Tel: 416.862.7785  
 Fax: 416.862.2136  
 E-mail: harlan@schonfeldinc.com  
 E-mail: jmerryweather@schonfeldinc.com

Fred Myers  
 Partner  
 Goodmans LLP  
 Bay Adelaide Centre  
 333 Bay Street, Suite 3400  
 Toronto, ON M5H 2S7  
 Tel: 416.597.5923  
 Fax: 416.979.1234  
 E-mail: fmyers@goodmans.ca

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<sup>2</sup> Note that there are certain exceptions to this stay listed at paragraph 13.

<sup>3</sup> Note that Mr. Myers is out of the country this week conducting examinations and will have less than usual access to e-mail and voicemail.

We look forward to hearing from you.

Yours very truly,

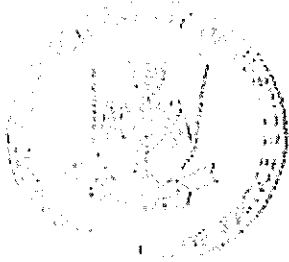
**Goodmans LLP**

A handwritten signature in dark ink, appearing to read 'Mark S. Dunn', written over a light gray circular background.

Mark S. Dunn

cc: Schonfeld Inc.  
Fred Myers, *Goodmans LLP*

6267168



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

JUSTICE NEWBOULD

) FRIDAY, THE 5<sup>th</sup> DAY  
)  
)  
) OF NOVEMBER, 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

**ORDER**

THIS MOTION made by the Applicants, DBDC Spadina Ltd. and those Corporations Listed on Schedule "A" hereto for an Order appointing Schonfeld Inc. Receivers + Trustees, as manager (in such capacities, the "Manager") without security, of all of the assets, undertakings and properties of the Schedule "B" Corporations, or for other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavits of Jim Reitan sworn October 1, October 3 and October 24, 2013 and the Exhibits thereto, the Affidavit of Susan Lyons and the Exhibits hereto, the Affidavit of Lorna Groves and the Exhibits thereto, the First Interim Report of the Inspector,

Schonfeld Inc., the Supplemental Report to the First Interim Report of the Inspector and the Exhibits thereto, the Second Interim Report of the Inspector and the Exhibits thereto, the Affidavits of Norma Walton sworn October 3 and 31, 2013 and the Exhibits thereto and on hearing the submissions of counsel for the Applicants, counsel for the Inspector and counsel for the Respondents,

#### SERVICE

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

#### CONTINUING ORDERS

2. THIS COURT ORDERS that the Orders of the Honourable Justice Newbould dated October 4, 2013 and October 25, 2013 continue in full force and effect except as modified by this Order.

#### APPOINTMENT

3. THIS COURT ORDERS that the Manager is hereby appointed Manager, without security, of all of the real property owned by the Schedule "B" Companies hereto (the "Real Estate") and all of the current and future assets, undertakings and property, real and personal, of the Schedule "B" Corporations of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively with the Real Estate, the "Property") effective upon the granting of this Order.

#### MANAGER'S POWERS

4. THIS COURT ORDERS that the Manager shall have the powers of the Inspector granted pursuant to the Order of the Honourable Justice Newbould dated October 4, 2013, including but not limited to access to the premises and books and records of the Respondent The Rose & Thistle Group Ltd.
5. THIS COURT ORDERS that the Manager is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Manager is hereby expressly empowered and authorized to do any of the following where the Manager considers it necessary or desirable:
  - (a) to undertake sole and exclusive authority to manage and control the Property and any and all proceeds, receipts and disbursements arising out



of or from the Property, wheresoever located, and any and all proceeds, receipts and disbursements arising out of or from the Property, and for greater certainty, the Manager shall have sole and exclusive right and control of the Schedule "B" Corporations' bank accounts wherever located in accordance with this Order;

- (b) to open bank accounts at any banking institution acceptable to the Applicant to transfer funds from the current bank accounts of the Schedule "B" Companies, as necessary, ~~with prior notice to the Parties;~~ ✓ *MS*
- (c) to receive, preserve, and protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (d) to manage, operate, and carry on the business of the Schedule "B" Corporations, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business ~~upon prior notice to the Parties,~~ ✓ *MS* or cease to perform any contracts of any of the Schedule "B" Corporations ~~upon prior notice to the Parties;~~ ✓ *MS*
- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this order including but not limited to a property manager, including but not limited to:
  - (i) DMS Properties;
  - (ii) Briarlane Property Rental Management Inc.; and

(iii) Sterling Karamar;

- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Schedule "B" Corporations or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Schedule "B" Corporations and to exercise all remedies of the Schedule "B" Corporations in collecting such monies, including, without limitation, to enforce any security held by any of the Schedule "B" Corporations, ~~provided that the Manager shall give prior notice to the Parties of any enforcement of security;~~ ✓ 215
- (h) subject to paragraph 4 below, to settle, extend or compromise any indebtedness owing to any of the Schedule "B" Corporations, ~~provided that the Manager shall give prior notice to the Parties of the settlement of any material indebtedness;~~ ✓ 215
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Manager's name or in the name and on behalf of the Schedule "B" Corporations, for any purpose pursuant to this Order;
- (j) to undertake environmental investigations, assessments, engineering and building condition or other examinations of the Real Estate;
- (k) subject to paragraph 12 below, to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Schedule "B" Corporations, the Property or the Manager, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (l) subject to paragraph 13 below, to market the Property and in particular the Real Estate, including advertising and soliciting offers in respect of the Property and negotiating such terms and conditions of sale as the Manager in its discretion may deem appropriate;
- (m) to enter into agreements and to sell, convey, transfer, or assign the Property or any part or parts thereof of the Schedule "B" Corporations' business, with the prior approval of this Court in respect of any transaction, and in each such case notice under subsection 63(4) of the *Ontario Personal Property Security Act*, shall not be required, and in each case the *Ontario Bulk Sales Act* shall not apply;
- (n) to have on-line and electronic as well as hard copy access to the bank accounts of the Rose & Thistle Group Ltd. to review all receipts and disbursements total from such accounts and to request and receive on a timely basis from the Respondents particulars of all receipts and disbursements sufficient for the Inspector to identify such transfers, the parties involved and the reasons therefore;
- (o) upon notice to all parties and affected registered encumbrances, to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Manager considers appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Manager deems advisable;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Manager, in the name of the Schedule "B" Corporations;

- (r) to do all acts and execute, in the name and on behalf of the Schedule "B" Corporations, all documents, and for that purpose use the seal of the corporation, if any; and
- (s) to take any steps reasonably incidental to the exercise of these powers.

and in each case where the Manager takes any such actions or steps, it shall, subject to paragraph 4 below, be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Schedule "B" Corporations, and without interference from any other Person. For greater certainty, nothing in this Management Order or to the Manager's exercise of its powers hereunder shall cause the Manager to be, or deemed to be, a receiver within the meaning of the *Bankruptcy and Insolvency Act*.

~~6. The Manager shall take reasonable steps to provide the Parties with an accounting on a monthly basis of any collections referred to in subparagraphs 5(g) above.~~ 21

#### DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MANAGER

- 7. THIS COURT ORDERS that (i) the Schedule "B" Corporations and The Rose & Thistle Group Inc., (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, including but not limited to the Respondents and all others having notice of this Order; (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order; and (iv) Meridian Credit Union; and (v) without limiting the generality of the foregoing, Norma Walton, Ronald Walton, anyone acting under the instructions of anyone listed in this paragraph; and (vi) anyone with notice of this order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Manager of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Manager, and shall deliver all such Property to the Manager upon the Manager's request, and in any event no later than 36 hours following the Manager's request.
- 8. THIS COURT ORDERS that all Persons shall forthwith advise the Manager of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Schedule "B" Corporations, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Manager or permit the Manager to make, retain and take away copies thereof and grant to the Manager unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this

paragraph 9 or in paragraph 11 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Manager due to the privilege attaching to solicitor-client communication or litigation work product belong to a Shareholder or a director of a Schedule "B" Corporations personally or due to statutory provisions prohibiting such disclosure.

9. THIS COURT ORDERS that the Records shall, upon reasonable notice to the Manager and during normal business hours of the Manager, be open to examination by each of the parties and their respective legal counsel, and that a copy of these Records be provided by the Manager of the parties upon request, the reasonable costs associated with such access and copies to be determined by the Manager, and invoiced to and paid by the requesting party to the Manager forthwith.
10. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Manager for the purpose of allowing the Manager to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Manager in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Manager. Further, for the purposes of this paragraph, all Persons shall provide the Manager with all such assistance in gaining immediate access to the information in the Records as the Manager may in its discretion require including providing the Manager with instructions on the use of any computer or other system and providing the Manager with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE MANAGER**

11. THIS COURT ORDERS that, except as may be provided herein, no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Manager except with the written consent of the Manager or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE SCHEDULE "B" CORPORATIONS OR THE PROPERTY**

12. THIS COURT ORDERS that no Proceeding against or in respect of any of the Schedule "B" Corporations or the Property shall be commenced or continued except with the written consent of the Manager or with leave of this Court and any and all Proceedings currently under way against or in respect of the Schedule "B" Corporations or the Property, with the exception of the proceedings referred to in paragraph 7, are hereby stayed and suspended pending further Order of this Court. Notwithstanding any other provision in this Order, the parties shall not be precluded from taking any steps or from commencing or continuing any proceedings in Ontario Superior Court of Justice, Court File No. CV-13-10280-00CL (Commercial List), and in such circumstances the Manager

shall not be obliged to defend or participate on behalf of the Schedule "B" Corporations and the Manager shall not be liable for any costs, damages or awards related to any such proceedings.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

13. THIS COURT ORDERS that, except as may be provided herein, all rights and remedies against the Schedule "B" Corporations, the Manager, or affecting the Property, are hereby stayed and suspended except with the written consent of the Manager or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Manager or the Schedule "B" Corporations to carry on any business which the Schedule "B" Corporations is not lawfully entitled to carry on, (ii) exempt the Manager or the Schedule "B" Corporations from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE MANAGER**

14. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Schedule "B" Corporations, without written consent of the Manager or leave of this Court.

#### **CONTINUATION OF SERVICES**

15. THIS COURT ORDERS that all Persons having oral or written agreements with the Schedule "B" Corporations or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Schedule "B" Corporations are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Manager, and that the Manager shall be entitled to the continued use of the Schedule "B" Corporations' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Manager in accordance with normal payment practices of the Schedule "B" Corporations or such other practices as may be agreed upon by the supplier or service provider and the Manager, or as may be ordered by this Court.
16. THIS COURT ORDERS that Respondents are enjoined from canceling or failing to renew any insurance policies or other coverage in respect of to the Rose & Thistle Group Ltd. and/or the Schedule B Companies or any property owned by them, except with the express written approval of the Manager.
17. THIS COURT ORDERS that the Inspector shall be added as a named insured to any existing insurance policies or other coverage in respect of to the Rose & Thistle Group Ltd. and/or the Schedule B Companies or any property owned by them.

## MANAGER TO HOLD FUNDS

18. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Manager from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into either the existing bank accounts held by Schedule "B" Corporations' or one or more new accounts to be opened by the Manager, at the Manager's discretion, as the Manager may reasonably decide and the monies standing to the credit of such accounts from time to time, net of any disbursements provided for herein, shall be held by the Manager to be paid in accordance with the terms of this Order or any further Order of this Court.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

19. THIS COURT ORDERS that nothing herein contained shall require the Manager to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Manager from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Manager shall not, as a result of this Order or anything done in pursuance of the Manager's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation.

## LIMITATION ON THE MANAGER'S LIABILITY

20. THIS COURT ORDERS that the Manager shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part as so found by a court of competent jurisdiction. The Manager shall further enjoy the protections from liability as would otherwise be afforded to a trustee in bankruptcy under section 14.06 of the *Bankruptcy and Insolvency Act* or under any other similar legislation applicable to trustees and receivers.

## MANAGER'S ACCOUNTS

21. THIS COURT ORDERS that any expenditures or liability which shall properly be made or incurred by the Manager including the fees and disbursements of the Manager and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of

the Manager and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Manager's Charge").

22. THIS COURT ORDERS that the Manager and its legal counsel, if any, shall pass their accounts from time to time, and for this purpose the accounts of the Manager and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
23. THIS COURT ORDERS that prior to the passing of its accounts, the Manager shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Manager or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### FUNDING OF THE MANAGERSHIP

24. THIS COURT ORDERS that the Manager be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$5 million (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Manager by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Manager's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Manager's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
25. THIS COURT ORDERS that neither the Manager's Borrowings Charge nor any other security granted by the Manager in connection with its borrowings under this Order shall be enforced without leave of this Court.
26. THIS COURT ORDERS that the Manager is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Manager's Certificates") for any amount borrowed by it pursuant to this Order.
27. THIS COURT ORDERS that the monies from time to time borrowed by the Manager pursuant to this Order or any further order of this Court and any and all Manager's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Manager's Certificates.



**GENERAL**

28. THIS COURT ORDERS that the Manager may from time to time apply to this Honourable Court for advice and directions in the discharge of the Manager's powers and duties hereunder.
29. THIS COURT ORDERS that nothing in this Order shall prevent the Manager from acting as receiver, interim receiver or trustee in bankruptcy of the Schedule "B" Companies.
30. THIS COURT HEREBY REQUESTS that aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Manager and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Manager, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Manager and its agents in carrying out the terms of this Order.
31. THIS COURT ORDERS that the Manager be at liberty and is hereby authorized and empowered to apply to any court, tribunal regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
32. THIS COURT ORDERS that any interested party may apply to this Court to seek the advice and direction of the Court in respect of this Order or the Manager's activities on not less than seven (7) days' notice to the Manager and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
33. THIS COURT ORDERS that any court materials in these proceeds may be served by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time.



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

NOV 18 2013

NB

**SCHEDULE "A" COMPANIES**

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investment Pape Ltd.
5. DBDC Investments Highway 7 Ltd.
6. DBDC Investments Trent Ltd.
7. DBDC Investments St. Clair Ltd.
8. DBDC Investments Tisdale Ltd.
9. DBDC Investments Leslie Ltd.
10. DBDC Investments Lesliebrook Ltd.
11. DBDC Fraser Properties Ltd.
12. DBDC Fraser Lands Ltd.
13. DBDC Queen's Corner Inc.
14. DBDC Queen's Plate Holdings Inc.
15. DBDC Dupont Developments Ltd.
16. DBDC Red Door Developments Inc.
17. DBDC Red Door Lands Inc.
18. DBDC Global Mills Ltd.
19. DBDC Donalda Developments Ltd.
20. DBDC Salmon River Properties Ltd.
21. DBDC Cityview Industrial Ltd.
22. DBDC Weston Lands Ltd.
23. DBDC Double Rose Developments Ltd.
24. DBDC Skyway Holdings Ltd.

25. DBDC West Mall Holdings Ltd.
26. DBDC Royal Gate Holdings Ltd.
27. DBDC Dewhurst Developments Ltd.
28. DBDC Eddystone Place Ltd.
29. DBDC Richmond Row Holdings Ltd.

**SCHEDULE "B" COMPANIES**

1. Twin Dragons Corporation
2. Bannockburn Lands Inc. / Skyline – 1185 Eglinton Avenue Inc.
3. Wynford Professional Centre Ltd.
4. Liberty Village Properties Inc.
5. Liberty Village Lands Inc.
6. Riverdale Mansion Ltd.
7. Royal Agincourt Corp.
8. Hidden Gem Development Inc.
9. Ascalon Lands Ltd.
10. Tisdale Mews Inc.
11. Lesliebrook Holdings Ltd.
12. Lesliebrook Lands Ltd.
13. Fraser Properties Corp.
14. Fraser Lands Ltd.
15. Queen's Corner Corp.
16. Northern Dancer Lands Ltd.
17. Dupont Developments Ltd.
18. Red Door Developments Inc. and Red Door Lands Ltd.
19. Global Mills Inc.
20. Donalda Developments Ltd.
21. Salmon River Properties Ltd.
22. Cityview Industrial Ltd.
23. Weston Lands Ltd.
24. Double Rose Developments Ltd.

25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Dewhurst Developments Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.

SCHEDULE "C"

MANAGER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$\_\_\_\_\_

1. THIS IS TO CERTIFY that [MANAGER'S NAME], the Manager (the "Manager") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_\_\_ of MONTH, 20YR (the "Order") made in an action having Court file number \_\_\_\_\_-CL-\_\_\_\_\_, has received as such Manager from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Manager is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Manager pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Manager to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Manager to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Manager to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Manager does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

[MANAGER'S NAME], solely in its capacity  
as Manager of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

DBDC SPADINA LTD., and those corporations listed on Schedule  
A hereto  
Plaintiffs

-and- NORMA WALTON et al.  
Defendants

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

ORDER

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Lawyers for the Plaintiffs



CITATION: DBCD Spadina Ltd et al v. Norma Walton et al, 2013 ONSC 6833  
COURT FILE NO.: CV-13-10280-00CL  
DATE: 20131105

**SUPERIOR COURT OF JUSTICE – ONTARIO  
COMMERCIAL LIST**

**BETWEEN:**

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

**BEFORE:** Newbould J.

**COUNSEL:** *Peter H. Griffin and Shara N. Roy*, for the Applicants

*John A. Campion, Emmeline Morse and Guillermo Schible*, for the Respondents

*Fred Myers and Mark S. Dunn*, for the Inspector

**HEARD:** November 1, 2013

**ENDORSEMENT**

[1] On October 4, 2013, Schonfeld Inc. was appointed as inspector of all of the companies in schedule B. On October 24, 2013 a motion by the applicants to have Schonfeld Inc. appointed as a manager of those corporations and related corporation was adjourned to November 1, 2013 and

interim relief was granted, including giving the applicants access to and joint control over all bank accounts.

[2] The applicants now move for the appointment of the Inspector as receiver/manager over the schedule B corporations and certain other properties that are mortgaged to Dr. Bernstein under mortgages which have expired. It is resisted by the respondents who maintain that the appointment would be an interim appointment pending a trial of the issues that should be ordered and that the applicants have sufficient protection from the order of October 24, 2013 that the respondents will not attack.

[3] For the reasons that follow, Schonfeld Inc. is appointed as receiver/manager of the 31 schedule B corporations.

#### Background

[4] Dr. Bernstein is the founder of very successful diet and health clinics. Norma Walton is a lawyer and co-founder with her husband Ronauld Walton of Rose & Thistle. She is a principal of Walton Advocates, an in-house law firm providing legal services to the Rose & Thistle group of companies. Ronauld Walton is also a lawyer and co-founder of Rose & Thistle and a principal of Walton Advocates

[5] Beginning in 2008, Dr. Bernstein acted as the lender/mortgagee of several commercial real estate properties owned by the Waltons either through Rose & Thistle or through other corporations of which they are the beneficial owners.

[6] Following several financings, Dr. Bernstein and the Waltons agreed to invest jointly in 31 various commercial real estate projects. Each is a 50% shareholder of each corporation set up to hold each property.

[7] The known facts and concerns of the applicants giving rise to the appointment of the Inspector are set out in my endorsement of October 7, 2013 and were contained in affidavits of James Reitan, director of accounting and finance at Dr. Bernstein Diet and Health Clinics. Since

then, there has been further affidavit material from both sides and the Inspector has delivered two interim reports and a supplement to the first. The most recent affidavit from the applicants' side is an affidavit of Mr. Reitan sworn October 24, 2013. The most recent from the respondents' side is an affidavit of Norma Walton sworn October 31, 2013 on the day before this motion was heard. There has been no cross-examination on any affidavits. The first interim report of the Inspector is dated October 21, 2013, the supplement to it is dated October 24, 2013 and the second interim report is dated October 31, 2013. I have not permitted any cross-examination of the Inspector but the respondents have been free to make reasonable requests for information from the Inspector and they have availed themselves of that opportunity.

[8] To date, Dr. Bernstein through his corporations has advanced approximately \$105 million into the 31 projects (net of mortgages previously repaid), structured as equity of \$2.57 million, debt of \$78.5 million and mortgages of \$23.34 million`.

[9] According to the ledgers provided to the Inspector, the Waltons have contributed approximately \$6 million. \$352,900 is recorded as equity, which I assume is cash, \$1.78 million is recorded as debt and \$3.9 million is recorded in the intercompany accounts said to be owing to Rose & Thistle and is net of (i) amounts invoiced by Rose & Thistle but not yet paid; (ii) amounts paid by Rose & Thistle on behalf of the companies such as down-payments; and (iii) less amounts paid by DBDC directly to Rose & Thistle on behalf of the companies and (iv) other accounting adjustments.

#### Concerns of the applicants

##### (i) \$6 million mortgage

[10] This was a matter raised at the outset and was one of the basis for my finding of oppression leading to the appointment of the Inspector. Mr. Reitan learned as a result of a title search on all properties obtained by him that mortgages of \$3 million each were placed on 1450 Don Mills Road and 1500 Don Mills Road on July 31, 2013 and August 1, 2013. Dr. Bernstein had no knowledge of them and did not approve them as required by the agreements for those properties. At a meeting on September 27, 2013, Ms. Walton informed Mr. Reitan and Mr.

Schonfeld that the Waltons were in control of the \$6 million of mortgage proceeds (rather than the money being in the control of the owner companies), but refused to provide evidence of the existence of the \$6 million. Ms. Walton stated that she would only provide further information regarding the two mortgages in a without prejudice mediation process. That statement alone indicates that Ms. Walton knew there was something untoward about these mortgages.

[11] In his first interim report, Mr. Schonfeld reported that the proceeds of the Don Mills mortgages were deposited into the Rose & Thistle account. Rose & Thistle transferred \$3,330,000 to 28 of the 31 companies. The balance of the proceeds of the Don Mills mortgages totalling \$2,161,172, were used for other purposes including the following:

1. \$98,900 was paid to the Receiver General in respect of payroll tax;
2. \$460,000 was deposited into Ms. Walton's personal account;
3. \$353,000 was apparently used to repay a loan owed by Rose & Thistle in relation to Richmond Row Holdings Ltd.; and,
4. \$154,600 was transferred electronically to an entity named Plexor Plastics Corp. and \$181,950 transferred electronically to Rose and Thistle Properties Ltd. Ms. Walton advised the Inspector that she owns these entities with her husband.

[12] In her affidavit of October 31, 2013, Ms. Walton admits that \$2.1 million was "diverted" and used outside the 31 projects. She admits it should not have been done without Dr. Bernstein's consent. She offers excuses that do not justify what she did. What happened here, not to put too fine a point on it, was theft. It is little wonder that when first confronted with this situation, Ms. Walton said she would only talk about it in a without prejudice mediation.

[13] In her affidavit of October 4, 2013, Ms. Walton said she had made arrangements to discharge the \$3 million mortgage on 1500 Don Mills Rd on October 21, 2013 and to wire money obtained from the mortgage on 1450 Don Mills Road into the Global Mills account (one of the 31 companies) by the same date. Why the money would not be put into the 1450 Don

Mills account was not explained. In any event, no repayment of any of the diverted funds has occurred.

(ii) Tisdale Mews

[14] Tisdale Mews is a rezoning for 35 townhomes near Victoria Park Avenue and Eglinton Avenue East. Mr. Reitan states in his affidavit that Dr. Bernstein made his equity contribution to Tisdale Mews December 2011 in the amount of \$1,480,000. The bank statements for December 2011 for Tisdale Mews have not been made available. The forwarded balance on the bank statements available for Tisdale Mews from January 2012 is \$96,989.91, indicating that most if not all of Dr. Bernstein's money went elsewhere. Ms. Walton states in her affidavit that the project "was purchased by Dr. Bernstein on January 11, 2012" and he invested \$1.7 million in equity. How it was that Dr. Bernstein purchased the property is not explained and seems contrary to the affidavit of Mr. Reitan. The bank account statements for the property show no deposits of any consequence in January 2012 or later.

[15] In any event, Mr. Reitan was able to review bank records and other documents. Invoices and cheques written from Tisdale Mews' bank account show that a total of \$268,104.57 from Tisdale Mews has been used for work done at 44 Park Lane Circle, the personal residence of the Waltons in the Bridle Path area of Toronto.

[16] Ms. Walton in her affidavit acknowledges that the money was used to pay renovation costs on her residence. She says, however, that Rose & Thistle funded 100% of the \$268,104.57 purchases before any cheques were sent out of the Tisdale Mews account. How this was funded was not disclosed, although she did say that overall, Rose & Thistle has a positive net transfer to the Tisdale Mews account of \$2,208,964 "as per Exhibit G to the Inspector's first interim report". Exhibit G to that report has nothing to do with Tisdale Mews. Exhibit D to that report, being the property profile report of the Inspector for the 31 properties, contains no information for Tisdale Mews because information had not yet been provided to the Inspector. The Inspector's updated profile prepared after information was obtained from Rose & Thistle shows \$1,274,487 owing from Tisdale Mews to Rose & Thistle, but whether this is legitimate cannot be

determined until back-up documents sought by the Inspector are provided. It is no indication that cash was put into Tisdale Mews by Rose & Thistle.

[17] The statement of Ms. Walton that Rose & Thistle funded 100% of the \$268,104.57 purchases on her residence before any cheques were sent out of the Tisdale Mews account makes little sense. There would be no reason for Rose & Thistle to transfer funds into the Tisdale Mews account to pay personal expenses of Ms. Walton for her residence. Again, it has all the appearances of another case of theft.

(iii) Steps to impede a proper inspection

[18] It is quite evident that from the moment the order was made appointing the Inspector, Ms. Walton took various steps to hinder the Inspector. That order was made on October 4, a Friday, and permitted the Inspector to go to the offices of Rose & Thistle during normal business hours and on that evening and throughout the week-end. Mr. Reitan swears in his affidavit that when he arrived at the Rose & Thistle offices at 3:33 p.m. on the direction of the Inspector, which was shortly after the order was made, he saw Ms. Walton locking the door to the premises and she waved to him as she walked away from the doors. He was informed by Angela Romanova that Ms. Walton had told all employees to leave the premises once the order was granted at approximately 3 pm. He observed one employee who left with a server and one or more computers. After a discussion with the employee and Steven Williams, VP of operations at Rose & Thistle, these were taken back into the building. I received an e-mail from Mr. Griffin early in the evening alerting me to the problem and I was asked to be available if necessary. Mr. Reitan states that after several hours, and following Mr. Walton's arrival, Mr. Schonfeld, Mr. Merryweather and he were allowed into the premises.

[19] Ms. Walton in her affidavit states that a laptop "that was about to be removed" from the Rose & Thistle offices was 13 years old and they were disposing of it. One of her occasional workers asked if he could have it and they agreed. She states that the timing was unfortunate. She states that there are eight server towers permanently affixed to the premises. What she does not answer is Mr. Reitan's statement that she locked the doors and told her employees to leave, that whatever was taken from the premises was returned after discussions with the employee and

Mr. Williams, the VP of operations, and that it took several hours before the Inspector and Mr. Reitan were permitted on the premises. The order appointing the Inspector required Ms. Walton to fully co-operate with the Inspector.

[20] The order also permitted the Inspector to appoint persons as considered necessary, including Mr. Reitan. Ms. Walton however took the position that Mr. Reitan should not be on the premises, which was contrary to the order, and that the Inspector should not discuss with the applicants or their lawyers any information he obtained before making his first report to the court. Mr. Reitan was the accounting person for Dr. Bernstein most familiar with the investments and not having him available to the Inspector, either on the Rose & Thistle premises or not, would not be helpful to the Inspector. On October 9, 2013 I made a further order, which should not have been necessary, permitting Mr. Reitan to be on the premises when Mr. Schonfeld or his staff were present. I also ordered that Mr. Schonfeld was entitled, but not required, to discuss his investigation with the parties or their representatives.

[21] Ms. Walton informed the Inspector that the books and record of the companies were last brought current in 2011. Since August or September, 2013, after Mr. Reitan became involved in seeking information, Rose & Thistle employees have been inputting expense information into ledgers relating to the period January 2012 and August 2013. They have also issued a number of invoices for services rendered or expenses incurred by Rose & Thistle during the period January 2012 to August 2013. On October 17, 2013, Mr. Schonfeld convened a meeting with the parties and their counsel to orally present his findings. Prior to that meeting, Ms. Walton would only provide the Inspector with access to general ledgers for individual companies once she and Rose & Thistle had completed their exercise of updating the ledgers and issuing invoices from Rose & Thistle to each company. At the meeting, Ms. Walton agreed to provide the Inspector with access to ledgers for the remaining companies in their current state. These were eventually provided.

[22] Ms. Walton instituted a procedure under which no information could be provided by Rose & Thistle employees to the Inspector only after Ms. Walton had vetted it, which was causing considerable difficulties for the Inspector. On October 18, counsel for the Inspector wrote to counsel to the respondents and asked that the respondents provide immediate unfettered access to the books and records and end the insistence that all information be provided through

Ms. Walton. During the week of October 21, Ms. Walton said she could not meet because she was involved in preparing responding material in the litigation and that her staff was unavailable. By October 24, 2013 no substantive response to the Inspector's request was made, and on that date I made an order requiring Ms. Walton not to interfere with Rose & Thistle employees providing information to the Inspector. This should not have been necessary in light of the terms of the original order of October 4, 2013 appointing the Inspector.

(iv) Improper use of bank accounts

[23] The agreements for each project require that each project has a separate bank account. The Inspector reports, however, that there has been extensive co-mingling of bank accounts and that funds were routinely transferred between the company accounts and the Rose & Thistle account. From the date of each agreement to September 30, 2013, approximately \$77 million was transferred from the companies' accounts to Rose & Thistle and Rose & Thistle transferred approximately \$53 million to the various company accounts meaning that Rose & Thistle had retained approximately \$24 million transferred to it from the various companies.

[24] Ms. Walton confirmed to the Inspector that equity contributions to, and income received by, the companies were centralized and co-mingled in the Rose & Thistle account, which she described as a "clearing house". This practice continued in September 2013 and the Inspector reported it was difficult to trace how transfers from the companies were used because the funds were also co-mingled with funds transferred to the Rose & Thistle account by other Walton companies not making up the 31 companies in which Dr. Bernstein has his 50% interest. It is clear that the Waltons did not treat each company separately as was required in the agreements for each company.

[25] To alleviate the problem of the co-mingling of funds and the payments out to Rose & Thistle, the order of October 25 provided for the payment of deposits to be made to the bank accounts of the 31 companies and that no payment out could be made without the written consent of the applicants or someone they may nominate.



**(v) Receivables of Rose & Thistle from the 31 companies**

[26] The agreements for the 31 properties state that Dr. Bernstein and the Waltons are to provide 50% of the equity required. They do not provide that the Walton's equity is to be provided in services. They state that each of Dr. Bernstein and the Waltons will put in amounts of money. In her lengthy affidavit of October 31, 2013, Ms. Walton went to the trouble of describing each of the 31 projects, including stating how much equity Dr. Bernstein had put into each property. Tellingly, however, she made no statement at all of how much equity she or her husband had put into any of the properties, and gave no explanation for not doing so. This may be an indication that Ms. Walton is not able to say what equity has been put into each property, hardly surprising as the books and records were two years out of date at the time the Inspector was appointed.

[27] In his first interim report, Mr. Schonfeld reported that based on invoices and general ledger entries provided to October 18, 2013, Rose & Thistle appeared to have charged the companies approximately \$27 million for various fees and HST on the fees. On October 17, the date of his meeting with the parties, he had circulated a version of his chart regarding this which identified \$2.68 million that had been transferred to Rose & Thistle that could not be reconciled to any invoice issued by Rose & Thistle. On the following day on October 18, Rose & Thistle provided additional invoices to the companies for \$5.6 million so that the total amount invoiced exceeded the amounts transferred by Rose & Thistle to the companies by \$2.9 million. In his supplement to his first report, Mr. Schonfeld reported that the respondents had produced further invoices from Rose & Thistle dated between January 2012 and September 2013 to the companies for a total of \$34.6 million, being \$10.6 million more than it had received from the companies. Mr. Schonfeld identified approximately \$3.9 million recorded on the ledgers of Rose & Thistle as owing from the companies to Rose & Thistle. This amount is part of the \$6 million recorded in the books as being the contribution by the Waltons to the companies.

**(vi) Documentation to support Rose & Thistle invoices**

[28] The Inspector has sought unsuccessfully so far to obtain documentation underlying Rose & Thistle's invoices of some \$34.6 million to the companies, including construction budgets for

the various projects. This is of considerable importance in understanding the claim for equity put into the properties by the Waltons, because by far the largest amount of equity now claimed to have been put in by the Waltons are the fees for services said to have been provided by the Waltons to the various companies.

[29] The information that has been obtained regarding the invoices issued to some of the companies by Rose & Thistle is troubling and gives little confidence in what Ms. Walton and Rose & Thistle have done.

[30] Riverdale Mansion Inc. is one of the 31 projects. It is the owner of a historic mansion on Pape Avenue. Riverdale transferred \$1,759,800 to Rose & Thistle and received from Rose & Thistle \$785,250. Thus Rose & Thistle retained \$974,550 transferred to it by Riverdale.

[31] Rose & Thistle provided the Inspector with invoices addressed to Riverdale for construction management fees totaling \$1,183,981 plus HST and maintenance fees of \$60,000, including \$275,000 for "deposits for materials", \$103,863 for "project management services", \$295,000 for "site plan deposits and application" and \$67,890 for "steel bar ordered and installed". At the October 17 meeting, the Inspector asked for documentation, including third party invoices, to support the amounts invoiced to Riverdale. Ms. Walton said that Rose & Thistle did not have third party invoices for many of the invoiced expenses because Rose & Thistle performed much of the work itself (it has a construction company) and that some of the expenses had not yet been incurred. In response, the Inspector requested documents such as material invoices and payroll records to validate the cost of work done by Rose & Thistle and invoiced to Riverdale. None were provided.

[32] On the following day, October 18, the Inspector received a credit note from Rose & Thistle which showed that the invoice from Rose & Thistle to Riverdale had been reversed except for \$257,065.62 for work performed in 2011. The credit note is dated December 31, 2011.

[33] In her affidavit of October 31, 2013, Ms. Walton gave an explanation for the Riverdale reversal, an explanation that has problems. She said that considerable work was done to prepare the site for construction of townhouses and condominiums. As the work was proceeding, the

project changed and the mansion will be rebuilt and become used for a woman's shelter. Rose & Thistle was owed "certain monies" for its work and the invoice for \$1,291,025 inclusive of HST was rendered by Rose & Thistle to Riverdale. She states that "the Inspector thought the amount claimed was too high" and so she issued a credit note and submitted a lower invoice for \$257,065.62 "that reflected the value of the work done by Rose & Thistle". She says she merely forgot to re-do the invoice after the plans changed.

[34] The applicants have had no chance to cross-examine Ms. Walton on her affidavit. I have considerable doubts that the Inspector told Ms. Walton that the invoice was too high, as he has had no back-up documentation to consider the validity of the invoice and was asking for it to be produced. However, even assuming that the Inspector told her the invoice was too high, which is not what the Inspector reported, one may ask why, if the new invoice of some \$257,000 reflected the work that was done, an earlier invoice had been sent for some \$1.2 million. That earlier invoice appears to have been highly improper.

[35] Dupont Developments Ltd. is one of the 31 projects. It is a contaminated industrial building and the plan according to Ms. Walton is to "gut renovate" the building and remediate the contaminated site. The Inspector requested the construction budget for it and it was provided by Mr. Goldberg, who said he was responsible for the construction project. Mr. Goldberg told Mr. Schonfeld that the budget documents were out of date. They indicate that Dupont spent \$385,000 on construction and \$20,000 on environmental renovation. The Inspector had previously been provided with an invoice issued by Rose & Thistle to Dupont for \$565,339.34 which includes an entry for construction management services of \$175,300.30, said in the invoice to be "10% of hard costs", implying that Rose & Thistle had supervised construction that cost approximately \$1.75 million. The updated general ledger for Dupont received by the Inspector on October 24 showed capitalized expenses of approximately \$248,000, construction in progress of \$36,000 and various consulting fees of approximately \$563,000. All of these documents show different construction expenditures, none nowhere near the implied cost of \$1.75 million.

[36] This Dupont budget was the only budget for any of the projects provided to the Inspector by the time of his last report dated October 31, 2013, one day before this motion was heard. The

Inspector concludes that it appears that Rose & Thistle is not maintaining project budgets on an ongoing basis to track expenses and measure construction costs against the pro forma statement prepared when the property was purchased.

[37] Fraser Properties owns property at 30 Fraser Avenue and Fraser Lands owns abutting property purchased in October 2012. Dr. Bernstein made an equity contribution of approximately \$16 million. Fraser Properties transferred \$10,281,050 to Rose & Thistle and received back \$1,215,100. Thus Rose & Thistle retained \$9,065,950. In his first report, Mr. Schonfeld said he had inspected the property and saw no construction work or evidence of recent construction work. In his supplement to his first report, after he had received the general ledger and invoices from Rose & Thistle to Fraser Properties, he reported that the invoices to Fraser Properties were approximately \$1.6 million. Assuming the invoices can be supported, that would mean that Rose & Thistle has received approximately \$7.4 million more from Fraser Properties than it invoiced to Fraser Properties. It is to be noted that at the time of the Inspector's first report, the books and records showed an intercompany receivable due to Rose & Thistle from the companies of approximately \$9.9 million. By the time of the first supplement to the Inspector's report three days later, after the invoices and general ledger had been received and reviewed, this amount was reduced to approximately \$3.9 million, due to a new debit showing as being owed by Rose & Thistle to Fraser Properties of approximately \$6.45 million.

[38] On October 31, 2013 Mr. Campion on behalf of the respondents wrote to counsel to the applicants and to the Inspector and referred to the Inspector asking which filing cabinet he could review to obtain the documents requested, such as third party invoices, contracts, payroll records or other contemporaneous documents. Mr. Campion said that the information sought can only be obtained through discussion with the staff as all documentation is on computer and not in a filing cabinet. This is troubling to the Inspector. It would mean that there is no paper of any kind in existence for \$35 million of costs said to have been incurred, or that it has all been scanned and thrown out. It would be unusual to scan it and throw it out, and questionable that it was all scanned when Rose & Thistle was two years late in their bookkeeping and according to Ms. Walton had an outdated software system.

[39] Since the Inspector was appointed, Rose & Thistle has been preparing invoices for work done going back to January 2012, and one may question where the information is coming from to do that. Mr. Campion was undoubtedly passing on what he was told by Ms. Walton, but what he was told raises concerns.

(vii) Other equity investors

[40] The agreements provided that the only shares to be issued were to Dr. Bernstein's corporations or to the Walton's corporations and neither could transfer shares to another party without the consent of the other party. However, in his prior affidavit, Mr. Reitan provided documentary evidence that disclosed that the Waltons have taken on new equity investors in at least one project, without the agreement of Dr. Bernstein. This issue was not answered by Ms. Walton in her affidavit of October 31, 2013, the failure of which is compounded in that Ms. Walton did not disclose, as previously discussed, what equity contributions have been made by the Waltons for any of the properties.

Legal principles and analysis

[41] Section 101 of the *Courts of Justice Act* provides for the appointment of a receiver/manager where it appears to a judge to be just and convenient to do so. In *Royal Bank of Canada v. Chongsim Investment Ltd.* (1997), 32 O.R. (3d) 565, Epstein J. (as she then was) discussed what should be considered in deciding whether to make such an order. She stated:

The jurisdiction to order a receiver is found in s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. This section provides that a receiver may be appointed where it appears to be just and convenient. The appointment of a receiver is particularly intrusive. It is therefore relief that should only be granted sparingly. The law is clear that in the exercise of its discretion, the court should consider the effect of such an order on the parties. As well, since it is an equitable remedy, the conduct of the parties is a relevant factor.

[42] Section 248 of the OBCA also provides for the appointment of a receiver manager if there has been oppression as contained in section 248(2). Under section 248(2) a court may make an order to rectify the matters complained of and section 248(3) provides:

(3) In connection with an application under this section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

[...]

(b) an order appointing a receiver or receiver-manager;

[43] Various cases other than the *Chongsim Investment* case have discussed the principles to be taken into account. See *Anderson v. Hunking*, [2010] O.J. No. 3042 and *Bank of Montreal v. Carnival Leasing Limited* (2011), 74 C.B.R. (5th) 300 and the authorities referred to in those cases.

[44] In my view this is not a case in which the applicants are seeking an interim order appointing a receiver/manager. They do not seek an interim order. They seek the appointment on the basis of evidence that is largely uncontested by Ms. Walton. I would agree with the respondents that if the evidence relied on by the applicants for the order sought was largely contested, the relief should be considered on the basis that it is interim relief. However, that is not the case. In any event, even if the *RJR MacDonald* tri-part test were applicable, that would not be materially different in this case from the test articulated by Epstein J. in *Chongsim Investment* that requires a consideration of the effect of the order sought on the parties and their conduct.

[45] In my reasons when the Inspector was appointed on October 4, 2013, I found oppression had occurred as follows:

[27] In my view, on the record before me Dr. Bernstein has met the test required for an investigation to be ordered. To put on two mortgages for \$6 million without the required agreement of Dr. Bernstein and then refuse to disclose what happened to the money except in a without prejudice mediation meets the higher test of oppression, let alone the lesser test of unfairly disregarding the interests of Dr. Bernstein. The other examples of the evidence I have referred, as well as the failure to provide monthly reports on the projects to Dr. Bernstein, are clearly instances of the Waltons unfairly being prejudicial to and unfairly disregarding the interests of Dr. Bernstein, a 50% shareholder of each of the owner corporations.

[46] I do not see the picture as now being less clear. To the contrary, it seems much clearer. I have referred to the concerns above in some detail. They include the following:

1. \$2.1 million was improperly taken from the proceeds of the \$6 million mortgages that never had Dr. Bernstein's approval, \$400,000 of which was taken by Ms. Walton into her personal bank account. Ms. Walton was well aware that this was wrong. She is a lawyer and the agreements were drawn in her office. Her initial reaction when confronted about the mortgages by Mr. Reitan, who at the time did not know what had happened to the mortgage proceeds, that she would only discuss it in a without prejudice mediation is a clear indication she knew what she did was wrong and contrary to Dr. Bernstein's interests.
2. \$268,104.57 was improperly paid from the Tisdale Mews account to pay for renovations to the Waltons' residence. No reasonable explanation has been provided.
3. The co-mingling of accounts and the cash sweep into the Rose & Thistle accounts was a breach of agreement and unfairly prejudicial to Dr. Bernstein and a disregard of his interests. This is particularly the case in light of the lack of current books and records that should have been prepared and available rather than requiring an Inspector to try to get to the bottom of what has occurred. A lack of records is in itself unfairly disregarding the interests of Dr. Bernstein, particularly taken the size of his investment. Blaming it on outdated computer software is hardly an answer. That should have been taken care of long ago.
4. The frenzied attempts in the past month since the Inspector was appointed to update ledgers and manufacture invoices should never have been necessary and in light of the evidence, obviously casts doubt on what is now being done to update the records. Dr. Bernstein should never have had to face this prejudicial situation.
5. The Waltons have not provided equal payments of money into any of the 31 properties. The claim that their equity was provided by way of set-off for fees and

work, even if that were permissible under the agreements, is unsupported by any available documents to the Inspector. What little has been provided raises serious issues, as discussed above. As well, taking in new equity partners is not at all what Dr. Bernstein signed up for, and indicative of a lack of ability of the Waltons to fund their equity in accordance with the agreements.

6. Dr. Bernstein was entitled to monthly reports. It is now quite evident why that has not occurred.

[47] Mr. Campion contended that a receiver/manager could not be ordered over any particular property without a finding of oppressive conduct regarding that property. I am not at all sure that such a proposition in this case is correct, but in any event there has been oppressive conduct regarding each property. The co-mingling of funds and the sweep of cash from each property's account into Rose & Thistle was oppressive in these circumstances in which there were no contemporaneous books and records kept that would permit Dr. Bernstein, or now the Inspector, to fully understand what occurred to the money from each property. The setting up of alleged fees owing to Rose & Thistle for the properties to substantiate the Waltons' equity contributions, even if permissible, without readily available documentation to substantiate the validity of the fees, was oppressive. The lack of records and reports for each property was oppressive.

[48] It is contended on behalf of the respondents that they have the contractual right to manage the projects and thus no receiver/manager should be appointed. The difficulty with this argument is that the contracts have been breached and the Waltons have certainly not shown themselves to be capable managers. A basic lack of record keeping, compounded by co-mingling of funds and transferring them to Rose & Thistle, belies any notion of proper professional management. Ms. Walton acknowledges that accounting and other issues "have plainly caused him [Dr. Bernstein] to lose confidence in my management". That is a fundamental change to the relationship.

[49] It is contended that the business will be harmed if a receiver/manager is appointed. Ms. Walton states in her affidavit that she believes that the dynamic nature of this portfolio will suffer and in the end suffer unnecessary losses. What is meant by the dynamic nature is not clear.



I recognize that a receiver/manager can in certain circumstances have negative implications in the marketplace, particularly if it means that unsold properties will have to be put up for sale at less than market prices or be sold quickly. There is no indication that is the plan here at all and there is no court ordered sale being requested.

[50] It is also to be recognized that a receiver/manager can bring stability to a situation, which in this case appears to be a requirement to protect the interests of Dr. Bernstein.

[51] Dr. Bernstein with his \$100 million plus investment has a huge financial interest in this portfolio of properties. It is hardly in his interest to have the properties dealt with in less than a sound commercial way. He suffers the same risk as the Waltons, and depending on what real equity the Waltons have put in, perhaps far more. The Waltons contend that they have huge financial risk in that they have guaranteed mortgages to the tune of some \$206 million. They have not offered any evidence that there is any likelihood of being called upon on their guarantees, and to the contrary Ms. Walton says that all of the projects except perhaps one or two of them are or expected to be profitable. There is no reason why an experienced receiver/manager with capable property managers cannot continue with the success of the ventures.

[52] The respondents contend that with the controls over the bank accounts and the other provisions of the two orders made to date, there is plenty of protection for Dr. Bernstein. There may be something in this argument, but it ignores one of the basic problems caused by the way the business has been run. There is no clear evidence yet what exactly has been put into the properties by the Waltons, and that is crucial to understanding what both Dr. Bernstein and the Waltons are entitled to. In the month since the Inspector was appointed, Ms. Walton has caused back dated invoices to be prepared for past work said to have been done. What they have been prepared from is not at all clear. With some of the troubling things about changing records that have become apparent as a result of digging by Mr. Reitan and the Inspector, discussed above, and the diversion of money that has taken place, there is reason to be concerned exactly what Ms. Walton is doing to shore up her position. The Inspector is not in a position to know what is being prepared on an *ex post facto* basis or from what, and Dr. Bernstein should not have to rely

on a hope that something untoward will no longer be done. The present situation is causing considerable harm to Dr. Bernstein.

### Conclusion

[53] Schonfeld Inc. is appointed as manager/receiver of all of the properties in schedule B, effective immediately. I was provided with a draft order that is based on the model order in use in our Court and approved by the Users' Committee. It appears satisfactory but there were no submissions as to its terms. If the respondents have any submissions with respect to the draft order, they are to be made in writing within three days and the applicants or Schonfeld Inc. shall have until Wednesday of next week to respond. In the meantime, the appointment of Schonfeld Inc. as manager/receiver is not to be delayed and Schonfeld Inc. shall immediately have the powers contained in the draft order pending any objection to it by the respondents.

[54] The applicants have applied to have Schonfeld Inc. appointed as receiver over four properties mortgaged to Dr. Bernstein with expired mortgages that are not schedule B corporations. Ms. Walton has stated in her affidavit that funds are being raised that will see these mortgages paid in full by the end of November, 2013. In light of that statement, this application is adjourned *sine die*. It can be brought on after the end of November in the event that the mortgages have not been paid in full.

[55] The applicants have also requested a certificate of pending litigation over 44 Park Lane Circle, the residence of the Waltons in light of the evidence that money from one of the 31 schedule Dr. Bernstein corporations was used to pay for renovations to the residence. I was advised by counsel for Ms. Walton during the hearing of the motion that the money would be repaid that day. Based on that statement, the request for a certificate of pending litigation is adjourned *sine die* and can be brought back on in the event that evidence of the payment is not provided to the applicants and Schonfeld Inc.

[56] The Inspector moved for approval of his interim reports and the actions taken as disclosed in the reports, and approval for his fees and disbursements and those of his counsel. No one opposed the request although Mr. Campion said that the respondents were not consenting to

them. In my view, the actions taken by the Inspector have been entirely proper in difficult circumstances and in her affidavit Ms. Walton acknowledges that the Inspector was necessary because of her issues. The fees and disbursements also appear reasonable. At the conclusion of the hearing I granted the order sought.

[57] The applicants are entitled to their costs from the respondents. If costs cannot be agreed, brief written submissions along with a proper cost outline may be made within 10 days and brief written reply submissions may be made within a further 10 days.



Newbould J.

Date: November 5, 2013

TAB J



**PANICBL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER**

**10117-0637 (LT)**

This is Exhibit.....  
 11-J-11  
 The defendant of..... Robert Duranclean..... referred to in the  
 sworn before me, I.....  
 day of December 2013.....  
 16th

2013

PROPERTY DESCRIPTION: PART LOT 10, CON. 3, EYS (CITY OF N  
TR24557 & TR819634 CITY OF MATOMO

7824553 & 79119624. CITY OF TORONTO  
UNSUBSCRIBED AS FOLLOWS:  
1, 2, 3, 4, 5, 6, 7 & 8 ON PLAN BELL/662. SUBJECT TO 79081124, N199208, NY6574.  
CA/HIS

**PROPERTY RELATIONS:**

**BIBBACON/COLONY#2868**

**ABSOLUTE**

**PRINTERS' NAMES**

BL-AD (1500 DON FILES) LIMITED

RECENTLY:  
RE-ENTRY FROM 10117-0595

**PIN CREATION DATE:**  
**1997/08/22**

**1997/08/22**

Commissionaire d'assessment  
Commissioner for Oaths  
LINDA  
PRONVOST

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
<p>** EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1990/05/07 ON THIS FIRM **</p>					
<p>** WAS REPLACED WITH THE "PIN CREATION DATE" OF 1997/08/22 **</p>					
<p>** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **</p>					
NY765474	1979/08/03	TRANSFER EASEMENT	\$2		METROPOLITAN TORONTO
NY795416	1981/04/13	NOTICE OF SUBLEASE			
NY601406	1981/07/30	NOTICE OF LEASE			
7924553	1982/06/11	TRANSFER EASEMENT	\$1		THE CORP. OF THE CITY OF NORTH YORK
7872482	1983/02/21	AGREEMENT			
78119624	1983/09/08	TRANSFER EASEMENT	\$300		BELL CANADA
78939167	1994/01/26	NOTICE OF LEASE			METROPOLITAN TORONTO
78981024	1996/02/15	NOTICE			
78986320	1996/07/18	NO APL 1ST REG			
REMARKS: RE: APPLICATION					
78986321	1996/07/18	NO APL 1ST REG			
REMARKS: APPLICATION 78986320					
78989316	1996/08/06	NOTICE			
CIBC DEVELOPMENT CORPORATION					
CROSTOWN ASSET LIMITED PARTNERSHIP I,					

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OFFICE #66

10117-0637 (LT)

PANCREL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 3  
PREPARED FOR Henkelman  
ON 2013/12/02 AT 19:38:43

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CHOWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHRD
7B989317	1996/08/06	NO AP1 1ST REG		CIBC DEVELOPMENT CORPORATION CROSSTOWN ASSET LIMITED PARTNERSHIP 1,		C
TR10132	1997/08/22	CERT FIRST REGN LT		CROSSTOWN CANADIAN ASSET CORP. 1 CIBC DEVELOPMENT CORPORATION		C
66R17662	1997/08/22	PLAN REFERENCE				C
E246176	1999/05/11	NOTICE OF LEASE		GELBEN MANAGEMENT INC.	TRIZECHAHN OFFICE PROPERTIES INC	C
B442036	2001/08/08	NOTICE OF LEASE		BBM BUREAU OF MEASUREMENT	OXFORD PROPERTIES GROUP INC. 3744213 CANADA INC.	C
AT1054461	2006/02/03	NOTICE OF LEASE		1500 DON MILLS ROAD LIMITED	CURTIS INSURANCE LTD.	C
AT1296475	2006/11/01	NOTICE OF LEASE	\$2	1500 DON MILLS ROAD LIMITED	GSI CANADA	C
AT1296476	2006/11/01	NOTICE OF LEASE	\$2	1500 DON MILLS ROAD LIMITED	ROTHMANS, BENSON & HEDGES INC.	C
AT1299108	2006/11/02	TRANSFER	\$32,750,000	1500 DON MILLS ROAD LIMITED	EL-AD (1500 DON MILLS) LIMITED	C
AT3195558	2012/12/12	NOTICE OF LEASE	\$2	EL-AD (1500 DON MILLS) LIMITED	BBM CANADA	C
AT3195559	2012/12/12	NOTICE OF LEASE	\$2	EL-AD (1500 DON MILLS) LIMITED	ROTHMANS, BENSON & HEDGES INC.	C
AT3195560	2012/12/12	NOTICE OF LEASE	\$2	EL-AD (1500 DON MILLS) LIMITED	CITY OF TORONTO	C
AT3195767	2012/12/12	CHARGE	\$31,000,000	EL-AD (1500 DON MILLS) LIMITED	CDPQ MORTGAGE INVESTMENT CORPORATION	C
AT3195768	2012/12/12	NO ASSGN RENT GEN		EL-AD (1500 DON MILLS) LIMITED	CDPQ MORTGAGE INVESTMENT CORPORATION	C
REMARKS: AT3195767						
AT3195784	2012/12/12	NO ASSG LESSOR INT		EL-AD (1500 DON MILLS) LIMITED	CDPQ MORTGAGE INVESTMENT CORPORATION	C
REMARKS: AT3195560, AT3195767						
AT3195785	2012/12/12	NO ASSG LESSOR INT		EL-AD (1500 DON MILLS) LIMITED	CDPQ MORTGAGE INVESTMENT CORPORATION	C
REMARKS: AT3195558, AT3195767						
AT3195786	2012/12/12	NO ASSG LESSOR INT		EL-AD (1500 DON MILLS) LIMITED	CDPQ MORTGAGE INVESTMENT CORPORATION	C

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10117-0637 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PAGE 3 OF 3

PREPARED FOR Henkelman  
ON 2013/12/02 AT 19:38:43

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHRD
AT3195787	2012/12/12	NO ASSG LESSOR INT		EL-AD (1500 DON MILLS) LIMITED	CDPO MORTGAGE INVESTMENT CORPORATION	C
REMARKS: AT3195559, AT3195767						
AT3366714	2013/08/01	CHANGE	\$3,000,000	EL-AD (1500 DON MILLS) LIMITED	WINDSOR PRIVATE CAPITAL INC.	C
AT3366715	2013/08/01	NO ASSGN RENT GEN		EL-AD (1500 DON MILLS) LIMITED	WINDSOR PRIVATE CAPITAL INC.	C
REMARKS: AT3366714 RENTS						
AT3366727	2013/08/01	NO ASSG LESSOR INT		EL-AD (1500 DON MILLS) LIMITED	WINDSOR PRIVATE CAPITAL INC.	C
REMARKS: AT3366715, AT3366714						
AT3366728	2013/08/01	NO ASSG LESSOR INT		EL-AD (1500 DON MILLS) LIMITED	WINDSOR PRIVATE CAPITAL INC.	C
REMARKS: AT3195558, AT3366714						
AT3366729	2013/08/01	NO ASSG LESSOR INT		EL-AD (1500 DON MILLS) LIMITED	WINDSOR PRIVATE CAPITAL INC.	C
REMARKS: AT3195559, AT3366714						
AT3366730	2013/08/01	NO ASSG LESSOR INT		EL-AD (1500 DON MILLS) LIMITED	WINDSOR PRIVATE CAPITAL INC.	C
REMARKS: AT3195560, AT3366714						

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TAB K



**Meredith, Heather L.**



**From:** Jones, Lynda <LJones@oteracapital.com>  
**Sent:** Monday, October 07, 2013 10:39 AM  
**To:** Mark Goldberg  
**Cc:** Chin, Paul  
**Subject:** 1500 Don Mills Road - O/S Utility Invoices  
**Attachments:** DOC.PDF

**Importance:** High  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

This is Exhibit "K" referred to in the  
affidavit of Robert Duranceau  
sworn before me, 16th  
day of December 13

*Linda Pronovost*

A COMMISSIONER FOR TAKING AFFIDAVITS OATHS

Hi Mark,

Further to our telephone conversation on Friday, there are significant utility arrears related to the above-noted property. Please provide me with confirmation that all amounts have been paid (copies of cheques or wire transfers) together with a current tax certificate from Toronto Revenue Services by Wednesday, October 9, 2013.

Thanks!

Lynda

Lynda L. Jones  
Director, Real Estate Lending  
Directrice, Financement immobilier



Otera Capital  
55 University Avenue, Suite 1701  
Toronto, Ontario M5J 2H7  
Tél. / Tel.: 416-958-0159  
Mob. / Cell: 416-543-8399  
Télec. / Fax.: 416-360-8709

[ljones@oteracapital.com](mailto:ljones@oteracapital.com)  
[www.oteracapital.com](http://www.oteracapital.com)

## Meredith, Heather L.

---

**From:** Mark Goldberg <mGoldberg@roseandthistle.ca>  
**Sent:** Monday, October 07, 2013 9:23 PM  
**To:** Jones, Lynda  
**Cc:** Chin, Paul  
**Subject:** RE: 1500 Don Mills Road - O/S Utility Invoices

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Lynda

All arrears are being brought up to date and I will forward you proof in due course. All other utilities are on pre authorized payments. There was an issue with the property tax being sent to the wrong address, as well as the Water bills, and with the Yardi implementation, these bills fell thru the cracks.

We apologize for the slip up and will endeavour not to have this happen again

Thanks

Mark

---

**From:** Jones, Lynda [mailto:[LJones@oteracapital.com](mailto:LJones@oteracapital.com)]  
**Sent:** October-07-13 10:39 AM  
**To:** Mark Goldberg  
**Cc:** Chin, Paul  
**Subject:** 1500 Don Mills Road - O/S Utility Invoices  
**Importance:** High

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Thanks!

Lynda

Lynda L. Jones  
Director, Real Estate Lending  
Directrice, Financement immobilier



Otera Capital  
55 University Avenue, Suite 1701  
Toronto, Ontario M5J 2H7  
Tél. / Tel.: 416-956-0159  
Mob. / Cell: 416-543-8399  
Télec. / Fax.: 416-360-8709





TAB L

**Meredith, Heather L.**

---

**From:** Mark Goldberg <mGoldberg@roseandthistle.ca>  
**Sent:** Tuesday, October 22, 2013 1:40 PM  
**To:** Jones, Lynda  
**Cc:** Norma Walton; Fodorean, Adrian  
**Subject:** RE: 1500 Don Mills Road - O/S Utility Invoices  
**Attachments:** 1500 DON MILLS RENT ROLL - OCT 2013.pdf; net worth October 18 13.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

This is Exhibit 11 referred to in the  
affidavit of Robert Duranceau  
sworn before me, this 16<sup>th</sup>  
day of December 2013

Linda Pronovost  
COMMISSIONER FOR TAKING AFFIDAVITS OATHS

Dear Lynda, please see my notes below in red.

Thanks

Mark

---

**From:** Jones, Lynda [mailto:LJones@oteracapital.com]  
**Sent:** October-18-13 6:13 PM  
**To:** Mark Goldberg  
**Cc:** Norma Walton; Fodorean, Adrian  
**Subject:** RE: 1500 Don Mills Road - O/S Utility Invoices

Hi Mark,

Further to my follow up regarding utility arrears (Oct 7) and our request for annual reporting in accordance with the loan terms (Sep 17 – see attached), please provide me with the following:

- A current 2013 rent roll Attached
- Detailed income and expense statement (12 months) based on your most recent fiscal year end We only closed this in Dec 2012. We have not had 12 months of income and expense and the fiscal year end is Dec 31, 2013
- Current tax certificate I have requested this but all property taxes are paid by Otera from the tax escrow.
- Financial statements for Donalda Developments Ltd. for the most recent year end We only produce F/S once a year, and as I mentioned above, our year end is Dec 31 2013
- Detailed net worth statement for Norma Walton and Ronauld Walton Attached
- Confirmation that all utilities payments are up to date All utilities are on pre authorized payments, except for water/sewer. This account will be up-to-date by the end of this month and I will be happy to

If you have any questions or concerns, please let me know as soon as possible as the loan is watch listed and credit is following up. Please call me to discuss the financial requests above.

Thanks,

Lynda

Lynda L. Jones  
Director, Real Estate Lending  
Directrice, Financement immobilier





Otéra Capital  
55 University Avenue, Suite 1701  
Toronto, Ontario M5J 2H7  
Tél. / Tel.: 416-956-0159  
Mob. / Cell: 416-543-8399  
Télec. / Fax.: 416-360-8709

[ljones@oteracapital.com](mailto:ljones@oteracapital.com)  
[www.oteracapital.com](http://www.oteracapital.com)

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**To:** Mark Goldberg  
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**Subject:** 1500 Don Mills Road - O/S Utility Invoices  
**Importance:** High

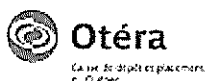
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Thanks!

Lynda

Lynda L. Jones  
Director, Real Estate Lending  
Directrice, Financement immobilier



Otéra Capital  
55 University Avenue, Suite 1701

Toronto, Ontario M5J 2H7  
Tél. / Tel.: 416-956-0159  
Mob. / Cell: 416-543-8399  
Télec. / Fax.: 416-360-8709

[liones@oteracapital.com](mailto:liones@oteracapital.com)  
[www.oteracapital.com](http://www.oteracapital.com)



**Meredith, Heather L.**

---

**From:** Mark Goldberg <mGoldberg@roseandthistle.ca>  
**Sent:** Friday, October 25, 2013 3:05 PM  
**To:** Jones, Lynda  
**Cc:** Norma Walton; Fodorean, Adrian  
**Subject:** RE: 1500 Don Mills Road - O/S Utility Invoices  
**Attachments:** Donalda Developments Ltd 09-30-13 Draft Financial Statement 10-24-13.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Lynda,

Please find attached the Sept 30 F/S as requested. I will confirm the utility (water) bill is up-to-date next week at the latest.

Have a great weekend

Thanks

Mark

---

**From:** Jones, Lynda [<mailto:LJones@oteracapital.com>]  
**Sent:** October-18-13 6:13 PM  
**To:** Mark Goldberg  
**Cc:** Norma Walton; Fodorean, Adrian  
**Subject:** RE: 1500 Don Mills Road - O/S Utility Invoices

Hi Mark,

Further to my follow up regarding utility arrears (Oct 7) and our request for annual reporting in accordance with the loan terms (Sep 17 – see attached), please provide me with the following:

- A current 2013 rent roll
- Detailed income and expense statement (12 months) based on your most recent fiscal year end
- Current tax certificate
- Financial statements for Donalda Developments Ltd. for the most recent year end
- Detailed net worth statement for Norma Walton and Ronald Walton
- Confirmation that all utilities payments are up to date

If you have any questions or concerns, please let me know as soon as possible as the loan is watch listed and credit is following up.

Thanks,

Lynda

Lynda L. Jones  
Director, Real Estate Lending  
Directrice, Financement immobilier



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Toronto, Ontario M5J 2H7  
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[ljones@oteracapital.com](mailto:ljones@oteracapital.com)  
[www.oteracapital.com](http://www.oteracapital.com)

**From:** Mark Goldberg [<mailto:mGoldberg@roseandthistle.ca>]  
**Sent:** October-07-13 9:23 PM  
**To:** Jones, Lynda  
**Cc:** Chin, Paul  
**Subject:** RE: 1500 Don Mills Road - O/S Utility Invoices

Dear Lynda

All arrears are being brought up to date and I will forward you proof in due course. All other utilities are on pre authorized payments. There was an issue with the property tax being sent to the wrong address, as well as the Water bills, and with the Yardi implementation, these bills fell thru the cracks.

We apologize for the slip up and will endeavour not to have this happen again

Thanks

Mark

**From:** Jones, Lynda [<mailto:LJones@oteracapital.com>]  
**Sent:** October-07-13 10:39 AM  
**To:** Mark Goldberg  
**Cc:** Chin, Paul  
**Subject:** 1500 Don Mills Road - O/S Utility Invoices  
**Importance:** High

Hi Mark,

Further to our telephone conversation on Friday, there are significant utility arrears related to the above-noted property. Please provide me with confirmation that all amounts have been paid (copies of cheques or wire transfers) together with a current tax certificate from Toronto Revenue Services by Wednesday, October 9, 2013.

Thanks!

Lynda

Lynda L. Jones  
Director, Real Estate Lending  
Directrice, Financement immobilier



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[ljones@oteracapital.com](mailto:ljones@oteracapital.com)  
[www.oteracapital.com](http://www.oteracapital.com)

**Meredith, Heather L.**

---

**From:** Lessard, Jacinthe <JLessard@oteracapital.com>  
**Sent:** Tuesday, October 29, 2013 4:19 PM  
**To:** Mark Goldberg (mGoldberg@roseandthistle.ca)  
**Cc:** Jones, Lynda  
**Attachments:** DOC.PDF

Good afternoon Mr. Goldberg,

I have received this bill this morning from the City of Toronto.  
I have another one to send you.

Jacinthe Lessard  
Otéra Capital Inc.

## Meredith, Heather L.

---

**From:** Lessard, Jacinthe <JLessard@oteracapital.com>  
**Sent:** Tuesday, October 29, 2013 4:25 PM  
**To:** Mark Goldberg (mGoldberg@roseandthistle.ca)  
**Cc:** Jones, Lynda  
**Subject:** TR: Numérisation depuis un WorkCentre  
**Attachments:** DOC.PDF

Hi Mr. Goldberg,

Here is the second bill for 1500 Don Mills Road.

Thank you!

Jacinthe Lessard  
Technicienne, Gestion financière  
Technician, Financial Management

Otéra Capital  
Centre de commerce mondial  
413, rue St-Jacques – Bureau / Suite 700  
Montréal (QC) H2Y 1N9

---

Tél. / Tel.: 514-847-5454  
Télec. / Fax.: 514-847-2397

[jlessard@oteracapital.com](mailto:jlessard@oteracapital.com)  
[www.oteracapital.com](http://www.oteracapital.com)

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☑Merci de penser à votre environnement avant d'imprimer ce courriel / Thank you for considering the environment before printing this email

-----Message d'origine-----

De : [OTERA-0149-WC@oteracapital.com](mailto:OTERA-0149-WC@oteracapital.com) [<mailto:OTERA-0149-WC@oteracapital.com>]

Envoyé : octobre 29, 2013 9:21 PM

À : Lessard, Jacinthe; Lessard, Jacinthe

Objet : Numérisation depuis un WorkCentre

Veillez ouvrir le document joint. Il a été numérisé et envoyé à l'aide d'un WorkCentre Xerox.

Type du fichier joint : PDF

Emplacement du WorkCentre : machine location not set

Nom du périphérique : OTERA-0149-WC

Pour plus d'informations sur les produits et solutions Xerox, visitez le site <http://www.xerox.com>

**Meredith, Heather L.**

---

**From:** Jones, Lynda <LJones@oteracapital.com>  
**Sent:** Tuesday, October 29, 2013 4:58 PM  
**To:** Mark Goldberg  
**Cc:** Fodorean, Adrian  
**Subject:** Re: 1500 Don Mills Road - O/S Utility Invoices

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I understand that Jacinthe Lessard in Montreal has been forwarding all invoices and notices to your attention since March. I am assuming this is just a matter of a notice (phone call?) to the City to direct water bills to your offices rather than Otera's.

Please do send confirmation asap. Thanks, Mark.

Lynda

---

**From:** Mark Goldberg  
**Sent:** Tuesday, October 29, 2013 2:52 PM  
**To:** Jones, Lynda  
**Cc:** Norma Walton; Fodorean, Adrian  
**Subject:** RE: 1500 Don Mills Road - O/S Utility Invoices

You now see our confusion. We are chasing the city and will advise. We plan to bring this account current in the next few days.

Thanks

Mark

---

**From:** Jones, Lynda [<mailto:LJones@oteracapital.com>]  
**Sent:** October-29-13 4:28 PM  
**To:** Mark Goldberg  
**Cc:** Norma Walton; Fodorean, Adrian  
**Subject:** Re: 1500 Don Mills Road - O/S Utility Invoices

Hi Mark,

Can you confirm that the water bills are now being sent to Donalda directly from the City (and not being sent to Otera ). From a look at the file it seems that some were sent to Hazelton address in Toronto and some sent to Otera.

Lynda  
416-956-0159 (office)  
416-543-8399 (cell)

---

**From:** Mark Goldberg

**Sent:** Friday, October 25, 2013 1:10 PM  
**To:** Jones, Lynda  
**Cc:** Norma Walton; Fodorean, Adrian  
**Subject:** RE: 1500 Don Mills Road - O/S Utility Invoices

Dear Lynda,

Please find attached the Sept 30 F/S as requested. I will confirm the utility (water) bill is up-to-date next week at the latest.

Have a great weekend

Thanks

Mark

---

**From:** Jones, Lynda [<mailto:LJones@oteracapital.com>]  
**Sent:** October-18-13 6:13 PM  
**To:** Mark Goldberg  
**Cc:** Norma Walton; Fodorean, Adrian  
**Subject:** RE: 1500 Don Mills Road - O/S Utility Invoices

Hi Mark,

Further to my follow up regarding utility arrears (Oct 7) and our request for annual reporting in accordance with the loan terms (Sep 17 – see attached), please provide me with the following:

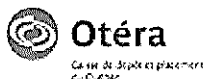
- A current 2013 rent roll
- Detailed income and expense statement (12 months) based on your most recent fiscal year end
- Current tax certificate
- Financial statements for Donald Development Ltd. for the most recent year end
- Detailed net worth statement for Norma Walton and Ronald Walton
- Confirmation that all utilities payments are up to date

If you have any questions or concerns, please let me know as soon as possible as the loan is watch listed and credit is following up.

Thanks,

Lynda

Lynda L. Jones  
Director, Real Estate Lending  
Directrice, Financement immobilier



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[ljones@oteracapital.com](mailto:ljones@oteracapital.com)  
[www.oteracapital.com](http://www.oteracapital.com)

---

**From:** Mark Goldberg [<mailto:mGoldberg@roseandthistle.ca>]  
**Sent:** October-07-13 9:23 PM  
**To:** Jones, Lynda  
**Cc:** Chin, Paul  
**Subject:** RE: 1500 Don Mills Road - O/S Utility Invoices

Dear Lynda

All arrears are being brought up to date and I will forward you proof in due course. All other utilities are on pre authorized payments. There was an issue with the property tax being sent to the wrong address, as well as the Water bills, and with the Yardi implementation, these bills fell thru the cracks.

We apologize for the slip up and will endeavour not to have this happen again

Thanks

Mark

---

**From:** Jones, Lynda [<mailto:LJones@oteracapital.com>]  
**Sent:** October-07-13 10:39 AM  
**To:** Mark Goldberg  
**Cc:** Chin, Paul  
**Subject:** 1500 Don Mills Road - O/S Utility Invoices  
**Importance:** High

Hi Mark,

Further to our telephone conversation on Friday, there are significant utility arrears related to the above-noted property. Please provide me with confirmation that all amounts have been paid (copies of cheques or wire transfers) together with a current tax certificate from Toronto Revenue Services by Wednesday, October 9, 2013.

Thanks!

Lynda

Lynda L. Jones  
Director, Real Estate Lending  
Directrice, Financement immobilier



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[ljones@oteracapital.com](mailto:ljones@oteracapital.com)  
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Caisse de dépôt et placement  
du Québec  
413, rue St-Jacques, bureau 700  
Montréal (Québec) H2Y 1N9  
514 847-5900

63081 www.scotiabank.com/businessservices 1-888-855-1234  
www.banquescotia.com/servicesauxentreprises

10003728

DATE

2013

11 '15

A/Y

M/M

J/D

COMPTE EN DOLLARS CAD

PAYEZ/PAY

TRENTE-SEPT MILLE DEUX CENT VINGT-NEUF & 24/100 Dollars

\$ 37,229.24

A  
L'ORDRE  
DE/  
TO THE  
ORDER OF

City of Toronto  
Revenue Services - Mortgages  
5100 Yonge Street  
North York Civic Centre; Lower Level  
Toronto ON CA  
M2N 5V7

PER  
PAR

⑈000010003728⑈ ⑆6308100021⑆ 01980113⑈



Caisse de dépôt et placement  
du Québec

Otéra Capital Inc.  
413, rue Saint Jacques - Bureau 700  
Montréal QC Canada  
H2Y 1N9

Chèque/Check

10003728

#### Adresse/Address

City of Toronto  
Revenue Services - Mortgages  
5100 Yonge Street  
North York Civic Centre; Lower Level  
Toronto ON CA  
M2N 5V7

#### Information

Número paiement/Payment number 1500002815  
Date paiement/Payment date 11/15/2013  
Número fournisseur/Supplier number 203271  
Page 1 de 1

Numéro facture/ Invoice number	Date facture/ Invoice date	Description	Montant brut/ Gros amount	Escompte/ Discount	Montant net/ Net amount
CITY OF TORONTO	11/15/2013	5200040763	37,229.24	0.00	37,229.24
		Total chèque .....			\$ 37,229.24



# FINAL NOTICE

Assessment  
Roll No. 19-08-10-2-180-01400-0000-0 1

2012-0858

Payments are posted to this date November 4, 2013  
Mailing Address

Overdue Amounts  
Year 2013 Total 37,229.24

001586 xx129(X)  
DONALDA DEVELOPMENTS LTD  
OTERA CAPITAL  
CENTRE DE COMMERCE MONDIAL  
413 RUE ST-JACQUES SUITE 700  
MONTREAL QC H2Y 1N9

Total: 37,229.24  
Remaining Instalments  
Date Amount

Effective January 1, 2008 tax accounts that are issued to a bailiff will be charged a \$56.00 Administration Fee.

Property Address  
1500 DON MILLS RD



PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

## FINAL NOTICE

Assessment  
Roll No. 19-08-10-2-180-01400-0000-0 1

Payments are posted to this date November 4, 2013

Property Address  
1500 DON MILLS RD

Prior Years  
\$ 0.00

Current Year  
\$ 37,229.24

Total Amount Due  
\$ 37,229.24

Amount Paid  
\$ 37,229.24

### FINAL NOTICE — Prior to Bailiff Action

Full payment must be made within 21 days of the mailing of this FINAL NOTICE to avoid bailiff action and applicable costs. Please call 416-395-0174 to make payment arrangements.

19081021800140000000 1 00037229242 00037229242 201311040

0015630000 1001383879490 96

conformé par Lyndia Jones  
à payer avec la provision de  
taxes

JL 14/11/2013



PLEASE RETURN THIS PORTION FOR YOUR RECORDS

**TRANSFER TO TAX**Assessment  
Roll No. 1908-10-2-180-01400-0000-0 1Date Issued  
30/Sep/2013Property Address 1500 DON MILLS RD  
Mailing AddressCharge  
Utilities Transfer To Tax000092 xx129(L)  
DONALDA DEVELOPMENTS LTD  
OTERA CAPITAL CENTRE DE COMMERCE  
MONDIAL  
413 RUE ST-JACQUES SUITE 700  
MONTREAL, QC H2Y 1N9

DUE DATE 30/Oct/2013

**Amount Due**Amount Transferred \$12,820.02  
Transfer Fee \$35.00

Total Amount Due \$12,855.02

**Notice of Action**

Outstanding water charges on this account have been transferred to the property tax account and a fee of \$35 has been applied, in accordance with City of Toronto Municipal Code Chapter 441. Any owner/agent agreements respecting water bill mailings are terminated. All future bills and notices will be mailed to the assessed property owner.



PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

**TRANSFER TO TAX**Assessment  
Roll No. 1908-10-2-180-01400-0000-0 1Total Amount Due  
\$ 12,855.02

Property Address 1500 DON MILLS RD

Due Date  
30/Oct/2013Charge  
Utilities Transfer To TaxAmount Paid  
\$

19081021800140000000 1 00012855029 00012855029 201310307

⑆01563⑉900⑆ 100138387949⑈ 96



Revenue Services  
Toronto  
416-392-9000

**OVERDUE NOTICE**

000162610  
Account No.

001180280 00  
Client No.

1500 DON MILLS RD  
Service Address

Amount Paid

Sep 3, 2013  
Original Due Date

Sep 17, 2013  
Notice Date

\$21,604.95  
Past Due Amount

000881 xx129(L)  
DONALDA DEVELOPMENTS LTD  
OTERA CAPITAL CENTRE DE COMMERCE  
MONDIAL  
700-413 RUE ST-JACQUES  
MONTREAL, QC H2Y 1N9

Please RETURN this portion  
with your payment

00016261000118028000 030920136 021604954 021604954

001572-9001

96

# UTILITY BILL

Please KEEP this portion  
for your records

000162610 001180280 00  
Account No. Client No.  
1500 DON MILLS RD  
Service Address

Property Owner  
DONALDA DEVELOPMENTS LTD



Revenue Services  
Box 6000  
Toronto ON M7N 1V3

Sep 17, 2013  
Notice Date

Please pay the amount shown on this notice promptly to avoid additional charges.

Amount Paid  
Sep 3, 2013  
Original Due Date  
\$21,604.95  
Past Due Amount

Water & Solid Waste Management

**OVERDUE NOTICE**

If payment has been made  
within the past 10 days  
Early discount will apply



Revenue Services  
Box 6000  
Toronto, ON M2N 5V3

# TRANSFER TO TAX NOTICE

000162610  
Account No.

001180280 00  
Client No.

1500 DON MILLS RD  
Service Address

Amount Paid

Jul 29, 2013

Original Due Date

Sep 27, 2013

Transfer Date

\$12,820.02

Past Due Amount

000194 xx129(F)  
DONALDA DEVELOPMENTS LTD  
OTERA CAPITAL CENTRE DE COMMERCE  
MONDIAL  
700-413 RUE ST-JACQUES  
MONTREAL, QC H2Y 1N9

Please RETURN this portion  
with your payment

00016261000118028000 290720135 012820023 012820023

101572-9001

96

## UTILITY BILL

Please KEEP this portion  
for your records



Revenue Services  
Box 6000  
Toronto, ON M2N 5V3

000162610  
Account No.

001180280 00  
Client No.

1500 DON MILLS RD  
Service Address

Aug 28, 2013

Notice Date

Sep 27, 2013

Transfer Date

Outstanding water charges & solid waste fees remaining unpaid after the "Transfer Date" above will be transferred to the property tax account, and a fee of \$35 will apply, in accordance with City of Toronto Municipal Code Chapter 441. Any owner/agent agreements respecting utility bill mailings will be terminated, and all future bills and notices will be mailed to the assessed property owner.

Amount Paid

Jul 29, 2013

Original Due Date

\$12,820.02

Past Due Amount

Water & Solid Waste Management

# TRANSFER TO TAX NOTICE

Toronto OVERDUE NOTICE

1st bill I have received

Account No. 000162610 Client No. 001180280 00  
1500 DON MILLS RD  
Service Address

000450 xx129(F)  
DONALDA DEVELOPMENTS LTD  
OTERA CAPITAL CENTRE DE COMMERCE  
MONDIAL  
700-413 RUE ST-JACQUES  
MONTREAL, QC H2Y 1N9

Amount Paid  
Jul 29, 2013  
Original Due Date  
Aug 14, 2013  
Notice Date  
\$12,820.02  
Past Due Amount

Please return this bill to:  
Donalda Developments Ltd

00016261000118028000 290720135 012820023 012820023

0015729000

98

UTILITY BILL



000162610 001180280 00  
Account No. Client No.  
1500 DON MILLS RD  
Service Address

Please KEEP this notice  
in a safe place

Property Owner  
DONALDA DEVELOPMENTS LTD

Aug 14, 2013  
Notice Date

Please pay the amount shown on this notice promptly to avoid additional charges.

Amount Paid  
Jul 29, 2013  
Original Due Date  
\$12,820.02  
Past Due Amount

Water & Solid Waste Management  
OVERDUE NOTICE

2ND  
Bill



000162610 001180280 00  
Account No. Client No.  
1500 DON MILLS RD  
Service Address

011084 59/8 xx129(F)  
DONALDA DEVELOPMENTS LTD  
OTERA CAPITAL CENTRE DE COMMERCE  
MONDIAL  
700-413 RUE ST-JACQUES  
MONTREAL, QC H2Y 1N9

Please RETURN this portion  
with your payment

Amount Paid
Payable Before \$ 29,236.96
Due Date 30/Sep/2013
Payable After \$ 29,639.13

00016261000118028000 300920139 029236965 029639135

001572-9001

96

Toronto Water & Solid Waste Management Services

# UTILITY BILL

Please KEEP this portion  
for your records



000162610 001180280 00  
Account No. Client No.  
1500 DON MILLS RD  
Service Address  
DONALDA DEVELOPMENTS LTD

Page 1 of 1

## DESCRIPTION

<b>WATER - METER READING</b>	<b>METER NO. 10000183</b>
Current Reading Date	Large Reading Small Reading
01/Sep/2013	40057.00 46178.50
Previous Reading Date	
01/Aug/2013	38645.00 44778.10
Consumption (31 days)	1412.00 1400.40
<b>Total Consumption (Large + Small)</b>	<b>2812.40 m³</b>

Balance Forward	\$ 12,820.02
Billings	\$ 8,345.18
Loss of Discount	\$ 439.75
Previous Balance	\$ 21,604.95

## WATER - Current Billing

Total Consumption	Total Water & Sewer Charge	
9% Rate Increase JAN 01, 2013		
Block 1: 2812.40 m³ @ 2.8567	= \$ 8,034.18	
2812.40 m³	\$ 8,034.18	
<b>Total Water - Current Billing</b>		\$ 8,034.18
<b>Total Billing</b>		\$ 29,639.13



3rd Bill



# Property Tax Account Statement

Assessment Roll No. 19-08-10-2-180-01400-0000-0 1

Payments are posted to this date September 7, 2013

Mailing Address

094577 135/1 xx129(F)  
DONALDA DEVELOPMENTS LTD  
OTERA CAPITAL  
CENTRE DE COMMERCE MONDIAL  
413 RUE ST-JACQUES SUITE 700  
MONTREAL QC H2Y 1N9

Property Address

1500 DON MILLS RD  
CON 3 EY PT LOT 10 RP 66R17662 PARTS 1 TO 8

Account Summary

Overdue Amounts (Due Now):

Year	Total
2013	23,482.42
<b>Total Overdue:</b>	<b>23,482.42</b>

## OVERDUE TAX NOTICE

Message Centre

A \$16 Statement Fee has been added to your account and is included in the Total Amount Due.

### Overdue Property Taxes

The overdue amount is a result of late or missed payments, penalty/interest charges, and/or applicable fees. Please note that payments received are applied to the oldest outstanding balance first. The Overdue Amount must be paid immediately.

Penalty, interest and fees are added to overdue accounts. See the Penalty, Interest and Fees message on the back of this statement.

*WATER TAX Bill  
transferred to property  
confirm for tax  
la ville de  
Toronto  
le 18/09/2013  
i pay for  
a client*

Overdue Amount  
- DUE NOW

\$23,482.42

Future Amount(s) Due

\$0.00

TOTAL AMOUNT DUE

\$23,482.42



# PLEASE RETURN THIS PORTION WITH YOUR PAYMENT Property Tax Account Statement

Assessment Roll No. 19-08-10-2-180-01400-0000-0 1

Payments are posted to this date September 7, 2013

Property Address

1500 DON MILLS RD  
CON 3 EY PT LOT 10 RP 66R17662 PARTS 1 TO 8

Overdue Amount  
- DUE NOW

\$23,482.42

Future Amount(s) Due

\$0.00

TOTAL AMOUNT DUE

\$23,482.42

Amount Paid

19081021800140000000 1 00023482425 00023482425 201309077

001563-9000 1001380860870000

TAB M



**Otéra**

Caisse de dépôt et placement  
du Québec

55, University Avenue  
Suite 1701  
Toronto ON M5J 2H7  
Tel. 416 360-1979  
Fax 416 360-8709  
www.oteracapital.com

November 15, 2013

**WITHOUT PREJUDICE &  
VIA REGISTERED MAIL**

El-Ad (1500 Don Mills) Limited  
and Donalda Developments Ltd.  
30 Hazelton Avenue  
Toronto, Ontario  
M5R 2E2

This is Exhibit "M" referred to in the  
affidavit of Robert Duranceau  
sworn before me  
day of December 13, 2013

Attention: Mr. Mark Goldberg, Executive Vice President, Real Estate

**Loan: 2012-0358**  
**Property: 1500 Don Mills Road, Toronto, Ontario**  
**Borrower: El-Ad (1500 Don Mills) Limited**  
**Beneficial Owner: Donalda Developments Ltd.**  
**Guarantors: Norma Walton & Ronald Walton**

*Linda Pronovost*  
A COMMISSIONER FOR TAKING AFFIDAVITS OATHS

Dear Sir,

Further to our telephone conversations over the past few weeks, we advised you that we are aware of the existence of water arrears, some of which have been added to the property tax account. We have made several requests to you via telephone and email to have these arrears paid by the Borrower. On November 13, 2013, you had indicated that a payment of \$21,339.24 had been sent to the City on October 29, 2013 but the arrears remain outstanding according to a Final Notice in the amount of \$37,229.24 received from the City of Toronto on November 14, 2013. We have used funds in the tax escrow account to pay the notice in full.

We have discovered that a second mortgage has been placed on the property. This is in breach of the Borrower's covenant not to cause the same to happen without our prior consent having been obtained.

Both matters have caused our mortgage to be in default. Unless all utility arrears have been paid and the mortgage in second position is discharged on or before December 1, 2013, we will be referring this matter to counsel for the institution of legal proceedings to protect our interests.

Yours truly,

Lynda L. Jones  
Director, Real Estate Lending

c.c. Norma Walton, Rose and Thistle Group  
Ronald Walton, Rose and Thistle Group  
Lanning J. Abramson, Cassels Brock & Blackwell LLP



TAB N

# Goodmans<sup>LLP</sup>

Barristers & Solicitors

Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211  
Facsimile: 416.979.1234  
goodmans.ca

Direct Line: 416.597.5923  
fmyers@goodmans.ca

November 27, 2013

Our File No.: 132838

**DELIVERED VIA FACSIMILE (416-868-0673)**

McCarthy Tetrault LLP  
5300 - 66 Wellington Street West  
Box 48, Toronto-Dominion Bank Tower  
Toronto, ON M5K 1E6

Attention: Heather Meredith

Dear Ms Meredith:

Re: **DBDC Spadina Ltd. et al. v. Norma Walton et al.**

We are counsel for Schonfeld Inc. in its capacity as Manager of the property known municipally as 1500 Don Mills Road, Toronto. Let me start by noting that our clients are not adverse in interest. Our client is an Officer of the Court who will take its direction from the Court considering the input of interested parties. Assuming that your client is the first ranking secured creditor on the property, your client's input will be valued and considered appropriately.

We can advise you that the Manager is not co-mingling funds of the various corporations over which it has been appointed. Each company is being kept separate and will be responsible only for claims properly brought against it. Separate financial reporting has been implemented. We understand that the property over which your client has a mortgage is cash flow positive. As we have discussed, our client is reviewing the status of the properties under its management and expects to formulate a strategy for dealing with them in the next 30 to 60 days. There are many options, including sale, that will have to be considered from the perspectives of all interested parties. If your client has a current valuation establishing that the property is not worth the value of its mortgage, please share that with us as soon as possible as it would be a significant piece of evidence in formulating a strategy and understanding the interest (or lack of interest) of stakeholders. Unless your client can show that the property is not worth its mortgage value, it is hard to see the prejudice in moving forward for a short period of time with the mortgage being kept current by the Manager.

If there is information that your client wishes to see, please advise. Our client is happy to have its property manager share property-level information with your client if it wishes to see it. We certainly expect to be in contact with you or your client to discuss our client's views on the best strategy for dealing with the properties as our client moves forward. Our client intends to be

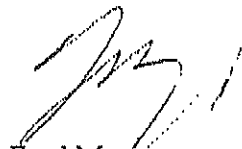
This is Exhibit "N" referred to in the  
affidavit of Robert Durancieu  
sworn before me 16<sup>th</sup>  
day of December 13  
*Linda Pronovost*  
A COMMISSIONER FOR TAKING AFFIDAVITS



responsive and, most of all, practical. It is committed to cooperate and communicate with your client and believes that a practical and cooperative approach is preferable to incurring legal fees in proceedings that distract our client from the important tasks which it faces. Our client is actively reviewing issues concerning the property attribution and allocation of costs to and among the properties. We expect to have a proposal to discuss with you shortly.

Yours truly,

**Goodmans LLP**



Fred Myers

FLM/kfw

c: Schonfeld Inc.

Guillermo Schible, Schible Law

Peter Griffin, Lenczner Slaght Royce Smith Griffin LLP

TAB O

**mccarthy  
tetrault**

This is Exhibit <sup>110</sup>.....referred to in the  
affidavit of Robert Duranceau  
sworn before r <sup>16<sup>th</sup></sup>

day of December 13

Linda Pronovost  
A COMMISSIONER FOR TAKING AFFIDAVITS

McCarthy Tétrault LLP  
PO Box 48, Suite 5300  
Toronto-Dominion Bank Tower  
Toronto ON M5K 1E6  
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Jamey Gage  
Direct Line: (416) 601-7539  
Direct Fax: (416) 888-0873  
Email: jgage@mccarthy.ca

November 29, 2013

Via Email

Peter Griffin  
Lenczner Slaght  
130 Adelaide Street West  
Suite 2600  
Toronto, ON M5H 3P5



Fred Myers  
Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

Dear Sirs:

**Re: Lands, Buildings and Other Property located at 1500 Don Mills Road, Toronto and order dated November 5, 2013 ("Receivership Order") in proceedings commenced by DBDC Spadina Inc. and certain others (collectively, the "Shareholder Applicants") against Norma and Ronauld Walton and certain others (the "Shareholder Respondents")**

As you know, we are counsel for CDPQ Mortgage Investment Corporation ("Otera"). Otera is the first mortgagee in respect of the lands, buildings and other property located at 1500 Don Mills Road, Toronto (the "Property"). The amount owing to Otera pursuant to its commitment letter with El-Ad (1500 Don Mills) Limited, registered owner of the Property, and Donalda Investments Ltd., the beneficial owner of the Property, and the related mortgage and other security (collectively, the "Mortgage") exceeds \$30 million, plus accruing interest and costs. The Mortgage is in default and, subject to the discussion below regarding the Receivership Order, Otera is now in a position to enforce its rights and remedies in respect of the Property. We understand from Otera that the defaults extend beyond the making of the Receivership Order and the proceedings giving rise to it, and include monetary defaults and other breaches.

The Receivership Order, among other things: appears to stay all of the rights and remedies of Otera in respect of the Property and its beneficial owner; appoints Schonfeld Inc. Receivers + Trustees as manager of the Property (the "Manager") with exclusive authority to manage and control it, and appoints the Manager in respect of what may be at least 30 other properties and entities, having no relation to the Property (the "Other Properties"); creates a charge in priority to Otera's first mortgage for the Manager's costs in connection with *all* of its activities, including in relation to the Other Properties; and authorizes the Manager to borrow millions of dollars, with the benefit of a further charge on the Property ranking in priority to Otera's first mortgage, as security for such borrowings. The Receivership Order, which is far-reaching and highly prejudicial to Otera as a first mortgagee of the Property, was obtained without notice to Otera. Indeed, it was only on November 19, 2013, by letter from Goodmans dated November 19, 2013, that Otera learned the Property and its beneficial owner had become subject to the Receivership Order as of November 5, 2013.

We have requested copies of all of the court materials relating to the apparent disputes between the Shareholder Applicants and the Shareholder Respondents, including the application giving rise to the Receivership Order (collectively, the "Shareholder Dispute Proceedings"). The



Manager's counsel has provided certain (but not all) of those materials to us. It is apparent, even from a review of the materials that we have received, that the Shareholder Applicants intended to seek, and ultimately obtained, a receivership order that significantly and prejudicially interfered with Otera's rights, without any notice whatsoever to Otera. In fact, it is unclear to us the extent to which there was any conspicuous disclosure to the court of the existence of Otera as a first mortgagee of the Property (or to the existence of mortgagees generally), and we are not aware that any party raised with the court the impact of the proposed order on the rights of mortgagees, notwithstanding the request to make such an order without notice to Otera or other secured creditors.

It is also readily apparent that the Shareholder Dispute Proceedings involve, at their core, disputes between shareholders of multiple entities and their different investments in different properties, with many different registered owners and beneficial owners. Otera is not a shareholder and has no involvement or stake in the shareholder dispute, and should be entitled to enforce its rights and remedies without interference from the shareholders and the proceedings commenced to resolve their disputes. It is trite to say that creditors rank in priority to shareholders, but this fundamental point appears to have been ignored in this case. It is unacceptable that a court order would be sought without notice to Otera and on terms that did not respect its rights nor offer any protection whatsoever to it or to other similarly-situated mortgagees.

Counsel for the Manager has, in response to our expressions of concern, indicated that the Manager is not co-mingling funds and that each company will "be responsible only for claims properly brought against it". This "advice" provides little comfort to Otera in the face of the Receivership Order that precludes it from exercising its statutory, contractual and other rights to protect its position and tramples all over its rights. As but one example, the Receivership Order provides for the Manager's Charge and the Manager's Borrowings Charge (as defined in the Receivership Order) to rank in priority to Otera's first mortgage. There is nothing in the order to prevent those amounts from being applied entirely against the Property in priority to Otera – the first ranking security holder that had no notice of the order. This is entirely unacceptable to Otera.

We have been instructed to take steps to challenge the Receivership Order, unless it is varied or amended without delay on terms acceptable to Otera.

It is unfortunate that Otera and other mortgage lenders have been put in the position of having to "undo" the highly prejudicial steps that have been taken without any notice to them or apparent consideration for their rights or interests. It will only result in significant and unnecessary further costs if a consensual and cooperative path forward cannot be immediately arranged.

With a view to avoiding even greater costs and attempting to arrive at a consensual path forward that properly protects and respects the rights of Otera, attached is a "without prejudice" term sheet that outlines the basis upon which Otera would be prepared to proceed. As you will see from the term sheet, the high-level framework involves amendments to the Receivership Order to "carve-out" Otera and to limit the intrusion on Otera's rights and interests, coupled with a forbearance agreement that would properly protect Otera while the Manager is in possession of control of the Property (on a basis that is subject to the terms and conditions of the forbearance agreement).

In light of Otera's intention to challenge the Receivership Order without delay unless the matter can be resolved immediately, Otera needs a response to the attached proposal by no later than 12:00 noon on Tuesday, December 3, 2013. If the proposal is acceptable, Otera expects the Manager to commit to govern itself in accordance with the terms of the proposal, while we prepare a draft forbearance agreement and draft comments to the Receivership Order that would form the basis of a consensual amending order.

Finally, we have requested a copy of the service list in this matter but have yet to receive a copy. We also request that you provide us, without delay, with the names, addresses and other contact information of all other mortgage lenders in respect of the Other Properties, and their counsel if known to you.

We look forward to hearing from you in the immediate future.

Yours truly,

McCarthy Tétrault LLP



Jamey Gage

JDG/emdk

c: Irene Papavasil, Otera

TAB P

**mccarthy  
tétrault**

December 11, 2013

Via Email

[bempey@goodmans.ca](mailto:bempey@goodmans.ca)

[fmvers@goodmans.ca](mailto:fmvers@goodmans.ca)

[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)

Mr. Brian F. Empey, Mr. Fred Myers and Mr.  
Mark S. Dunn  
Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto ON M5H 2S7

This is Exhibit "P" in the  
affidavit of Robert Durand  
sworn before me 16<sup>th</sup>  
day of December 20, 2013

*Linda Pronovost*

ACOMMISSIONER FOR TAKING AFFIDAVITS

McCarthy Tétrault LLP  
PO Box 48, Suite 5300  
Toronto-Dominion Bank Tower  
Toronto ON M5K 1E6  
Canada  
Tel: 416-362-1812  
Fax: 416-868-0673

Heather L. Meredith  
Direct Line: (416) 601-8342  
Direct Fax: (416) 868-0673  
Email: [hmeredith@mccarthy.ca](mailto:hmeredith@mccarthy.ca)



Dear Sirs:

**Re: Lands, Buildings and Other Property located at 1500 Don Mills Road, Toronto (the "Property"), El-Ad (1500 Don Mills) Limited, registered owner of the Property, and Donald Development Ltd., the beneficial owner of the Property (the "Borrower") and the Order dated November 5, 2013 (the "Receivership Order")**

As you know, we are counsel for CDPQ Mortgage Investment Corporation ("Otera"), first mortgagee in respect of the Property. We are writing further to various discussions and meetings we have had with you as counsel for the Schonfeld Inc. Receiver + Manager (the "Receiver").

As we have told you and counsel to the applicants that obtained the Receivership Order, Otera objects to the Receivership Order, obtained without notice to Otera. Shortly after learning of the existence of the Receivership Order, we advised you that we were instructed to take steps to challenge the Receivership Order, unless it was varied or amended without delay on terms acceptable to Otera. In that context, we engaged in discussions with you regarding amendments to the Receivership Order and a related agreement with the Receiver to govern the management and sale of the Property to appropriately protect Otera's interests. We provided two without prejudice proposals to you to attempt to address this situation. However, to date, we have been unable to reach a consensual resolution and the Receivership Order, which is highly prejudicial and provides no protections to Otera, has not been varied or amended. Accordingly, we have been instructed to proceed to request a date for a motion to challenge the Receivership Order at the 9:30 appointment this Friday. Otera has also served and filed a notice of appeal.

As you know, one of the particularly egregious elements of the Receivership Order is that it provides for a charge for the Receiver's fees and expenses and a charge for the Receiver's

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borrowings (the "**Priming Charges**"), both ranking in priority to Otera. Not only was this provision obtained without Otera's consent and without notice to Otera, which we believe to be improper, but also there are no restrictions or protections in the Receivership Order that would prevent fees, expenses and borrowings relating to the *entire* receivership – including those incurred in relation to the other entities and properties subject to the Receivership Order that are unrelated to the Borrower and the Property – from being applied against the Property.

It has now come to our attention that the Receiver paid its *entire* November fees and expenses in relation to the receivership as a whole from the revenues of only four properties, with the greatest portion of such fees being paid from the account established to hold revenues from the Property (the "**Property Revenue**"). Otera is the first-ranking mortgagee on the revenues of the Property. Its mortgage is in default. The effect of the Receiver's actions is to divert funds to which Otera should be entitled to fund the Receiver's costs to address issues relating to other unrelated properties. This occurrence only serves to heighten Otera's grave concerns with the Receivership Order.

You have assured us that the Receiver will not apply its fees against the Property Revenue again prior to the next Court appearance. Obviously, since the next Court appearance is scheduled for Friday of this week, such an assurance is a short-lived comfort and must be addressed by the Court. Otera is not willing to subordinate its first-ranking charge to fund the receivership of other unrelated properties from which it obtains no benefit - nor should it have to do so.

Otera is also concerned that its Property is one of many properties subject to the Receivership Order. Without intending any criticism of the Receiver or its abilities, the fact is that the Receiver has been investigating and dealing with numerous issues that are unrelated to the Property. While understandable in all of the circumstances (namely, in light of the Receivership Order), when the Receiver refers to an Otera request as low on the Receiver's list, this is a concern for Otera. Again, Otera is not critical of the Receiver for this but it is very critical of the form of Receivership Order and the fact that Otera has been prevented from exercising its rights and remedies in relation to the Property. Otera should be entitled to ensure that issues relating to the Property and Otera's rights and interests in relation thereto are dealt with by a party that is focussed on the Property.

We have also stressed to you that Otera is concerned to ensure that the Property is managed appropriately pending a sale of the Property. Otera is continuing to review the credentials and skills of the property manager that was appointed over the Property and with whom Otera had no prior experience or dealings. The property manager plays an important role with the Property, particularly at this point in time. As you may know, there is an upcoming vacancy in the Property that is important to fill promptly and appropriately. In addition, as the Property is being marketed for sale, management of the Property and tenants is an important task.

Finally, you advised us that the second mortgage that was placed on the Property without Otera's knowledge or consent is not being serviced from the revenues of the Property. Again, as there are no restrictions in the Receivership Order to this effect, Otera appreciates your advice in this regard and expects that no such payments will be made from revenue of the Property, but will also require this issue to be addressed formally.

As noted above, we will be seeking a date for a motion to challenge the Receivership Order at the 9:30 appointment on Friday. It is unfortunate that we have been unable to reach a

consensual resolution of this matter in all of the circumstances. In that regard, we understand that providing appropriate protections to Otera in the Receivership Order means that the Receiver will have to find a source of funds to support the receivership of the cash-deficient properties and fund the Receiver's own fees in relation to such properties; however, we cannot stress enough that the mere fact that Ms Walton was allegedly taking funds from one property to support another unrelated property or company, is no reason to group all such entities together in one receivership and to, in effect, continue that practise by imposing the Priming Charges without restrictions.

We will contact you tomorrow to discuss scheduling of the motion in advance of Friday's appearance.

Yours truly,

McCarthy Tétrault LLP

Per:

A handwritten signature in black ink, appearing to read 'HLM', is written over a horizontal line.

Heather L. Meredith

HLM/sty  
Attachment

**CDPQ MORTGAGE  
INVESTMENT CORPORATION** and

**DONALDA DEVELOPMENTS LTD., et al.**

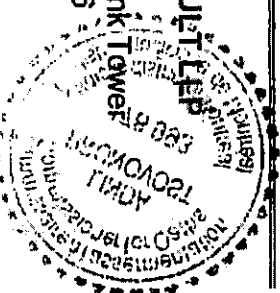
Court File No: \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE -  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF ROBERT DURANCEAU**

**MCCARTHY TÉTRAULT LLP**  
Suite 5300, Box 48,  
Toronto Dominion Bank Tower  
Toronto ON M5K 1E6



**James Gage LSUC#: 346761**  
Tel: (416) 601-7539  
Fax: (416) 868-0673  
Email: jgage@mccarthy.ca

**Heather L. Meredith LSUC#: 48354R**  
Tel: (416) 601-8342  
Fax: (416) 868-0673  
Email: hmeredith@mccarthy.ca

**Lawyers for CDPQ Mortgage Investment  
Corporation**  
#13041889





Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

)

TUESDAY, THE 24th

JUSTICE NEWBOULD

)

DAY OF DECEMBER, 2013

)

**CDPQ MORTGAGE INVESTMENT CORPORATION**

Applicant

- and -

**DONALDA DEVELOPMENTS LTD. and  
EL-AD (1500 DON MILLS) LIMITED**

Respondents

**ORDER**

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing FTI Consulting Canada Inc. as receiver (in such capacities, the "Receiver") without security, of

- (i) the lands and buildings municipally known as 1500 Don Mills Road, Toronto;
- (ii) all personal property located at, relating to, or used in connection with such lands and buildings; and
- (iii) all other property subject to the mortgage and other security of the Applicant,

(collectively, the "Property") granted to the Applicant by Donalda Developments Ltd. and El-Ad (1500 Don Mills) Limited (the "Debtor"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of Robert Duranceau sworn December 16 and 20, 2013 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and •, no one appearing for • although duly served as appears from the affidavit of service of • sworn • and on reading the consent of FTI Consulting Canada Inc. to act as the Receiver,

### **SERVICE**

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

### **APPOINTMENT**

2. THIS COURT ORDERS that, pursuant to section 243(1) of the BIA and section 101 of the CJA, FTI Consulting Canada Inc. is hereby appointed receiver, without security, of all of the Property.

### **INTERIM POSSESSION AND TRANSITION**

3. THIS COURT ORDERS that Schonfeld Inc. Receivers + Trustees in its capacity as manager of the Property (the "Manager") pursuant to an order dated November 5, 2013 in Court File No. CV-13-10280-OOCL (the "Manager Order") may continue to be in possession and control of the Property pursuant to the Manager Order as amended by the Property-Specific Order dated December 24, 2013 in Court File No. CV-13-10280-OOCL (the "Property-Specific Order") and in accordance with the terms and conditions set out in the Property-Specific Order, until the Receiver delivers notice, in writing, to the Manager of its intention to take possession of and exercise control over the Property at which time (the "Time of Transition") the Manager shall forthwith deliver possession and control of the Property to the Receiver in accordance with the Receiver's request.

4. THIS COURT ORDERS that the Manager and the Receiver shall cooperate and coordinate in relation to the transfer of the possession and control of the Property as set out herein.

5. THIS COURT ORDERS that, notwithstanding any other provision herein but subject to the Property-Specific Order and this Order as it relates to the Property, the parties in Court File No. CV-13-10280-00CL shall not be precluded from taking any steps or from commencing or continuing any proceedings in that action against the Debtor or any of its other property, and that in such circumstances that Receiver shall not be obliged to defend or participate on behalf of the Debtor and the Receiver shall not be liable for any costs, damages or awards in related to any such proceedings.

### **RECEIVER'S POWERS**

6. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor relating to the Property, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of such business, or cease to perform any contracts of the Debtor relating to the Property;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise

of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof relating to the Property;
- (f) to receive and collect all rents, revenues, monies and accounts now owed or hereafter owing to the Debtor relating to the Property (the "Property Revenue") and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor relating to the Property;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate after consultation with Otera;

- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business after consultation with Otera,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor relating to the Property;

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor and the Manager, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

7. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) the Manager and all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

8. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

10. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

11. THIS COURT ORDERS that, from and after the Time of Transition, no Proceeding against or in respect of the Property or the Debtor in relation to the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Property or the Debtor in relation to the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

12. THIS COURT ORDERS that, from and after the Time of Transition, all rights and remedies against the Debtor relating to the Property, the Receiver, or otherwise affecting the

Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien; and further provided that the Manager Order, as amended by the Property-Specific Order, continues to apply subject to the terms hereof.

#### **NO INTERFERENCE WITH THE RECEIVER**

13. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor relating to the Property, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

14. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor relating to the Property or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor relating to the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.



## **RECEIVER TO HOLD FUNDS**

15. THIS COURT ORDERS that all Property Revenue and all other funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

16. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

17. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all

material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

18. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

19. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

20. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the

Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person except Otera's rights and interest in the Property which shall rank ahead of the Receiver's Charge, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

23. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person except Otera's rights and interest in the Property which shall rank ahead of the Receiver's Borrowings Charge and the Receiver's Charge, but subordinate in priority to

the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

24. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

26. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **GENERAL**

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and

that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that FTI Consulting Canada Inc., the receiver (the "Receiver") of the Property (as defined in the Order, as such term is defined below) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 24<sup>th</sup> of December, 2013 (the "Order") made in an application having Court file number \_\_\_\_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of MONTH, 20YR.

**FTI Consulting Canada Inc.**, solely in its  
capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

**ONTARIO  
SUPERIOR COURT OF JUSTICE -  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**RECEIVERSHIP ORDER**

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Lawyers for CDPQ Mortgage Investment  
Corporation  
#13040203



DBDC SPADINA LTD. et al.

NORMA WALTON, et al.

and

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE -  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SUPPLEMENTARY AFFIDAVIT OF  
ROBERT DURANCEAU  
(SWORN DECEMBER 20, 2013)**

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