

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial List**

**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 IN SCHEDULE "B" HERETO, TO BE  
BOUND BY THE RESULT**

**MOTION RECORD OF THE MANAGER, SCHONFELD INC.**

**(Motion for an Order releasing 19 Tennis Crescent, 646 Broadview Avenue and 346 Jarvis  
Street, Unit C from the operation of the Judgment and Order of Justice Brown dated  
August 12, 2014)**

**GOODMANS LLP**

**Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Ontario  
M5H 2S7**

**Brian Empey LSUC#: 30640G  
Mark S. Dunn LSUC#: 55510L  
Tel: (416) 979-2211  
Fax: (416) 979-1234**

**Lawyers for The Manager**

**TO: SERVICE LIST**

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

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 IN SCHEDULE B, TO BE  
BOUND BY THE RESULT

**SERVICE LIST**  
**(Updated March 17, 2015)**

**Goodmans LLP**  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

Brian Empey – bempey@goodmans.ca  
Mark Dunn – mdunn@goodmans.ca

Tel: 416.979.2211  
Fax: 416.979.1234

Counsel to the Inspector/Manager

**Lenczner Slaght Griffin LLP**

Barristers & Solicitors  
130 Adelaide St W  
Suite 2600  
Toronto, ON  
Canada M5H 3P5

Peter Griffin – pgriffin@litigate.com  
Shara N. Roy – sroy@litigate.com  
Paul-Erik Veel – pveel@litigate.com

Tel: 416.865.9500  
Fax: 416.865.9010

Counsel to the Applicants

**Norma Walton**

PO Box 22070  
East York Post Office  
Toronto, Ontario  
M4H 1N9

Norma Walton - waltonlitigation@gmail.com

Tel: (416) 444-3950  
Fax: (416) 489-9973

Respondent

**Cohen, Sabsay LLP**

357 Bay Street, Suite 901  
Toronto, ON  
M5H 2T7

Howard Cohen - cohen@cohensabsay.com

Tel: 888-626-1102  
Fax: 416-364-0083

Counsel to the Respondents other than Norma  
Walton

**Robins, Appleby & Taub LLP**

Barristers &amp; Solicitors

2600 – 120 Adelaide Street W

Toronto, Ontario M5H 1T1

Irving Marks imarks@robapp.com

Dominique Michaud –dmichaud@robapp.com

Tel: 416.360.3795

Fax: 416.868.0306

Counsel to Trez Capital Limited Partnership

**Minden Gross LLP**

Barristers &amp; Solicitors

145 King Street W., Suite 2200

Toronto, Ontario M5H 4G2

Timothy R. Dunn

Tel: 416.369.4335

Fax: 416.864.9223

E-mail: tdunn@mindengross.com

Counsel to 295 The West Mall Portfolio Ltd.

**Zimmerman Associates**

3338 Dufferin Street

Toronto, Ontario M6A 3A4

Lawrence Zimmerman

Tel: 416.489.9222

Fax: 416.489.6222

E-mail: larry@zimlaw.ca

Counsel to the Handelman Group and the  
Tannenbaum Group

**Lawrence F. Wallach**

4580 Dufferin Street, Suite 302  
Toronto, Ontario M3H 5Y2

Lawrence F. Wallach

Tel: 416.661.5600

Fax: 416.663.4424

E-mail: wallach@wallach.ca

Litigation counsel to E. Manson Investments  
Limited, B & M Handelman Investments  
Limited, 1363557 Ontario Limited and Martha  
Sorger

**Stikeman Elliot LLP**

5200 Commerce Court West  
199 Bay Street  
Toronto, Ontario M5L 1B9

Maria Konyukhova

Tel: 416.869.5230

Fax: 416.947.0866

E-mail: mkonyukhova@stikeman.com

Counsel to IMC Limited Partnership

**Fogler, Rubinoff LLP**

77 King Street West  
Suite 3000, PO Box 9  
TD Centre North Tower  
Toronto, ON M5K 1G8

Vern W. DaRe – vdare@foglers.com

Tel: 416.864.9700

Fax: 416.941.8852

Counsel to Riocan Management Inc., RioCan  
Mortgage Corp., RioCan Real Estate Investment  
Trust and Trinity Urban Properties Inc.

**Aird & Berlis LLP**

Brookfield Place  
 181 Bay Street  
 Suite 1800, Box 754  
 Toronto, ON M5J 2T9

Steven L. Graff – [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)  
 Ian Aversa – [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)  
 Jeremy Nemers – [jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)

Tel: 416.865.7726  
 Fax: 416.863.1515

msi Spergel Inc., in its capacity as the Court-appointed receiver and manager of Academy Lands Ltd.

**Torkin Manes LLP**

151 Yonge Street  
 Suite 1500  
 Toronto, Ontario M2C 2W7

Jeffrey Simpson

Tel: 416. 777.5413  
 Fax: 1.888.587.9143  
 E-mail: [jsimpson@torkinmanes.com](mailto:jsimpson@torkinmanes.com)

Counsel to Harbour Mortgage Corp.

**Bram Zinman**

Barristers & Solicitors  
 4711 Yonge Street, Suite 509  
 Toronto, ON M2N 6K8

Bram Zinman

Tel: 416.221.5919  
 Fax : 416.226.0910  
 E-mail: [binman@bellnet.ca](mailto:binman@bellnet.ca)

Counsel for Gemtec Wall & Ceiling Systems Ltd., a subcontractor of Fox Contracting

**Jack Copelovici**

Barristers & Solicitors  
 1220 Sheppard Avenue East  
 Suite 204  
 Toronto, Ontario M2K 2S5

Jack Copelovici

Tel: 416. 494.0910  
 Fax: 416.494.5480  
 E-mail: jack@copel-law.com

Counsel for Fox Contracting Ltd.

**Glaholt LLP**

141 Adelaide Street West  
 Suite 800  
 Toronto, Ontario M5H 3L5

Andrea Lee

Tel: 416.368.8280  
 Fax: 416.368.3467  
 E-mail: andrealee@glaholt.com

Counsel for Gentry Environmental Systems Ltd.

**Brauti Thorning Zibarras LLP**

151 Yonge Street  
 Suite 1800  
 Toronto, ON M5C 2W7

David Meirovici – dmeirovici@btzlaw.ca  
 Mark R. McMackin – mmcmackin@btzlaw.ca

Tel: 416.362.4567  
 Fax: 416.362.8510

Counsel for Norel Electric Ltd.

**Chaitons LLP**

5000 Yonge Street, 10th Floor  
 Toronto, Ontario M2N 7E9

George Benchetrit

Tel: 416.218.1141

Fax: 416.218.1841

E-mail: [George@chaitons.com](mailto:George@chaitons.com)

Counsel for Return on Innovation Capital Inc.

**Bianchi Presta LLP**

Barristers and Solicitors  
 9100 Jane Street, 3<sup>rd</sup> Floor Building A  
 Vaughn, Ontario L4K 0A4

Renzo Belluz

Tel: 905.738.1076

Fax: 905.738.0528

E-mail: [rbelluz@bianchipresta.com](mailto:rbelluz@bianchipresta.com)

Counsel for the Estate of Celestina Venuto and  
 Silvano & Celestina Investments Ltd.

**Kramer Simaan Dhillon LLP**

Litigation Counsel  
 120 Adelaide St West, Suite 2100  
 Toronto, Ontario M5H 1T1

Nathaniel Erskine-Smith – [nerskine-smith@kramersimaan.com](mailto:nerskine-smith@kramersimaan.com)

Tel: 416.601.6819

Fax: 416.601.0702

Counsel to Atrium Mortgage Investment  
 Corporation

**Dale & Lessmann LLP**

181 University Avenue  
Suite 2100  
Toronto, Ontario M5H 3M7

David E. Mende

Tel: 416.369.7838  
Fax: 416.863.1009  
E-mail: dmende@dalelessmann.com

Counsel for First National Financial LP whose first mortgage is registered in the name of Computershare Trust Company of Canada

**Dentons Canada LLP**

Barristers & Solicitors  
77 King Street West  
Suite 400  
Toronto-Dominion Centre  
Toronto, Ontario M5K 0A1

Amer Pasalic

Tel: 416.863.4368  
Fax: 416.863.4592  
E-mail: amer.pasalic@dentons.com

Counsel for Page & Steele/IBI Group Architects

**Oldfield, Greaves, D'Agostino**

P.O. Box 16580  
172 King Street South  
Waterloo, Ontario N2J 4X8

Edward L. D'Agostino

Tel: 519.576.7200  
Fax: 519.576.0131  
E-mail: edagostino@watlaw.com

Counsel for Macnaughton Hermsen Britton  
Clarkson Planning Limited

**Torkin Manes LLP**

151 Yonge Street  
Suite 1500  
Toronto, Ontario M2C 2W7

S. Fay Sulley

Tel: 416. 777.5419  
Fax: 1.888.587.9143  
E-mail: fsulley@torkinmanes.com

Counsel to Almanox Limited

**Kramer Simaan Dhillon LLP**

Litigation Counsel  
120 Adelaide St West, Suite 2100  
Toronto, Ontario M5H 1T1

Michael Simaan msimaan@kramersimaan.com

Tel: 416.601.0965  
Fax: 416.601.0702

Counsel to Windsor Private Capital Inc.

**Rosenbaum & Frank LLP**

The Exchange Tower  
130 King St. W., Suite 1800  
Toronto, ON  
M5X 1E3

Vanessa A. Ibe  
vibe@rosenbaum.com

Tel: 416.364.1919  
Fax: 416.850.9699

Counsel to Proteck Roofing & Sheet Metal Inc.

**Pallett Valo LLP**

Lawyers & Trade-Mark Agents  
 77 City Centre Drive, West Tower, Suite 300  
 Mississauga, ON  
 L5B 1M5

Alex Ilchenko – ailchenko@pallettvalo.com

Tel: 905.273.3300  
 Fax: 905.273.6920

Counsel to Toronto Children's Care Inc.,  
 operating as Ronald McDonald House Toronto,  
 mortgagee of Gerrard House Inc.

**Dickinson Wright LLP**

199 Bay Street, Suite 2200  
 P.O. Box 447, Commerce Court Postal Station  
 Toronto, Ontario  
 M5L 1G4

Mark Shapiro – mshapiro@dickinsonwright.com  
 Michael J. Brzezinski -  
 MBrzezinski@dickinsonwright.com

Tel – 416-646-4603  
 Fax – 416-865-1398

Counsel to Florence Leaseholds Ltd., Beatrice  
 Leaseholds Ltd. and ADA Leaseholds Ltd.,  
 mortgagees of 1485 Dupont St.

**Loopstra Nixon LLP**

135 Queen's Plate Drive, Suite 600  
 Toronto, Ontario, M9W 6V7

Peter W. G. Carey – pcarey@loonix.com

Tel – 416.748.4774  
 Fax – 416.746.8319

Counsel to Wendy Gaucher

**Boghosian + Allen LLP**

Litigation Counsel

65 Queen Street West, Suite 1000

Toronto, Ontario M5H 2M5

Rolf M. Piehler – [rmp@boglaw.ca](mailto:rmp@boglaw.ca)

Tel – 416.367.5558

Fax – 416.368.1010

Lawyers for Variety Club of Ontario – Tent 28,  
mortgagee of 14 Trent Avenue and 2 Kelvin  
Avenue.

**Cassels Brock & Blackwell LLP**

2100 Scotia Plaza,  
40 King Street West  
Toronto, Ontario  
M5H 3C2

Lorne Silver – lsilver@casselsbrock.com  
John Birch – jbirch@casselsbrock.com

Tel – 416.869.5300  
Fax – 416.360.8877

Counsel to Cushman & Wakefield Ltd., real estate broker with respect to the sale of 65 Front St. East.

**Steinberg Morton Hope & Israel LLP**

Barristers & Solicitors  
5255 Yonge Street  
Suite 1100  
Toronto, Ontario  
M2N 6P4

David A. Brooker - dbrooker@smhilaw.com  
Tel: 416.225.2777  
Fax: 416.225.7112

Counsel for Collins Barrow Toronto Limited, court appointed receiver for Global Mills Inc. and Wynford Professional Centre Ltd.

**SimpsonWigle Law LLP**

501-390 Brant Street  
Burlington, ON  
L7R 4J4

Rosemary A. Fisher –  
fisherr@simpsonwigle.com

Tel – 905.639.1052  
Fax – 905.333.3960

Counsel to Christine DeJong, Michael DeJong, Christine DeJong Medicine Professional Corporation, C2M2S Holding Corp. and DeJong Homes Inc.

**Soccol Law**

7823 Kipling Avenue  
 Vaughan, Ontario  
 L4L 1Z4

Fabio M. Soccol – [fabio@soccollaw.com](mailto:fabio@soccollaw.com)

Tel: 905.605.2332  
 Fax: 905.605.1812

Counsel for Land-Con Ltd.

**Miller Thomson LLP**

5800 Scotia Plaza  
 40 King Street West  
 Toronto, Ontario  
 M5H 3S1

Margaret R. Sims – [msims@millerthomson.com](mailto:msims@millerthomson.com)  
 Jeffrey C. Carhart –  
[jcarhart@millerthomson.com](mailto:jcarhart@millerthomson.com)

Tel: 416.595.8615 / 8577  
 Fax: 416.595.8695

Counsel for Ira Smith Trustee & Receiver Inc., in  
 its capacity as the Court appointed receiver of all  
 of the assets, undertakings and properties of  
 Norma Walton and Ronauld Walton.

**Department of Justice**

Ontario Regional Office  
 3400 The Exchange Tower  
 130 King Street West  
 Toronto, Ontario  
 M5X 1K6

Edward Park – [edward.park@justice.gc.ca](mailto:edward.park@justice.gc.ca)

Tel: 416.973.3746  
 Fax: 416.973.0810

Counsel for the Attorney General of Canada

**Borden Ladner Gervais LLP**

4400 Scotia Plaza  
40 King Street West  
Toronto, Ontario  
M5H 3Y4

John D. Marshall – [jmarshall@blg.com](mailto:jmarshall@blg.com)

Tel: 416.367.6024

Fax: 416.361.2763

Counsel for Gideon Levytam and Irene Levytam

**Thornton Grout Finnigan LLP**

#3200 – 100 Wellington Street West  
P.O. Box 329, Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1K7

John L. Finnigan – [jfinnigan@tgf.ca](mailto:jfinnigan@tgf.ca)

Emily Fan – [efan@tgf.ca](mailto:efan@tgf.ca)

Tel: 416.304.1616

Fax: 416.304.1313

Counsel for DiBri Inc.

# Index

# INDEX

<b>TAB NO.</b>		<b>PAGE NO.</b>
1.	Notice of Motion	19
2.	Twenty-Seventh Report of the Manager	27
A.	Reasons for Decision of Justice Brown dated August 12, 2014	40
B.	Judgment and Order dated August 12, 2014	141
C.	Evidence provided by the Owner of 19 Tennis Crescent	159
D.	Correspondence re: 646 Broadview	239
E.	Correspondence re: 346 Jarvis	291

# 1

Court File No.: CV-13-1 0280-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
 (Commercial List)

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 IN SCHEDULE “B” HERETO, TO BE  
 BOUND BY THE RESULT

**NOTICE OF MOTION**

(Motion for an Order releasing 19 Tennis Crescent, 646 Broadview Avenue and 346 Jarvis Street, Unit C from the operation of the Judgment and Order of Justice Brown dated August 12, 2014)

Schonfeld Inc., in its capacity as manager (the “**Manager**”) of (i) certain companies listed in Schedule “B” to the Order of Justice Newbould dated November 5, 2013 (the “**Schedule B Companies**”), together with the real estate properties owned by the Companies (the “**Schedule B Properties**”), as amended by Order of Justice Newbould dated January 16, 2014, and (ii) the properties listed at Schedule “C” to the Order of Justice Brown dated August 12, 2014 (the “**Schedule C Properties**”, together with the Schedule B Properties, the “**Properties**”) will make a motion to a judge presiding on the Commercial List on March 19, 2015 at 9:30 a.m. at 330 University Avenue, Toronto.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

## THE MOTION IS FOR:

1. an Order:
  - (a) Releasing 19 Tennis Crescent (“**19 Tennis**”), 646 Broadview Avenue (“**646 Broadview**”) and 346 Jarvis Street, Unit C (“**346 Jarvis**”) (collectively, the “**Disputed Properties**”) from the operation of the August 12 Order;
  - (b) Authorizing the deletion of the August 12 Order from title to 346 Jarvis; and
  - (c) Such further and other relief as counsel may advise and the Court may permit.

## THE GROUNDS FOR THE MOTION ARE:

### I. Background

2. This motion arises in the context of a long and complicated proceeding between the Applicants and the Respondents. Part of this dispute related to what properties the Respondents Norma and Ronould Walton (the “**Waltons**”) owned and whether any of these properties had been conveyed in an attempt to avoid judgment.
3. The main dispute between the Applicants and the Respondents, including with respect to the status of the Disputed Properties, was heard July 16-18, 2014. At this hearing, Ms. Walton argued that the Respondents had sold the Disputed Properties to *bona fide* purchasers for value and had no continuing interest in the properties. The Applicants asserted that the Waltons had a continuing interest in the Disputed Properties, or had conveyed them to avoid judgment.
4. On the evidence presented, Justice Brown was unable to determine the status of the Disputed Properties. As a result, the Disputed Properties were included as Schedule “C” Properties (i.e. properties that were subject to the August 12 Order) but the Manager was granted the right to release the properties from the operation of the August 12 Order if it was satisfied that.
5. The Manager has determined that the criteria for release of the Disputed Properties from the August 12 Order have been satisfied.

6. The Manager registered the August 12 Order on title to 346 Jarvis. The Manager understands that a further Order is required to delete the August 12 Order from title.

**II. Miscellaneous**

7. Rules 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

8. Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

1. The Twenty-Seventh Report of the Manager dated March 18, 2015; and

2. Such further and other material as counsel may advise and this Honourable Court may permit.

Date: March 18, 2015

**GOODMANS LLP**

333 Bay Street, Suite 3400

Toronto, Canada M5H 2S7

Brian Empey LSUC#: 30640G

Mark Dunn LSUC#: 55510L

Tel: (416) 979-2211

Fax: (416) 979-1234

Lawyers for the Manager

**SCHEDULE “A” COMPANIES**

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investments 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 Ltd.
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 Lands 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 Ltd.
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. Royal Gate Nominee Inc.
29. Royal Gate (Land) Nominee Inc.
30. Dewhurst Development Ltd.
31. Eddystone Place Inc.

- 32. Richmond Row Holdings Ltd.
- 33. El-Ad (1500 Don Mills) Limited
- 34. 165 Bathurst Inc.

**DBDC SPADINA LTD. ET AL**

and

**NORMA WALTON ET AL**

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

Applicants

Respondents

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
 (Commercial List)

Proceeding commenced at TORONTO

**NOTICE OF MOTION**  
 (Motion for an Order releasing 19 Tennis Crescent, 646  
 Broadview Avenue and 346 Jarvis Street, Unit C from  
 the operation of the Judgment and Order of Justice  
 Brown dated August 12, 2014)

**GOODMANS LLP**  
 Barristers & Solicitors  
 333 Bay Street, Suite 3400  
 Toronto, Canada M5H 2S7

Brian Empey LSUC#: 30640G  
 Mark Dunn LSUC#: 55510L  
 Tel: 416.979.2211  
 Fax: 416.979.1 234

Lawyers for the Manager

2

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

**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 IN SCHEDULE "B" HERETO, TO BE**  
**BOUND BY THE RESULT**

**TWENTY-SEVENTH REPORT OF THE MANAGER, SCHONFELD INC.**  
(Motion for an Order releasing 19 Tennis Crescent, 646 Broadview Avenue and 346 Jarvis  
Street, Unit C from the operation of the Judgment and Order of Justice Brown dated August 12,  
2014)

## I. INTRODUCTION

1. This is the Twenty-Seventh Report of Schonfeld Inc. (the “**Manager**”) in its capacity as Manager of (i) certain companies listed at Schedule “B” to the Order of Justice Newbould dated November 5, 2013 (the “**Schedule B Companies**”),<sup>1</sup> together with the real estate properties owned by those companies (the “**Schedule B Properties**”); and (ii) the properties listed at Schedule “C” (the “**Schedule C Properties**” and together with the Schedule B Properties, the “**Properties**”) to the Judgment and Order of Justice Brown dated August 12, 2014 (the “**August 12 Order**”).

### A. Purpose of this Report

1. The Manager has brought a motion for, among other things:
  - (a) An Order releasing 19 Tennis Crescent, 646 Broadview Avenue and 346 Jarvis Street, Unit C from the operation of the Order dated August 12, 2014 Order releasing 19 Tennis Crescent, 646 Broadview Avenue and 346 Jarvis Street, Unit C (collectively, the “**Disputed Properties**”) from the operation of the August 12 Order; and
  - (b) An Order authorizing the deletion of the August 12 Order from title to the Disputed Property at 346 Jarvis Street, Unit C (“**346 Jarvis**”).
2. This Report provides facts relevant to the Manager’s motion, a recommendation that the Disputed Properties be released from the operation of the August 12 Order and a recommendation that the August 12 Order be deleted from title to 346 Jarvis.

---

<sup>1</sup> Schedule “B” was amended by Order dated January 16, 2014.

- 2 -

**B. Terms of reference**

3. Based on its review and interaction with the parties to date, nothing has come to the Manager's attention that would cause it to question the reasonableness of the information presented herein. However, the Manager has not audited, or otherwise attempted to independently verify, the accuracy or completeness of any financial information of the Schedule B Companies or of the companies that own the Schedule C Properties (collectively, the "**Companies**"). The Manager therefore expresses no opinion or other form of assurance in respect of any of the Companies' financial information that may be in this Report.

**C. Background**

4. The Schedule B Companies are a group of real estate development corporations incorporated as part of a series of joint ventures between Dr. Stanley Bernstein and companies that he controls (the "**Bernstein Group**") and Norma and Ronauld Walton and entities that they control (the "**Walton Group**"). Most of the Schedule B Companies were incorporated to purchase and develop a particular Schedule B Property.

5. In the summer and fall of 2013, the relationship between the Walton Group and the Bernstein Group broke down amid allegations that the Walton Group had, among other things, placed mortgages on jointly-held properties without the Bernstein Group's consent and failed to provide reporting required by the agreements that govern the joint venture. The dispute between the Walton Group and Bernstein Group is described in more detail in the Endorsement of Justice Newbould dated November 5, 2013.

- 3 -

6. Pursuant to the Order of Justice Newbould dated November 5, 2013 (the “**November 5 Order**”), the Manager was appointed to provide independent management of the Schedule B Companies and the Schedule B Properties for the benefit of all stakeholders.

7. The Manager’s mandate was further expanded to include certain other real estate properties owned by the Walton Group, being the Schedule C Properties, pursuant to the Reasons of Justice Brown dated August 12, 2014, and the Judgment and Order of Justice Brown dated August 12, 2014.

## **II. THE DISPUTED PROPERTIES**

### **A. Background**

8. This motion arises in the context of a long and complicated proceeding between the Applicants and the Respondents. Part of this dispute related to what properties the Respondents Norma and Ronauld Walton (the “**Waltons**”) owned and whether any of these properties had been conveyed in an attempt to avoid judgment.

9. The main dispute between the Applicants and the Respondents, including with respect to the status of the Disputed Properties, was heard July 16-18, 2014. At this hearing, Ms. Walton argued that the Respondents had sold the Disputed Properties to *bona fide* purchasers for value and had no continuing interest in the properties. The Applicants asserted that the Waltons had a continuing interest in the Disputed Properties, or had conveyed them to avoid judgment.

10. On the evidence presented, Justice Brown was unable to determine the status of the Disputed Properties. As a result, the Disputed Properties were included as Schedule “C” Properties (i.e. properties that were subject to the August 12 Order) but the Manager was granted

- 4 -

the right to release the Disputed Properties from the operation of the August 12 Order if it was satisfied that:

- (a) the current owners of the Disputed Properties had acquired them for fair market value; and
- (b) the Waltons no longer had any interest in the properties.

11. This relief, and the rationale for it, is described at paragraph 255 of Justice Brown's August 12, 2014 Reasons for Decision (the "**August 12 Reasons**"), which are attached as Appendix "A".

12. In the Manager's view, it was granted authority to release the Disputed Properties from the operation of the August 12 Order without the need for a Court Order. However, the owners of the Disputed Properties have requested a specific order confirming the release of each Disputed Property by the Manager and, in the circumstances, the Manager is prepared to accommodate this request.

### **III. THE MANAGER'S DETERMINATION**

13. The August 12 Order, which is attached as Appendix "B", provided that the owner of each Disputed Property was to provide evidence that it acquired the property for fair market value and that the Waltons had no interest in it within 60 days. Each of the Disputed Property owners provided some evidence to this effect within 60 days. The Manager then analyzed this evidence, requested further evidence where necessary and satisfied itself that each of the Disputed Properties should be released from the operation of the August 12 Order.

- 5 -

**B. 19 Tennis Crescent ("19 Tennis")**

14. As is described at paragraphs 250-251 of the August 12 Reasons, 19 Tennis is owned by 1673883 Ontario Inc. ("**167 Inc.**"). 19 Tennis was included as a Schedule "C" Property because Ronauld Walton was listed as a director of 167 Inc.

15. Evidence provided by the owner of 19 Tennis Crescent is attached at Appendix "C". Based on that evidence, the Manager is satisfied that 167 Inc. was acquired by arm's length purchasers in 2011 but that, after the transaction closed, Mr. Walton's resignation as a director was not properly registered. As a result, Mr. Walton appeared as a director of 167 Inc. on the corporate profile report obtained by the Applicants.

16. Based on the evidence provided, the Manager was satisfied that the criteria set out in the August 12 Order have been satisfied in respect of 19 Tennis Crescent and released 19 Tennis Crescent from the operation of the August 12 Order.

**C. 646 Broadview Avenue ("646 Broadview")**

17. 646 Broadview was sold by 163483 Ontario Inc., a company that was found to have been controlled by the Waltons (see paragraph 252 of the August 12 Reasons), to 646 Broadview Inc. on April 29, 2014. 646 Broadview was included as a Disputed Property because Justice Brown had no evidence with respect to who owned 646 Broadview Inc.

18. Correspondence between the Manager and counsel for the owners of 646 Broadview Inc. is attached as Appendix "D". Based on the evidence provided, the Manager is satisfied that the Waltons have no interest in the current owner of 646 Broadview and that it paid fair market value for the property.

- 6 -

**D. 346 Jarvis**

19. 346 Jarvis is presently owned by Carlos and Colette Carreiro. 346 Jarvis was included as a Disputed Property because:

- (a) Carlos Carreiro has very close ties to Ms. Walton. More specifically, Mr. Carreiro: was held out as an employee of Rose & Thistle, his companies invoiced Rose & Thistle for significant construction work on several of the Schedule "B" Properties and Mr. Carreiro invested in, and was a director of, various companies controlled by the Waltons;
- (b) Neither Ms. Walton nor Mr. Carreiro filed satisfactory evidence with respect to the sale of 346 Jarvis.

20. The Manager exchanged extensive correspondence with three separate lawyers that represented the Carreiros in connection with 346 Jarvis. Relevant correspondence relating to 346 Jarvis is attached as Appendix "E".

21. Based on the evidence provided to the Manager, the purchase price for 346 Jarvis was satisfied by:

- (a) mortgage financing in the amount of \$559,872;
- (b) paying for "finishes" in the amount of \$57,750; and
- (c) foregoing proceeds from the sale of a separate property at 110 Lombard Street ("**110 Lombard**") in the amount of \$106,718.

- 7 -

22. The Carreiros provided evidence of the mortgage financing and receipts to substantiate the amounts paid for finishes. However, ascertaining the value of the “proceeds” from 110 Lombard is more complicated. Based on the information provided, 110 Lombard was purchased in 2009 and then sold in 2010. The sale price was approximately \$900,000 more than the purchase price. The Manager has confirmed that the Carreiros held shares in the former owner of 110 Lombard, Old Firehall Inc. (“**Old Firehall**”), and surrendered these shares around the time of their purchase of 346 Jarvis.

23. The Manager is not aware of any evidence with respect to what was done to 110 Lombard by Old Firehall before it was sold or at what cost. Accordingly, it is not possible to quantify the actual profit earned by Old Firehall on 110 Lombard. Despite this, the Manager is of the view that 346 Jarvis should be released from the August 12 Order for the following reasons:

- (a) The Carreiros’ acquisition of 346 Jarvis in 2010 pre-dated these proceedings by several years. The timing of the transaction weighs against the likelihood that it was part of an attempt to shift assets to avoid judgment;
- (b) In light of the Manager’s experience with the Waltons’ accounting practices, seeking to reconstruct the books and records of Old Firehall to determine the actual profits earned on the sale of 100 Lombard is likely to be cost prohibitive;
- (c) There is no evidence that the Carreiros had any reason to doubt the profit figures provided to them by Ms. Walton when they bought 346 Jarvis; and

- 8 -

- (d) Even if the "equity" portion of the purchase price for 346 Jarvis is ignored, the purchase price for 346 Jarvis is not so far below market value that the sale should be set aside.

24. Shortly after its appointment, the Manager learned that the Carreiros had entered into an Agreement of Purchase and Sale to sell 346 Jarvis. Out of an abundance of caution, the Manager registered the August 12 Order on title to 346 Jarvis. The Manager understands that a further Order is required to delete the August 12 Order from title and respectfully recommends that such an Order be granted.

#### IV. CONCLUSION

25. For the reasons described above, the Manager respectfully recommends that the relief sought in its Notice of Motion be granted.

All of which is respectfully submitted this 18<sup>th</sup> day of March, 2015.

**SCHONFELD INC.**

**In its capacity as Manager pursuant to the Order of Newbould, J. dated November 5, 2013 and the Judgment and Order of Brown, J. dated August 12, 2014**

Per:

  
Harlan Schonfeld CPA, CIRP

**SCHEDULE "A" COMPANIES**

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investments 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 Ltd.
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 Lands 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.

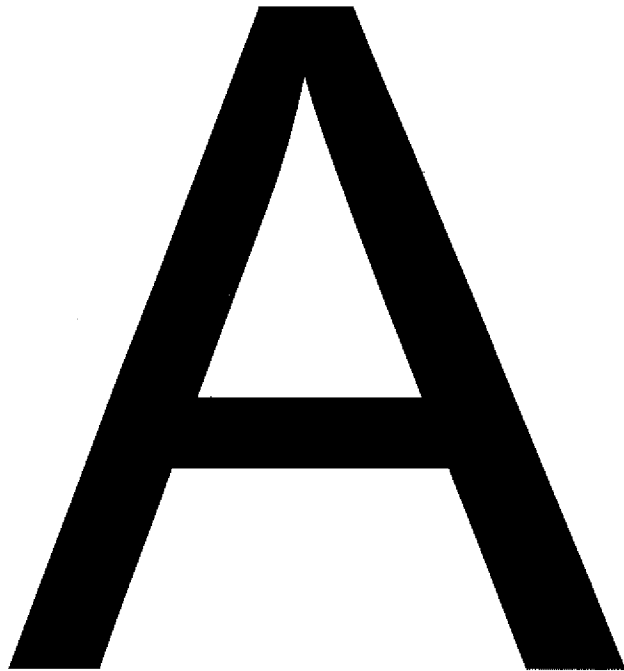
**SCHEDULE "B" COMPANIES**

1. Twin Dragons Corporation
2. Bannockburn Lands Inc. / Skyline – 1185 Eglinton Avenue Inc.
3. Wynford Professional Centre Ltd.
4. Liberty Village Properties Ltd.
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. Royal Gate Nominee Inc.
29. Royal Gate (Land) Nominee Inc.
30. Dewhurst Development Ltd.
31. Eddystone Place Inc.

- 2 -

- 32. Richmond Row Holdings Ltd.
- 33. El-Ad (1500 Don Mills) Limited
- 34. 165 Bathurst Inc.

6432810



**CITATION:** DBDC Spadina Ltd. v. Walton, 2014 ONSC 4644

**COURT FILE NO.:** CV-13-10280-00CL

**DATE:** 20140812

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**COMMERCIAL LIST**

**RE:** 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:** D. M. Brown J.

**COUNSEL:** P. Griffin and S. Roy, for the Applicants

N. Walton, Respondent in person

H. Cohen, for the remaining Respondents, Ronauld Walton, The Rose & Thistle Group Ltd. and Eglinton Castle Inc.

M. Dunn and J. LaBine, for Schonfeld Inc., Manager and Inspector

J. Simpson, for Harbour Mortgage

D. Jackson and R. Fisher, for Christine DeJong, Michael DeJong, Christine DeJong Medical Professional Corporation, C2M2S Holding Corp. and DeJong Homes Inc.

L. Wallach, for the Handelman/Sorga mortgagees

G. Benchetrit, for the Business Development Bank of Canada

D. Michaud, for Equitable Bank

A. Jackson, for Home Trust Company

J. Marshall, for Firm Capital Credit Corp.

**HEARD:** July 16, 17 and 18, 2014, with subsequent written submissions filed July 30, 2014 by the Applicants, Respondents and Inspector.

## **REASONS FOR DECISION**

### **I. Overview of the Motions and Return of Application**

[1] Between September, 2010 and June, 2013, Dr. Bernstein, through his Applicant companies, invested in a portfolio of 31 properties in Toronto with the Respondents, Norma and Ronald Walton. Each property was held by a corporation – the “Schedule B Companies” – jointly owned by Dr. Bernstein and the Waltons. The Applicants contributed to the Schedule B Companies \$2,568,694 by way of equity, \$78,490,801 by way of equity advances converted into debt, largely shareholder loans, and they advanced \$23,340,000 under mortgages.<sup>1</sup> Dr. Bernstein advanced mortgage funds against both Schedule B Companies and what the parties have called “Schedule C Properties”, which were owned by companies – Schedule C Companies – controlled by the Waltons in which Dr. Bernstein did not have an ownership interest.<sup>2</sup>

[2] These motions by the Applicants and Respondents, and the return of the Applicants’ application, deal with further issues in the on-going litigation between Dr. Bernstein and the Waltons concerning the need for the Respondents to account for funds, and to be held accountable for funds, invested by Dr. Bernstein and his companies with them.

[3] As well, Christine DeJong Medical Professional Corporation, C2M2S Holding Corp. and DeJong Homes Inc., other investors with the Waltons, brought a cross-motion seeking relief in respect of one Schedule C Property, 3270 American Drive, Mississauga.

[4] In a separate, handwritten endorsement made at the end of the hearing on July 18, 2014, I made an Interim Order restraining any further dealings with the Schedule C Properties in dispute until the release of these Reasons.

### **II. Background**

[5] Dr. Bernstein is the founder of diet and health clinics. Norma Walton is a lawyer and co-founder with her husband, Ronald Walton, of the Respondent, The Rose and Thistle Group Ltd. (the “Rose & Thistle”). Called to the Bar in 1995, Ms. Walton was a principal of Walton Advocates, an in-house law firm providing legal services to the Rose & Thistle group of companies. By Decision dated May 16, 2014, the Law Society of Upper Canada’s Hearing Division suspended Ms. Walton’s licence for 18 months starting on July 1, 2014; the Law Society has appealed that Decision as too lenient.

---

<sup>1</sup> Second Report of the Inspector, Appendix B. James Reitan, the CFO of Dr. Bernstein Diet and Health Clinics, put the amounts advanced at approximately \$78.8 million in equity and \$27.6 million in mortgages.

<sup>2</sup> The terms of five of the mortgages have expired and they remain unpaid. The terms of the other four mortgages will expire between July and December, 2014.

[6] Ronauld Walton is also a lawyer, a principal of Walton Advocates and a co-founder of Rose & Thistle.

[7] Newbould J., in his Reasons of October 7, 2013 appointing Schonfeld Inc. as Inspector of the Schedule B Companies,<sup>3</sup> set out many of the background events to this dispute:

[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 various commercial real estate projects. To date, Dr. Bernstein has invested approximately \$110,000,000 into 31 projects...

...

[7] Dr. Bernstein and the Waltons entered into separate agreements which provided as follows:

- a. A new company would be incorporated for each project (the "Owner Company");
- b. Dr. Bernstein (through a company incorporated for this purpose) would hold 50% of the shares of the Owner Company;
- c. The Waltons (either directly or through a company incorporated for this purpose) would hold the other 50% of the shares of the Owner Company;
- d. Each of Dr. Bernstein and the Waltons would contribute an equal amount of equity to each project;
- e. The Waltons would manage, supervise and complete each project for an additional fee through Rose & Thistle. Rose & Thistle is not a party to the agreements;
- f. The Waltons also agreed to be responsible for the finances, bookkeeping, accounting and filing of tax returns, among other things, of the Owner Company;
- g. Each Owner Company was to have a separate bank account;
- h. Dr. Bernstein would not be required to play an active role in completing each project, but his approval would be required for:

---

<sup>3</sup> 2013 ONSC 6251

- i. Any decisions concerning the selling or refinancing of each property;
  - ii. Any decisions concerning the increase in the total amount of equity required to complete each project; and
  - iii. Any cheque or transfer over \$50,000.
- i. The Waltons agreed to provide Dr. Bernstein with:
  - i. Ongoing reports on at least a monthly basis detailing all items related to each property;
  - ii. Copies of invoices for work completed each project monthly;
  - iii. Bank statements monthly; and
  - iv. Listing of all cheques monthly;
- j. Upon sale of a property, Dr. Bernstein and the Waltons would receive back their capital contribution plus a division of profits; and
- k. The agreements generally provided that Dr. Bernstein and Norma Walton were to be the sole directors of the Owner Company.

[8] A review by James Reitan, director of accounting and finance at Dr. Bernstein Diet and Health Clinics, in the early summer of 2013 and into early September 2013 revealed that:

- a. The Waltons were not making their portion of the equity investments into the properties;
- b. The Waltons appeared to be taking on third party investors in the projects;
- c. The Waltons were engaged in significant related party transactions in respect of the projects through and using Rose & Thistle;
- d. Dr. Bernstein's approval was not being sought for any of the matters set out in subparagraph 7(h) above;
- e. Dr. Bernstein was not receiving any of the required reporting, set out in subparagraph 7(i) above;
- f. The mortgage payment for August 2013 for 1450 Don Mills did not go to the mortgagee, Trez Capital, but to Rose & Thistle. No documentation has been provided to confirm that the payment was made from Rose & Thistle to Trez Capital. There is no legitimate purpose for the payment going through Rose & Thistle;

- g. Additional 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 respectively, of which Dr. Bernstein had no knowledge and which he did not approve;
- h. It appears that there has been extensive co-mingling of the Owner Companies' funds with and into the bank accounts of Rose & Thistle;
- i. Rose & Thistle has removed funds from the Owner Companies, which have been recorded as intercompany amounts owing from Rose & Thistle to the Owner Companies;
- j. Rose & Thistle has rendered invoices to the Owner Companies, which in some cases have the effect only of reducing the intercompany amount owed by Rose & Thistle, for work and services that have yet to be performed;
- k. The Waltons have entered into a series of transactions which have the result of reversing equity contributions made by them and immediately removing equity contributions by the Applicants; and
- l. The Owner Companies have incurred significant interest and penalty charges for late penalties of utilities, without explanation.

[9] On September 20, 2013, Dr. Bernstein appointed Schonfeld Inc. on behalf of the applicants to gather information related to the Owner Companies, the projects and the properties. Schonfeld Inc. has not been granted complete access to the documents (including bank statements, invoices and other documentation) related to 22 of 31 projects. Ms. Walton has indicated that she requires a further matter of weeks to make available the documents for the remainder of the projects.

[8] Most of the Applicants' equity contributions were advanced directly to Schedule B Companies, but some were paid to a Walton company, Rose & Thistle, for transfer to a Schedule B Company, and some were paid directly to a real estate agent for the purpose of acquiring a Schedule B Property.<sup>4</sup>

[9] By order made October 7, 2013, Newbould J. appointed Schonfeld Inc. as Inspector of the Schedule B Companies pursuant to section 161(2) of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16. In making that appointment, Newbould J. concluded:

[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

---

<sup>4</sup> Aide Memoire to Reply Argument of the Applicants, Schedule E.

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.

[28] Ms. Walton contends in her affidavit that the appointment of an inspector would likely preclude the respondents from further discharging their accounting and reporting functions. I fail to see how this could be the case, and in any event the evidence is clear that the Waltons have failed to properly provide monthly reports.<sup>5</sup>

[10] About one month later, on November 5, 2013, Newbould J. granted the Applicants' request to appoint Schonfeld Inc. as the receiver – or what the parties styled as the Manager - of the Schedule B Companies. That order was affirmed by the Court of Appeal on May 21, 2014.<sup>6</sup> I will return to the November 5 Reasons at various points in this decision, but for purposes of this background narrative I need only highlight the key findings of fact made by Newbould J. which led him to appoint the Manager:

[46] I do not see the picture as now being less clear [than on October 7]. 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

---

<sup>5</sup> *Ibid.*, paras. 27 and 28.

<sup>6</sup> 2014 ONCA 428

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.

[11] As of the July hearing of these motions and application, the Manager had sold 12 of the Schedule B Properties over which it had been appointed for purchase prices totaling \$127.013 million. After the payment of existing mortgages, those sales had netted \$18.908 million. As of July 9, 2014, the total value of the construction liens registered against the sold properties was \$1.228 million.

### **III. The positions of the parties and the relief requested**

#### **A. The Applicants**

[12] Later in these Reasons I shall deal at length with the relief sought by each side. By way of summary of the issues engaged by these motions, the Applicants advanced the following positions:

- (i) The Respondents had unjustly enriched themselves by improperly diverting funds from the Schedule B Companies to Rose & Thistle and the Schedule C Companies, and the diverted funds should be made subject to a constructive trust to be re-conveyed to the Schedule B Companies. The diverted funds can be traced into the Schedule C Properties and the Court should declare a constructive trust over 44 Park Lane Circle and the Schedule C Properties in favour of the Schedule B Companies in the total amount of \$23.6 million;
- (ii) The Waltons were fiduciaries of the Schedule B Companies and breached their fiduciary duty when they diverted the funds. That conduct also was oppressive conduct and should be remedied by granting the proprietary interest of a constructive trust in Schedule C Companies/Properties;
- (iii) The Waltons' shares in the Schedule B Companies should be cancelled and any entitlement to any finds flowing therefrom disallowed; and,
- (iv) A damages award in the amount of \$78,420,418 should be made in any event against the Respondents, together with certain ancillary relief including the appointment of a receiver over the property of the Waltons.

#### **B. Norma Walton**

[13] Norma Walton advanced three basic positions at the hearing: (i) the Respondents had accounted for the monies advanced to them by the Applicants; (ii) the jointly-owned Schedule B

Companies actually owed the Waltons' Rose & Thistle money, not the other way around; and, (iii) the restrictions placed on the Waltons' ability to deal with their Schedule C Properties by previous Court orders should be removed and they should be entitled to sell those properties in order to satisfy the claims of all their creditors and investors, except for Dr. Bernstein.

#### **IV. Structure of these Reasons**

[14] At the heart of these motions, cross-motions and return of application lie two issues: (i) Did the Waltons use the funds advanced to them by the Applicants as their contracts required? (ii) If they did not, did the Waltons use some or all of the funds advanced by the Applicants to their own personal benefit, including the benefit of their Schedule C Companies/Properties?

[15] For the reasons set out below, I conclude that the Waltons did not use the funds advanced to them by the Applicants as their contracts required but, instead, the Waltons mis-used and mis-appropriated most of the funds advanced to them, diverting some of the funds to their own personal benefit and the benefit of their Schedule C Companies. I further conclude that the Waltons have not provided the full accounting of how they in fact used those funds, notwithstanding the October 25, 2013 Order of this Court that they do so.

[16] The Inspector conducted an extensive, but not exhaustive, analysis tracing how the Waltons used the funds advanced to them by the Applicants. The Inspector presented its findings on the amount of the "net transfer" of funds between the jointly-owned Schedule B Companies and Rose & Thistle, and the amount of the "net transfer" of funds between Rose & Thistle and the Walton-owned Schedule C Companies and Properties. Those net transfer analyses formed the focal point of the arguments by both parties, with the Applicants contending that the Waltons had not explained the net transfers out of the Schedule B Companies to Rose & Thistle, and with Norma Walton taking the position that she had. In light of that structure to the evidence and the parties' arguments, I plan to review the evidence in the following manner:

- (i) First, I shall examine the evidence about how the funds advanced by the Applicants were used by the Respondents, in particular the evidence of the "net transfer" of funds from the Schedule B Companies to Rose & Thistle and the net transfer of funds from Rose & Thistle to the Schedule C Companies;
- (ii) Second, I will examine the evidence concerning the costs of construction actually incurred on behalf of the Schedule B Company projects, focusing on the Respondents' contention that the construction fees charged by Rose & Thistle to the Schedule B Companies were legitimate and explained much of the apparent net transfer of funds to Rose & Thistle;
- (iii) Next, I will examine the evidence of the tracing which the Inspector conducted of the Applicants' funds into Schedule C Companies and Properties; and,

- (iv) Finally, I will consider the evidence relating to the arguments made by the Respondents explaining their use of the Applicants' funds.

**V. The use of the Applicants' funds: the "net transfer" analysis**

**A. The reports of the Inspector**

[17] The Inspector conducted a tracing analysis of some of the funds advanced by the Applicants to the Schedule B Companies. The scope of its analysis was described in the Inspector's Fourth Interim Report (April 23, 2014). The Inspector identified the largest 53 advances by the Applicants to the Schedule B Companies and then examined the activity in the relevant Schedule B Company bank account immediately following each advance. The Inspector then looked for any contemporaneous transfer of funds from the relevant Schedule B Company account to the Rose & Thistle bank account and, finally, examined the Rose & Thistle bank account to ascertain what activity occurred following the receipt of the funds transferred in from the Schedule B Company account, in particular whether there was any contemporaneous transfer of funds from the Rose & Thistle account to a Schedule C Company's account.

[18] In its Fourth Report the Inspector set out the following findings:

In all but two cases reviewed to date, a portion of those funds provided by the Applicants and deposited to the [Schedule B] Company Accounts were immediately (on the same day and/or during the next few days) transferred from the relevant Company Account to the Rose & Thistle account. In the two exceptions, all of the funds provided by the Applicants to the Company Account were used by the [Schedule B] Company immediately.

Funds transferred into the Rose & Thistle Account were then used in one or more of the following ways: (a) transferred to a Walton Account; (b) transferred to other [Schedule B] Company Accounts; and (c) used to make payments directly out of the Rose & Thistle Account. The accuracy with which a specific dollar contributed by the Applicants can be matched to a specific use depends primarily on the opening balance and the level of activity in the Rose & Thistle Account when the funds were transferred. When funds contributed to a Company were transferred into the Rose & Thistle Account, funds were also transferred into and/or out of the Rose & Thistle Account by or to other Companies or Walton [Schedule C] Companies. In such cases, it is possible to trace funds out of the Rose & Thistle Account into accounts held by the Companies or the Walton Companies but it is not possible to match exactly the funds transferred out of the Rose & Thistle bank account to the funds transferred in as the funds have been co-mingled.

In support of those observations, the Inspector attached as Exhibit F to its Fourth Report a series of flowcharts which summarized the use of funds advanced by the Applicants to various Schedule B Companies.

[19] In its Fifth Report dated July 1, 2014, the Inspector reported that it had continued its tracing analysis and recorded the following further findings:

The Inspector's analysis to date supports the following conclusions:

- (a) The Respondents directed transfers of \$23.6 million (net) from the [Schedule B] Company Accounts to a bank account belonging to the Rose & Thistle Group Limited (the "Rose & Thistle Account") during the period from October 2010 to October 2013. These transfers occurred on a regular and ongoing basis during the period examined;
- (b) During the same period, the Respondents directed transfers of \$25.4 million (net) from the Rose & Thistle Account to companies that they own without the Applicants (the "Walton Companies" [or Schedule C Companies]). These transfers also occurred on a regular and ongoing basis during the period examined;
- (c) In almost all cases, some or all of the amounts advanced to the Companies by the Applicants were transferred almost immediately to the Rose & Thistle account;
- (d) In seven instances identified by the Inspector, all of the following occurred in a brief period of time:
  - (i) funds were transferred from one or more Company Accounts;
  - (ii) funds were then transferred to a Walton Company; and,
  - (iii) the relevant Walton Company purchased a property.

Based on the foregoing analysis, and the analysis set out below, the Inspector has concluded that the Respondents used new equity invested in, and mortgage amounts advanced to, the Companies by the Applicants to fund the ongoing operations of other Companies and the Walton Companies. Almost every time the Applicants advanced funds to one of the Companies, a significant portion of those funds was transferred to Rose & Thistle. In some instances, funds could be traced directly into a Walton Company. In other instances, funds could not be traced directly because the Applicants' funds were co-mingled with other funds in the Rose & Thistle Account. However, the Inspector has concluded that the Applicants' investment in the Companies was a major source of funds for the Walton Companies.

The Respondents have sought to justify the movement of funds from the Companies to Rose & Thistle on the basis that these transfers were payments for services rendered by the Respondents to the Companies. To date, the Respondents have not provided evidence to substantiate the majority of the alleged fees and the Inspector has found evidence that is not consistent with this explanation. In particular:

- (a) the transfer of funds observed by the Inspector is more consistent with funds being taken as needed to fund obligations in the other Companies and the Walton Companies than funds being taken as payment for services rendered. In some cases, funds were transferred by Companies immediately after those companies acquired

Properties and/or invoices were rendered for the exact amount transferred from a particular Company during the preceding period;

- (b) there is no evidence that the Respondents possessed sufficient funds to pay for both the construction activity that they alleged to have carried out and the transfers observed to the Walton Companies; and,
- (c) in some cases funds have been transferred from Companies, and the Respondents have delivered invoices for construction work, where little or no work had been done on the relevant Property. Moreover, the various Companies owned Properties in different stages of construction and development but none of the Companies retained any substantial cash reserve from the Applicants' initial investment to fund future construction costs.

[20] In her Factum Ms. Walton accepted the Inspector's finding that the net amount of \$23,680,852 had been transferred by the Schedule B Companies to Rose & Thistle.<sup>7</sup>

[21] However, Ms. Walton disputed the Inspector's view that the Respondents lacked sufficient funds to pay for both the construction activity they alleged they carried out and the transfers observed to the Schedule C Companies. Ms. Walton deposed that every dollar transferred from the Schedule B Companies to Rose & Thistle was for legitimate work completed and amounts owed to it. As well, Ms. Walton took the position that Schedule B Companies currently owed the Rose & Thistle additional sums for services rendered, but not yet paid. In its Supplement to its Fifth Report the Inspector responded:

In general terms, the Inspector agrees that construction and development work occurred at the properties identified by Ms. Walton. The Inspector has never asserted that Rose & Thistle did not perform any construction or development work. The Inspector is of the view, however, that Rose & Thistle has failed to provide documents to substantiate a level of construction and development work commensurate with the funds transferred to it from the Companies. In the Inspector's view, construction and development work on the scale alleged by the Respondents would be supported by a significant volume of relevant records including invoices from subcontractors, consultants and suppliers, timesheets, payroll records, progress draws and other similar documents. The supporting documents are (with limited exceptions) notably absent from the materials provided to the Inspector and the court...

#### **B. The Froese Forensics limited critique report**

[22] Ms. Walton retained Mr. Ken Froese, of Froese Forensic Partners ("Froese"), to prepare a response to the first Four Reports of the Inspector. Froese prepared a Forensic Accounting

---

<sup>7</sup> Factum of the Respondent Norma Walton, para. 49.

Report dated June 25, 2014 in the nature of a limited critique report. That report did not contain a statement of the expert's qualifications as required by Rule 53.03(2.1)(2) of the *Rules of Civil Procedure*.<sup>8</sup> An acknowledgment of expert's duty form was filed only when Ms. Walton filed her reply factum. Although Froese did not swear an affidavit through which to tender his report, thereby rendering the report hearsay, in the result the Applicants cross-examined him on his report. Under those circumstances, I am prepared to overlook those deficiencies in the Froese Report, and I will accept it as an expert's report properly tendered under Rule 53.03.

[23] The first area dealt with by Froese concerned the tracing analysis performed by the Inspector. Froese had written to the Inspector on May 30, 2014 requesting certain information. The Inspector met with Froese on June 3 and 10, 2014. Froese made the following observations about the Inspector's tracing analysis:

- (a) Although the Inspector stated that the tracing analysis was based on the 53 largest advances by the Applicants, Froese identified four other mortgage advances made by the Applicants which were larger in amount;
- (b) In respect of the 53 advances traced by the Inspector, Froese stated that \$35.2 million of the \$55.8 million was transferred from Schedule B Companies to the Rose & Thistle Account: "Our conclusion in reviewing the Inspector's tracing of the 53 Advances is that many of the advances are co-mingled in the Rose & Thistle clearing account and thus cannot be directly traced to Schedule C Companies";
- (c) The net transfer from Rose & Thistle to Walton-owned Schedule C Companies identified by the Inspector as amounting to \$25,464,492 should be reduced by \$1 million to take into account certain unrecorded deposits;
- (d) The net amount owing from Schedule C Companies to Rose & Thistle does not represent a direct tracing of the Applicants' funds to Schedule C Companies or an amount owing by Schedule C Companies to Schedule B Companies.

[24] Froese's general conclusion about the Inspector's tracing analysis was as follows:

Although we concluded that there are very few examples of a direct tracing of advances from Dr. Bernstein to Schedule B Companies that traced to the Rose & Thistle clearing account and then to Schedule C Companies without co-mingling with other sources of funds, *this does not negate the fact that, over all, net funds flowed to Schedule C Companies from Rose & Thistle, and that net funds flowed to Rose & Thistle from Schedule B Companies*. Rather,

---

<sup>8</sup> Mr. Froese's CV and retainer letters were produced and marked as exhibits on his July 8, 2014 cross-examination.

in our view it means that each Schedule C Company needs to be evaluated from the perspective of:

- 1) the tracing analysis performed by the Inspector, in conjunction with our comments on the tracing for particular advances; and,
- 2) the *overall* net transfer position of each Schedule C Company, as reflected in the net transfers schedule prepared by the Inspector, as adjusted for additional relevant information. (emphasis added)

Froese commented specifically on the inspector's tracing analysis for seven of the properties owned by Schedule C Companies. Froese did not offer any other analysis of the overall net transfer position of each Schedule C Company, no doubt because he was not asked to do so by the Respondents as part of his retainer.

[25] Froese also commented on the accuracy of the overall cash transfer analysis performed by the Inspector found in Appendix B to the Inspector's Fourth Report. Froese stated:

The Inspector's Cash Transfer Analysis includes transactions from September 1, 2010 to December 31, 2013 for Schedule C Companies and from October 1, 2010 to December 31, 2013 for Schedule B Companies. *It is a helpful analysis in that it provides an overall perspective on net transfers between these periods, and on amounts potentially owing from Schedule C Companies to Rose & Thistle.*

We have the following comments on the Inspector's Cash Transfer Analysis:

- 1) The Cash Transfer Analysis does not include all transactions between Rose & Thistle and the Schedule B and C Companies, such as proceeds on sale or refinancing of a property where funds are deposited directly to the Rose & Thistle clearing account from a source other than a bank transfer. For example, \$341,189 was deposited to Rose & Thistle in relation to 620 Richmond Street, a property we understand was beneficially owned by Richmond Row Holdings, a Schedule B Company;
- 2) Some deposits are not included in the Cash Transfer Analysis, including \$909,950 of deposits to Rose & Thistle from Norma Walton (see Schedule 2); and,
- 3) There may be other transactions relevant to evaluating amounts owing between the Schedule C Companies and Rose & Thistle, such as unpaid costs for services provided between the companies.

As we have not reconciled Rose & Thistle's bank account to the Cash Transfer Analysis, there may be deposits or transfers that are missing or mis-categorized in the analysis. (emphasis added)

Presumably Froese did not perform such a reconciliation because the Respondents did not ask him to as part of the retainer. Froese testified that in preparing his report he received no audited

financial statements or any form of prepared financial statements for the Schedule B Companies, Rose & Thistle or the Schedule C Companies.

[26] In the Supplement to its Fifth Report (July 9, 2014) the Inspector commented on this portion of the Froese Report:

The Inspector and Froese both acknowledged that, in some cases, funds could be traced directly from the [Schedule B] Companies to the Walton [Schedule C] Companies. The Inspector and Froese also agreed that, on a net basis, there was a transfer of \$23.8 million from the Companies to Rose & Thistle and a transfer of more than \$25 million from Rose & Thistle to the Walton Companies.

...

Some transfers are possible to trace to specific funds (as is evidenced numerous times in the tracing of specific amounts to Walton Company property acquisitions which is acknowledged in the Froese Report) and some are not.

In all, Froese and the Inspector agree that some funds can be traced directly from the Companies to the Walton Companies immediately before the Walton Companies purchased a Property. Froese asserts that the amount that can be traced into some Walton Companies is lower than the Inspector...

The Inspector also commented:

Froese states that the \$23.8 million does not represent a direct tracing to Walton Companies from Companies, but does not offer an explanation as to where else the Walton Companies received funds from, except in a few instances. This is generally consistent with the Inspector's analysis.

## **C. Disputes over the transfers in and out of specific Schedule B Companies**

### **C.1 Certain transfers**

[27] Froese commented on the Inspector's treatment of several advances (or groups of advances) on which the Inspector did not offer a specific response:

- (a) Froese acknowledged that an \$808,250 mortgage advance from Dr. Bernstein to Tisdale was transferred to the Rose & Thistle clearing account, but contended that because this transfer predated the agreement between Bernstein and the Waltons for that company, it should not be treated as a transfer from a Schedule B Company to Rose & Thistle;
- (b) Although Froese acknowledged that 15 mortgage advances involved funds transferred from a Schedule B Company to Rose & Thistle which were co-mingled with other funds, Froese observed that 13 of the advances related to mortgages which subsequently were fully repaid;

- (c) With respect to Dr. Bernstein funds deposited to Liberty Village and Queen's Corner which Froese acknowledged were transferred to Rose & Thistle, Froese stated that there was substantially more co-mingling between Schedule B and Schedule C Companies than disclosed in the Inspector's analysis or, in the case of Queen's Corner, the advances did not trace to Schedule C Companies.

## **C.2 Twin Dragons (241 Spadina)**

[28] In its analysis the Inspector traced \$251,350 of an October 18, 2010 Applicants' advance of \$1,120,500 from Twin Dragons – the Schedule B Company which owned 241 Spadina - to Rose & Thistle over the period October 25 to 29, 2010. The Inspector also commented that transfers into the Rose & Thistle account from Schedule C Companies during that period amounted to \$32,050, while transfers out to Schedule C Companies amounted to \$114,780.

[29] Froese stated that the Inspector's analysis did not include transfers in the same time frame from Rose & Thistle back to a second Twin Dragons bank account and deposits of non-Bernstein funds to Twin Dragons. Froese stated that transfers to/from Twin Dragons and Rose & Thistle in the five-day period under review netted to \$350, or "essentially that almost none of the funds traced to a Schedule C Company."

[30] In its report the Inspector made two comments in response to the Froese analysis. First, the Inspector stated:

Regarding Twin Dragons (Chart 1 of Appendix F) the \$1,120,500 provided by the Applicants and deposited to the Twin Dragons bank account on October 18, 2010, most of the funds appear to have been used to close the acquisition of the Property. However, an amount of \$150,000 from these funds was transferred from the Twin Dragons bank account to the Rose & Thistle bank account and was used to fund a cheque to Pointmark Real Estate in the amount of \$150,000. *According to Froese, this cheque relates to a deposit on the Property at 18 Wynford, which is owned by Wynford Professional Center Limited (one of the [Schedule B] Companies). The Inspector agrees with this aspect of the Froese analysis.* (emphasis added)

Accordingly, this was an instance where funds advanced by the Applicants to one Schedule B Company for its use were diverted by the Waltons to another Schedule B Company in breach of the Waltons' agreements with Dr. Bernstein.

[31] The second comment of the Inspector concerned the Froese observations made in a chart he provided to the Inspector that third parties had deposited share subscription amounts into a second Twin Dragons bank account between October 27 and 29, 2010. On September 24, 2010 Dr. Bernstein Diet Clinics Ltd. entered into an agreement with the Waltons and Twin Dragons Corporation in respect of the intended purchase and development of 241 Spadina Avenue, Toronto. That agreement stipulated that the ownership of Twin Dragons would be 50% to Dr.

Bernstein and 50% to Ron and Norma Walton. Section 13 stated: "The only shares to be issued in the company will be as set out above, and neither party may transfer his or her shares to another party without the consent of all the other parties, which consent may be unreasonably withheld." As can be seen, the agreement contemplated that there would be no third party investors in the Schedule B Company or Property.

[32] Froese provided the Inspector with a chart which recorded share subscriptions totaling \$250,000 received on October 27 and 29, 2010, from third parties - Teresa and Joe Memme and Duncan Coopland.<sup>9</sup> The Inspector filed copies of the cheques for both investments: one was dated October 26 and the other October 27, 2010. Both were made out to Twin Dragons Corporation. Both were dated approximately one month *after* Dr. Bernstein had concluded his agreement with the Waltons in respect of Twin Dragons.

[33] Froese testified that he subsequently realized that the third party investors had been removed from Twin Dragons, and he corrected his analysis on that point.<sup>10</sup>

[34] Back on June 7, 2013, Mr. Reitan, on behalf of the Applicants, had written to Norma Walton complaining that the records disclosed third-party equity contributions into Twin Dragons following the execution of the agreement with Bernstein. Ms. Walton responded on June 13, 2013 with a very aggressive letter in which she stated:

We do not have outside investors in the properties we jointly owned with Dr. Bernstein. As Mario explained, before Dr. Bernstein became a 50% owner of Spadina and Highway 7, we had attracted investment from third parties. The moment he became an investor, we shifted all of those responsibilities over to the Rose & Thistle Group Ltd. and that is where they currently remain...

[35] That was not an accurate statement by Ms. Walton. As noted, both the Memmes and Coopland wrote share subscription cheques to Twin Dragons one month *after* the execution of the agreement with the Applicants. One can only conclude that they did so at the direction of Norma Walton. In its Fifth Report the Inspector stated:

The contract between the Applicants and the Respondents prohibits any third party investors in Twin Dragons and the Respondents assert that the third-party investments were deposited into the Twin Dragons bank account in error

...

---

<sup>9</sup> Both appear on Appendix "B" to these Reasons.

<sup>10</sup> Transcript of the cross-examination of Ken Froese conducted July 8, 2014, QQ. 111-112.

In all, the documents reviewed and accounting treatment of the foregoing investments is not consistent with an erroneous investment in the wrong company as alleged by Ms. Walton.

[36] I accept that analysis by the Inspector. The statement made by Ms. Walton in her June 13, 2013 letter to Reitan regarding third party investors in Twin Dragons was not only inaccurate, it was misleading.

**C.2 Bannockburn Lands Inc. (1185 Eglinton Avenue East)**

[37] Froese stated that the Inspector's analysis of the tracing of a mortgage advance to Bannockburn Lands Inc. – the Schedule B Company which owned 1185 Eglinton Avenue East - omitted a deposit on March 28, 2011 into the Rose & Thistle clearing account from a Schedule C Company, 1780355 Ontario Inc.: "Accordingly, there was more co-mingling between Schedule B and Schedule C Companies than disclosed in the Inspector's analysis."

[38] In its Fifth Report the Inspector provided a detailed response to the comments made by Froese. The Inspector reported that after Froese had raised questions concerning Bannockburn, the Inspector conducted a further review of the banking and accounting records of Bannockburn and Rose & Thistle. The Inspector made the following points:

- (a) In dealing with Froese's questioning of how the Inspector could be certain that the funds transferred to Rose & Thistle were the Applicants' funds, the Inspector stated:

Froese indicated that their review had identified another mortgage as part of the Bannockburn transaction and suggested that the mortgage could have possibly been a source of funds for the transfer. However, this is not correct. As is set out below, the mortgage in question is a vendor take-back mortgage and no funds were advanced;

- (b) The Inspector reported that the Applicants had advanced their funds for the property by a cheque made payable to the Waltons' law firm, Walton Advocates. After dealing with closing adjustments on the acquisition of the Eglinton Avenue property, Walton Advocates transferred a net amount of \$628,630.52 to Rose & Thistle on December 17, 2010. The Inspector stated:

As the mortgage referred to on the closing adjustments schedule was a vendor take-back mortgage, no cash was provided from this mortgage. Therefore, the funds of \$628,630 transferred from Walton Advocates to Rose & Thistle can be directly traced to funds provided by the Applicants and this is consistent with the recording of the transaction in the accounting records of Bannockburn.

On cross-examination Froese agreed with that analysis by the Inspector;<sup>11</sup>

- (c) Although a few weeks following the acquisition of the property Rose & Thistle rendered an invoice to Bannockburn for “work completed” in respect of the property, the Inspector observed that the quantum of the invoice exactly matched the “excess” cash provided by the Applicants not required on closing in the amount of \$628,632.52. The Inspector stated:

It appears, therefore, that the amounts on the invoice were calculated based on eliminating the intercompany receivable account between Bannockburn and Rose & Thistle which arose largely because of the cash transfers made from Bannockburn to Rose & Thistle.

- (d) The Inspector stated that “a major use of funds by Rose & Thistle around the time of the \$628,630 transfer from Walton Advocates was for payments to 364808 Ontario Ltd. totaling \$484,349”. 364808 Ontario was a Walton-owned Schedule C Company which owned a Davenport Road property purchased on July 5, 2002 by Norma and Ron Walton. Based upon the Inspector’s review of the small balance in the Rose & Thistle bank account prior to the transfer from Walton Advocates, the Inspector concluded that “the Applicants’ funds can be traced through to Rose & Thistle and were used to fund these payments to this Walton Company.”

#### **D. Summary of conclusions on the “net transfer” analysis**

[39] The evidence set out above disclosed a substantial agreement between the Inspector and Froese on the overall amounts of the net transfers from (i) Schedule B Companies to Rose & Thistle and (ii) from Rose & Thistle to Schedule C Companies. The analysis performed by the Inspector was more comprehensive than the limited critique Froese was retained to perform. Both the Inspector (in respect of Twin Dragons) and Froese (in respect of Bannockburn) accepted certain criticisms made by the other of aspects of their respective analysis. On balance, I do not regard the specific critiques made by Froese to alter, in a material way, the findings made by the Inspector on the quantum of the net transfers. Consequently, I make the following findings of fact about the “net transfer” analysis of the movement of funds from Schedule B Companies to Rose & Thistle and from Rose & Thistle to Schedule C Companies:

- (i) The Waltons directed the transfer of \$23.6 million (net) from the Schedule B Company Accounts to a bank account belonging to Rose & Thistle during the period from October 2010 to October 2013;

---

<sup>11</sup> *Ibid.*, QQ. 137-144.

- (ii) During the same period, the Waltons directed transfers of \$25.4 million (net) from the Rose & Thistle Account to companies that they owned without the Applicants – the Schedule C Companies; and,
- (iii) In almost all cases, some or all of the amounts advanced to the Schedule B Companies by the Applicants were transferred almost immediately to the Rose & Thistle Account.

I further find that those transfers of funds from Schedule B Companies to Rose & Thistle constituted breaches of the agreements between the Applicants and the Respondents which required that each Schedule B Company, and the funds advanced to it, be used only to purchase, renovate and refinance the specific property owned by the Schedule B Company.

[40] Froese opined that the co-mingling of Schedule B Company funds and other funds in the Rose & Thistle account prevented, in most cases, the tracing of the Applicants' funds through Schedule B Companies to Schedule C Companies. For reasons which I will discuss in **Section VI below**, I do not accept Froese's opinion on that point. I also accept the point made by the Inspector that Froese did not offer an explanation of where the Waltons' Schedule C Companies otherwise sourced their funds, no doubt because he was not retained to express such an opinion. However, as will be discussed later in these Reasons, Ms. Walton has not provided a satisfactory answer to that most basic of questions.

#### **V. Issues concerning the use of funds for Schedule B Properties**

[41] From the evidence filed there is no doubt that the Respondents caused funds, including funds advanced by the Applicants, to be used to develop, renovate or construct several of the Schedule B Properties. The question raised by the evidence was: how much did the Respondents spend in the way of legitimate costs on the Schedule B Properties? As I will explain below, the Respondents have never provided a satisfactory answer to that question, notwithstanding an October, 2013 Order of this Court that they do so. Although the Respondents contended that a significant part of the funds advanced by the Applicants were used to pay invoices rendered by Rose & Thistle to Schedule B Companies for legitimate construction costs, as the following review of the evidence will disclose the Respondents have not provided concrete evidence to support the validity of the construction costs billed by Rose & Thistle despite repeated requests by the Inspector.

**A. The invoices for construction costs and management fees charged by Rose & Thistle to Schedule B Companies**

**A.1 Overview**

[42] The Respondents relied heavily on invoices rendered by Rose & Thistle to the Schedule B Companies to provide an explanation for \$12,264,158<sup>12</sup> of the \$23.680 million net transfer of funds from the Schedule B Companies to Rose & Thistle. In her April 28, 2014 affidavit Ms. Walton deposed:

In my opinion, the only basis upon which the Applicants can advance a claim against my non-Bernstein assets is if I am unable to back up the invoices Rose and Thistle charged to the joint portfolio.

Because of the centrality of those invoices to the Respondents' defence, I intend to spend some time reviewing how this issue has unfolded since October, 2013.

[43] From the early stages of this proceeding the Inspector expressed concern that the Rose & Thistle invoices were not rendered on a regular basis and, instead, a significant number of invoices had been rendered just prior to and following its appointment. In his November 5 Reasons Newbould J. commented:

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.

In her Factum Ms. Walton acknowledged, in her own way, the frailty of the Rose & Thistle invoices:

When the Inspector was appointed by the court, Walton was forced to rush through a number of invoices for work Rose and Thistle had performed for the Schedule B properties and the joint portfolio. As a result of the rush to account for all the work provided to the joint portfolio, Walton is not sure that all work done has been invoiced and Walton made mistakes in some of the invoices provided.<sup>13</sup>

---

<sup>12</sup> \$8,500,853 by way of invoiced construction work; \$1,183,013 for property management fees; and \$2,580,292 in the way of property maintenance fees.

<sup>13</sup> Walton Factum, para. 96.

## **A.2 The failure of the Respondents to provide back-up documentation for the Rose & Thistle invoices**

[44] Before reviewing the evidence concerning the Inspector's efforts to secure back-up documentation for the invoices rendered by Rose & Thistle to the Schedule B Companies, mention should be made of the Inspector's comments on the state of the accounting system maintained by the Respondents for their construction projects. In its First Report (October 21, 2013), the Inspector stated:

Ms. Walton has advised the Inspector that the books and records of the Companies are not current. Ms. Walton also advised the Inspector that, before her recent attempt to update the books and records of the Companies, they were last brought current in 2011.

The Inspector understands that Ms. Walton and Rose & Thistle have been working to bring the Companies' books and records up to date. As part of this process, Rose & Thistle has been inputting expense information into the ledgers in or around August and September 2013 relating to the period between January 2012 and August 2013. Rose & Thistle has also issued a number of invoices dated August and September 2013 for services rendered or expenses incurred by Rose & Thistle during the period from January 2012 to August 2013.

In this regard, the Inspector notes that the Companies' books and records are kept using QuickBooks accounting software. QuickBooks is a basic accounting package that is primarily marketed to small businesses. The Companies do not have any:

- (a) comprehensive financial accounting and reporting system;
- (b) cash flow forecasting, budgeting or reporting system; or,
- (c) systematic cash controls.

Prior to the October 17 all-hands meeting hosted by the Inspector, 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 ledger and issuing invoices from Rose & Thistle to such Company. At the October 17 meeting, Ms. Walton agreed to provide the Inspector with access to the ledgers for the remaining 11 Companies in their current state. That evening, the Inspector was provided with access to seven of the remaining 11 ledgers.

[45] Turning then to the issue of the Rose & Thistle invoices to Schedule B Companies, as early as October 21, 2013 - the date of the Inspector's First Report - the Respondents had provided invoices issued by Rose & Thistle to 27 of the Schedule B Companies for which the general ledgers had been provided for an aggregate amount in excess of \$32 million. At that time the Inspector requested "back-up documentation for the Rose & Thistle invoices that have been provided to date". The Inspector stated:

The Inspector has requested, but not yet received, documentation to substantiate the invoiced amounts. Once these documents are provided, further due diligence is required to confirm that the invoices from Rose & Thistle relate to services provided to, or expenses incurred on behalf of, the [Schedule B] Companies.

By October 24, 2013, the Inspector was reporting that the amount of the invoices rendered by Rose & Thistle to the Schedule B Companies had risen to \$34.6 million, or \$10.6 million more than Rose & Thistle had received from the Schedule B Companies.

[46] In its First Report the Inspector gave an example of the difficulties it was encountering in securing from the Respondents documents to support the invoices rendered by Rose & Thistle to Schedule B Companies. The property at 458 Pape Avenue was owned by Riverdale Mansion Inc. Rose & Thistle provided the Inspector with invoices addressed to Riverdale for construction management fees of slightly more than \$1.18 million for expenses which included “deposits for materials”, “project management services”, “site plan deposits and applications”, and “steel rebar ordered and installed”. When the Inspector asked for documentation, including third party invoices, to support the amounts invoiced:

Ms. Walton advised the Inspector that Rose & Thistle did not have third-party invoices for many of the invoiced expenses because Rose & Thistle performed much of the work itself and some of the expenses have not yet been incurred. In response, the Inspector requested that documents, such as material invoices and payroll records, be provided to validate the cost of work performed by Rose & Thistle and invoiced to Riverdale. As of the date of this report, no such documentation has been provided.

On October 18, 2013, the Inspector received a Credit Note from Rose & Thistle which showed that the invoice to Riverdale had been reversed except for \$257,065.62 charged for work performed in 2011.

[47] Subsequent reports of the Inspector disclosed not only the continuing difficulties in obtaining backup documentation to support the amounts claimed in the Rose & Thistle invoices, but also questioned the accuracy of the invoices. For example, in the Inspector’s Second Report (October 31, 2013), it reported that it had been provided with an invoice issued by Rose & Thistle to Dupont Developments Ltd. (1485 Dupont Street) which included an entry for construction management services in the amount of \$175,300.30. The invoice stated that the construction management fee was “10% of hard costs”. From that the Inspector reasonably assumed that Rose & Thistle had supervised construction which had cost approximately \$1.75 million. However, Rose & Thistle staff provided the Inspector with project budgets that indicated Dupont Developments had spent only \$385,000 on construction. The Inspector reported:

The Inspector also received a general ledger for Dupont Developments on October 24, 2013. The general ledger shows capitalized expenses of approximately \$248,000,

construction in progress of \$36,000 and various consulting fees of approximately \$563,000.

Based on the foregoing, it appears that Dupont Developments' construction budget (which is out of date), its general ledger (which was updated before being provided to the Inspector) and invoice from Rose & Thistle all show different construction expenditures in respect of the Dupont Project.

It also does not appear that Rose & Thistle is maintaining project budgets on an ongoing basis to track expenses and measure construction costs against the *pro forma* statement prepared when the property at 1485 Dupont was purchased.

[48] The difficulties encountered in obtaining proper accounting information from the Respondents were exemplified by the correspondence from the Respondent's former counsel, John Campion, to Applicant's counsel on October 31, 2013, in response to a request for "information about an accounting". On behalf of his client Mr. Campion responded: "I do not know what that reference is meant to encompass." Based no doubt on information provided by his clients, Mr. Campion wrote:

The Inspector has stated that they have not been provided with third-party invoices, contracts, payroll records or other contemporaneous documents. My client instructs me that other than the budgets that are being provided by Ms. Liu over the next three days, she is not aware of any request made that has not been fulfilled, as best it can be.

The Inspector keeps asking which filing cabinets he can review to obtain this information. The information he seeks can only be obtained through discussions with the staff mentioned above as all documentation is on computer and not contained in a filing cabinet.

As a result of the above, we believe that the Inspector has been given the kind of access to the Rose and Thistle documents that is available and reasonable under the order of Justice Newbould. Without wishing to criticize the Inspector, I am informed that he expects to have "physical copies of documents produced to him from a filing cabinet". This is not the way that Rose and Thistle stores its information. Upon request being made in an orderly manner, the Inspector has and will receive information and documentation as soon as it can be retrieved and ordered in a manner that meets his request.

[49] Again, no doubt based upon information provided by his clients, Mr. Campion wrote:

The Inspector has also met with Yvonne Liu, Project Manager, Construction and has provided to them information that has been requested, along with one construction budget. She is sending to the Inspector over the next three days all remaining budgets. The Inspector has spoken with and met with Mario Bucci, CFO of the Rose and Thistle Group, and Mr. Bucci has provided to the Inspector all information requested. Ms. Walton has offered to the Inspector to arrange a meeting with Carlos Carreiro, former Director of Construction of Rose and Thistle but the Inspector has not done so. Steve

Williams, VP of Operations as also met with the Inspector and provided what the Inspector requested.

[50] As will be seen from the subsequent reports of the Inspector which are set out below, the Inspector never received the information it requested. As the Inspector stated in the Supplement to its Fifth Report (July 9, 2014): "Neither construction budgets nor any significant volume of third-party documentation has been provided to the Inspector."

[51] The Inspector submitted its Third Report on January 15, 2014 in which it dealt at some length with the issue of the Rose & Thistle invoices:

The Inspector previously reported that Rose & Thistle Group Ltd. (Rose & Thistle) transferred approximately \$24.2 million (net) from the Schedule B Companies to itself between September 2010 and October 2013. In support of these transactions, Rose & Thistle provided the Inspector invoices totaling approximately \$30.6 million (plus HST) for management fees, maintenance fees and construction and project management. The Inspector's current analysis of these billings is outlined below.

#### **Construction and project management billings**

Of the total \$30.6 million charged by Rose & Thistle, approximately \$27.6 million was purportedly charged for construction supervision, project management and other project costs. Included in this amount is \$6.6 million that is explained below in the "contributed equity" section, leaving support required for \$21 million. *Despite the Inspector's request, Rose & Thistle has still not provided evidence to support these billings. Therefore, the Inspector is still unable to comment on the validity of these billings at this time.*

As Rose & Thistle has yet to provide evidence to substantiate more than \$20 million of billings for construction and project related costs, the Inspector is expanding its work to include an analysis of funds transferred from Rose & Thistle to other non-Schedule B companies where those funds appear to have initially originated from Schedule B companies. This Inspector will report on this work as soon as it is able to do so.

#### **Management fees**

Rose & Thistle charged a management fee to Schedule B Companies based upon 4% of the gross revenues of individual properties that generated revenue. The agreements between the Applicant and the Respondents do not specifically state that the fee is to be charged. However, the agreements generally state that Walton (as defined in each agreement) is responsible for managing the properties, including all finance, bookkeeping, office administration, accounting, information technology provision. The Inspector has no comment on the legal issue of whether Rose & Thistle is entitled to charge for those services under the terms of the various agreements as they may be duly interpreted. *The Inspector is of the opinion that a fee of 4% is a reasonable amount and is consistent with rates charged in the marketplace for similar services. Further, the Inspector worked with Rose & Thistle to reconcile the management fees charged on*

*revenue producing properties. These fees amount to approximately \$1 million in the aggregate.*

**Maintenance fees**

*Rose & Thistle charged maintenance fees to the Schedule B companies based upon a fixed monthly amount per property. This fee is purportedly charged to reimburse Rose & Thistle for the cost of providing maintenance employees to certain of the properties. The Inspector has no comment on the legal issue of whether Rose & Thistle is entitled to levy these charges under the terms of the various agreements as they may be duly interpreted. The Inspector is of the view that it can be appropriate for a real estate management service provider to seek reimbursement for costs that are not covered under its management fees when utilizing outside property management. However, the Inspector has not been able to verify or reconcile records of the fees charged to costs actually incurred by Rose & Thistle or for any set markup on such costs. These fees amount to approximately \$2 million in the aggregate. (emphasis added)*

[52] In its Fourth Report (April 23, 2014), the Inspector stated that Rose & Thistle had withdrawn some of the invoices which made up its original \$30.6 million claim against the Schedule B Companies, and now was alleging that it had invoiced those companies for \$27,292,722. The Inspector reported that as a result of the failure of Rose & Thistle to provide evidence to support the majority of those billings, it had expanded its work to include an analysis of the funds transferred from Rose & Thistle to bank accounts controlled by the Waltons (the "Walton Accounts"). The Inspector reported:

On February 21, 2014, counsel to the Inspector circulated a document prepared by the Inspector outlining the Inspector's analysis of funds flowing to and from the [Schedule B] Company Accounts to the Rose & Thistle Account and from the Rose & Thistle Account to the Walton Accounts.

The spreadsheet, which is referred to below as the "Cash Transfer Analysis", was circulated subject to the limitations noted in counsel's email...A summary version of the Cash Transfer Analysis, which shows the total amounts transferred to and from the Rose & Thistle Account to each Company Account and each Walton Account is attached as Appendix "B".

Neither the Applicants nor the Respondents have challenged the accuracy of the Cash Transfer Analysis...

In all, Rose & Thistle received approximately \$23.6 million more from the [Schedule B] Companies than it transferred to the Companies...

... In total, the Walton Accounts received transfers totaling \$64,712,258 from the Rose & Thistle account and transferred \$39,247,766 to the Rose & Thistle account during the period examined. The Walton Accounts received a net transfer of \$25,464,492 from Rose

& Thistle. That is, Rose & Thistle transferred approximately \$25 million more to the Walton Accounts than it received from the Walton Accounts during the period examined.

[53] By the time of its Fifth Report (July 1, 2014) the Inspector was still reporting the failure by the Respondents to provide appropriate backup documentation for the Rose & Thistle construction expense invoices:

The Inspector's analysis is impaired by the fact that the Respondents have not provided back-up documentation, including third party invoices, proof of payment and progress draws relating to the majority of the alleged construction expenses. *Accordingly, the Inspector cannot perform a detailed reconciliation of the alleged construction expenses to the cash transfers to determine whether these transfers related to construction work that had been performed.* The Respondents have instead provided reports from third-party quantity surveyors which will be addressed in a supplemental report.

...

Rose & Thistle provided the Inspector with invoices addressed to Riverdale (a Schedule B Company) totaling \$1.18 million. The invoices listed, among other things, expenses related to "deposits for materials", "project management services", "site plan deposits and applications" and "steel rebar ordered and installed".

The Inspector asked for documentation, including third party invoices, to support the amounts invoiced to Riverdale. Ms. Walton advised the Inspector that Rose & Thistle did not have third-party invoices for many of the invoiced expenses because Rose & Thistle performed much of the work itself and some of the expenses have not yet been incurred. This would appear to be inconsistent with her statement that transfers from the Companies to Rose & Thistle were in the nature of payments for services that have been provided but not yet invoiced. The Inspector requested that documents, such as material invoices and payroll records, be provided to validate the cost of work performed by Rose & Thistle and invoiced to Riverdale. No such documentation has been provided. (emphasis added)

### **A.3 The Inspector's observations on the Rose & Thistle invoices**

[54] In its Fifth Report the Inspector made several comments about the invoices which Rose & Thistle had rendered to the Schedule B Companies:

- (a) There was no apparent co-relation between the amount of construction work performed on a Schedule B Property and the volume of funds transferred from that property. For example, in respect of the property at Fraser Avenue, the two Fraser companies made net transfers of approximately \$9.2 million to Rose & Thistle, but little or no construction work was completed on the Fraser Properties before the Manager was appointed. By contrast, Twin Dragons successfully renovated and leased 241 Spadina and received a net transfer from Rose & Thistle of approximately \$1.3 million. The Fraser property is dealt with further in **Section V.A.5** below;

- (b) The Inspector observed a pattern whereby the amounts invoiced by Rose & Thistle to the Schedule B Companies appeared to match the amount of cash previously transferred from the Schedule B Company to Rose & Thistle. For example, the Inspector reported that it appeared that the amounts invoiced from Rose & Thistle to Bannockburn (1185 Eglinton East) in 2010 and 2011 were calculated to match the net cash transferred from Bannockburn to Rose & Thistle during those years. The Inspector pointed to Wynford and Riverdale Mansion as other Schedule B Companies in respect of which a similar matching-invoice practice by Rose & Thistle took place. Those invoices had the effect of essentially eliminating the inter-company debt owed by Rose & Thistle to the Schedule B Company;<sup>14</sup> and,
- (c) In respect of the Schedule B Company, Riverdale Mansion, the Inspector reported that it had received a credit note from Rose & Thistle which showed the invoices to Riverdale had been reversed except for \$257,065.62 charged for work performed in 2011. The Inspector stated: "The Credit Note was not accompanied by any return of funds. This would appear to reinforce the Inspector's conclusion that invoices rendered by Rose & Thistle to the Companies were calculated based on the net cash transferred from the Companies to Rose & Thistle rather than on the value of actual work, if any, performed by Rose & Thistle."

[55] In its report Froese stated that any further analysis of the net unsupported or unexplained transfers from Schedule B Companies to Rose & Thistle would require an evaluation of the quantity surveyor reports related to the Schedule B Properties to address further work performed by Rose & Thistle for those properties. Froese noted that the quantity surveyor reports were not made available to it in sufficient time to address them.

#### **A.4 The cost consultant reports filed by Ms. Walton**

[56] Ms. Walton filed reports from two cost consultants commenting on work performed by Rose & Thistle for Schedule B Properties. Intrepid Quantity Surveying Inc. prepared three reports dealing with 32 Atlantic Avenue, 241 Spadina Avenue and 18 Wynford Drive. The work on the Atlantic and Spadina properties had been fully completed; the building at 18 Wynford had been partially renovated.

[57] BTY Group prepared a set of 21 reports entitled "Audit Report On Incurred Cost To Date" for the following properties: (i) 1185 Eglinton East (Bannockburn); (ii) Cityview Drive (Cityview Industrial); (iii) 14 Dewhurst (Dewhurst Developments); (iv) 1500 Don Mills Road

---

<sup>14</sup> At paragraphs 66 through 69 of his affidavit sworn June 26, 2014, James Reitan provided other examples of this practice.

(Donalda Developments); (v) 65 Heward (Double Rose Developments); (vi) 1485 DuPont (DuPont Developments); (vii) 153 Eddystone (Eddystone Place); (viii) Fraser Avenue (Fraser Lands/Fraser Properties); (ix) 1450 Don Mills Road (Global Mills); (x) 14 Trent (Hidden Gem Developments); (xi) Lesliebrooke Holdings and Lesliebrooke Lands; (xii) 47 Jefferson (Liberty Village Lands); (xiii) 140 Queens Plate Crescent (Northern Dancer Lands); (xiv) 1003 Queen Street East (Queen's Corner Corp.); (xv) 875 Queen Street East (Red Door Developments); (xvi) 450 Pape (Riverdale Mansion); (xvii) Highway 7 (Royal Agincourt); (xviii) 1 Royal Gate Boulevard (Royal Gate Holdings); (xix) Skyway Drive (Skyway Holdings); (xx) 295 The West Mall (West Mall Holdings); and, (xxi) 355 Weston Road (Weston Lands).

[58] The BTY Group were not independent experts. The record disclosed that they had acted as cost consultants for progress draws on some Schedule B Properties during the course of demolition and construction work on them – 241 Spadina; 1185 Eglinton;<sup>15</sup> and 18 Wynford.<sup>16</sup>

[59] The authors of the cost consultant reports all purported to express opinions in their reports. Opinion evidence in civil cases must comply not only with the general rules of evidence, but also with Rule 53.03 of the *Rules of Civil Procedure*. Rule 53.03(2.1) mandates that any report of an expert witness must contain seven categories of information. In the case of the reports prepared by Intrepid Quantity Surveying they lacked the following mandatory information: area of expertise; qualifications; instructions provided to the expert; and, an acknowledgment of the expert's duty signed by the expert. Those constituted material omissions of mandated information for expert reports and, in my view, rendered the reports prepared by Intrepid Quantity Surveying inadmissible as expert evidence.

[60] As to the reports prepared by BTY Group, they also suffered from the same omissions of material mandated information. As well, they did not disclose the name of the expert who had prepared the reports – a singular omission which I have never seen before. By reason of those failures to include information mandated by Rule 53.03(2.1), I conclude that the cost consultant reports prepared by BTY Group are inadmissible as expert evidence.

[61] Even had I admitted the reports prepared by Intrepid Quantity Surveying and BTY Group as expert evidence, for the reasons set out below their probative value in respect of the issues in dispute on these motions would have been quite minimal.

---

<sup>15</sup> Norma Walton Motion Record, Vol. 1, pp. 207 and 212; Vol. 2, p. 380.

<sup>16</sup> Bernstein CX, Exhibit 5. It appeared from Exhibit 5 that in issuing their progress payment reports the BTY Group had relied heavily on the invoices from the Rose & Thistle Group, rather than examining the underlying supporting documentation for such invoices.

### **The reports prepared by Intrepid Quantity Surveying**

[62] The three Intrepid Quantity Surveying ("IQS") reports possessed a similar structure, so let me use the March 10, 2014 report on 32 Atlantic Avenue as an example of the limited probative value of the opinions expressed in those reports. First, it was difficult to discern the purpose of the report. Rule 53.03(2.1)(3) requires a report to contain "the instructions provided to the expert in relation to the proceeding"; none appeared in the body of the report. Rule 53.03(2.1)(4) requires a report to contain "the nature of the opinion being sought and each issue in the proceeding to which the opinion relates"; none was provided in the report.

[63] From the report it appears that Ms. Walton had asked IQS to review the budget for the 32 Atlantic Avenue project. IQS reported that they had reviewed the file and had "provided our comments here for your reference." At the end of the report, IQS stated:

In our opinion, we believe the work in place for the construction work is reasonable based on information and invoices received to substantiate the cost to date.

[64] The IQS report focused on two aspects of the project's budget: construction costs of \$3.045 million and management fees of approximately \$150,000.

[65] The IQS review of the construction costs was based upon an undated Vendor Transaction List provided by the Respondents. IQS requested copies of invoices to substantiate the items booked to the accounting system. Although it was provided with 89% of the overall hard costs booked to the Respondents' accounting system, it was not provided with the Rose & Thistle construction invoice for \$216,330.57.

[66] The Vendor Transaction document attached to the IQS report recorded amounts incurred for various types of work from various suppliers. The legend for that document identified which invoices had been reviewed (presumably by the Rose & Thistle management) and which invoices remained outstanding. In its report for the Atlantic Avenue property, IQS noted that it had only been provided with proof of 20% expended by way of an invoice and that it was relying primarily on the accounting summaries prepared by the Respondents' accounting system, not on the actual underlying invoices.

[67] IQS reported that the Respondents had provided timesheets which confirmed 20% of the Rose & Thistle construction fees of \$216,330.57, but it identified significant limits placed on its review of those Rose & Thistle construction fees. In particular, IQS could only rely upon "accounting summaries" provided by the Respondents when reviewing the Rose & Thistle construction fees. Although the accounting summaries confirmed 88% of the \$216,330.57, IQS reported:

These costs may have been incurred by [Rose & Thistle Properties] and entered into their accounts system, but we only have proof of 20% expended by way of an invoice.

We have been provided with partial bank account records and cancelled cheques. A full review to ensure that the amounts booked have cleared the [Rose & Thistle Properties] bank account was not part of the IQS scope of work.

The IQS report made clear that it lacked adequate backup documentation for most of the \$216,333.57 in construction fees charged by Rose & Thistle. In my view, those limitations identified by IQS severely limited the utility of their reports in verifying the amounts Rose & Thistle was recorded as charging the Schedule B Company which owned the project, Liberty Village.

[68] IQS reported that the budget identified management fees charged by Rose & Thistle of approximately \$150,000. IQS stated:

We have not reviewed backup invoices to date, however we have been provided a summary breakdown of the fees.

These costs may have been incurred by [Rose & Thistle Properties], but we do not have proof of the expenditure by way of an invoice.

The management fee is for time spent by [Rose & Thistle Properties] employees to coordinate the construction activities and the consultants.

IQS also noted in respect of the management fees that it had not been provided with timesheets or accounting backup. IQS calculated that the management fee charged had amounted to 4.5% of the total hard construction costs for the project which appeared to be reasonable based on the scope of work and a standard industry range of 2.5% to 4.5% for management fees.

[69] Similar limitations were contained in the other two IQS reports. IQS' report on the Twin Dragons project - 241 Spadina<sup>17</sup> - noted that it had not been asked to review construction costs, so it had not reviewed copies of invoices to substantiate the items booked to the Respondents' accounting system "as this was outside our scope of work. Costs booked to the vendor transaction list *are assumed* to be valid." IQS also observed, regarding the \$133,209 management fee charged, that it had not reviewed the internal Rose & Thistle Properties back-up for the fee. The only opinion expressed by IQS in respect of the 241 Spadina budget was that the management fee of 3.47% was reasonable based upon the scope of work and industry practices.<sup>18</sup>

---

<sup>17</sup> Dr. Bernstein acknowledged on his cross-examination that following the completion of the renovation of 241 Spadina, he began to receive equity distribution cheques from Twin Dragons: Transcript of the cross-examination of Dr. Bernstein conducted July 9, 2014, QQ. 295; 456-8.

<sup>18</sup> Carlos Carreiro filed an affidavit in support of the Respondents, his former employer, attesting, in a descriptive way, to the work his company had performed for Rose & Thistle at 241 Spadina, 32 Atlantic Avenue and 450 Pape. No documentation supporting the work performed or invoiced was attached to his affidavit. Yvonne Liu filed a

[70] In its report concerning 18 Wynford Drive, IQS noted that it had been provided with two invoices for construction costs from Rose & Thistle totaling \$3.55 million, but IQS stated:

Both of the above two invoices can be traced back to the vendor transaction list. *However the co-relation is not indicative of actual costs incurred as further details to substantiate actual backup to the costs incurred are not available.*<sup>19</sup>

[71] As to the management fee of \$355,000 charged by Rose & Thistle for 18 Wynford, IQS opined that the management fee of 6.95% was “in a higher range of what is expected based on the scope of work and industry standards”. IQS ventured that industry standards of between 2.5% and 4.5% “would be more reasonable”.

[72] In sum, the IQS reports did not assist the Respondents in explaining or justifying the construction costs invoiced by Rose & Thistle to the examined Schedule B Companies. The reports did not fill in the evidentiary gap identified by the Inspector. Instead, they highlighted the unwillingness of the Respondents to produce the back-up documentation needed to test and verify the amounts charged by Rose & Thistle to Schedule B Companies for both construction costs and management fees.

### **The reports prepared by BTY Group**

[73] The BTY Group reports disclosed that Rose & Thistle had asked it to provide an opinion on the validity of the hard construction, soft construction and Rose & Thistle management costs for a number of properties “in comparison to other projects”. Although the reports were styled as “audit reports”, they disclosed that the information provided by Rose & Thistle to BTY Group consisted of the budgets, ledgers and summary of management fees for each project. The BTY Group relied on those Rose & Thistle accounting documents and summaries. BTY Group did not review any invoices or cancelled cheques to substantiate the payments noted in the accounting records of Rose & Thistle.

[74] In the case of its analysis of the management fees charged by Rose & Thistle to the projects, BTY Group recorded their understanding that no accounting records existed to substantiate the information provided by Rose & Thistle with respect to the management fees incurred on a project. As a result, the opinions of the BTY Group about the reasonableness of the management fees were based solely on its review of the summary of management costs

---

similar type of affidavit describing work her personal company had performed for Rose & Thistle at 32 Atlantic, 241 Spadina, 1485 Dupont, 153 Eddystone, 450 Pape Avenue, 18 Wynford, 14 Dewhurst, Highway 7 West, 1 Royal Gate, 3765 St. Clair Avenue East, and 1003 Queen Street East.

<sup>19</sup> Emphasis added. In the Supplemental Report to its Fifth Report (July 9, 2014), the Inspector noted that not all of the amounts spent by Rose & Thistle on construction at 18 Wynford were relevant to the tracing analysis because some of them may have been funded by Rose & Thistle drawing on 18 Wynford's condominium reserve fund.

provided by Rose & Thistle for a project as a percentage of the project budget. For example, as noted in its report of the management fee review for the 1185 Eglinton East (Bannockburns) project:

We have not been privy to the calculation of the costs noted in this section and we acknowledge that there are no accounting records in place to justify the costs noted as being incurred on the project. Our opinion as to the reasonableness of the costs incurred to date is based on our experience of working on projects of a similar type and nature across several provinces in Canada.

The BTY Group, using its knowledge of other similar projects in the market, performed a comparative analysis which ranked each category of costs identified in the project's accounting summaries as either "not in line with", "in line with", or "below" current market conditions for those types of costs.

[75] As can be seen, the BTY Group reports did not examine whether costs recorded in the Respondents' accounting records for a project were in fact incurred, including whether costs included in invoices from Rose & Thistle to a Schedule B Company had been incurred. Put another way, the BTY Group reports assumed the accuracy of the accounting records of Rose & Thistle and the Schedule B Companies.

[76] In the Supplement to its Fifth Report, the Inspector offered the following comments on the cost consultant reports prepared by the BTY Group:

[T]he fundamental question relating to the Rose & Thistle Invoices is whether Rose & Thistle actually performed the invoiced work and is entitled to the claimed payment. All but one of the cost consultant reports offered by the Respondents does not address this issue at all. The exception relates to the property at 32 Atlantic...

In particular, the BTY reports essentially compared the costs in Rose & Thistle's budget and accounting ledgers to the work that Rose & Thistle said it performed. BTY appears to have assumed that Rose & Thistle performed the relevant work and incurred the costs associated with it...

Since all of BTY's information appears to originate in the books and records of Rose & Thistle, the BTY reports do not contribute anything meaningful to the analysis of whether those books and records are accurate. BTY compares the assumed cost of the work against its understanding of market rates for the same work but it does not assess whether the work was actually performed. As a result, in the Inspector's view, the BTY reports do not assist the Inspector's analysis of what work Rose & Thistle performed on each property and what payment it is entitled to for that work.

[77] Based upon my review of the reports prepared by the BTY Group, I accept the Inspector's conclusion that the reports do not contribute anything meaningful to the analysis of whether the books and records of Rose & Thistle are accurate nor do they contribute anything

meaningful to the inquiry into the accuracy, validity or reasonableness of the invoices rendered by Rose & Thistle to the Schedule B Companies. As was the case with the IQS reports, the BTY Group reports did not fill in the evidentiary gap noted by the Inspector. That rendered the BTY Group reports of little probative value to the issues in dispute.

#### **A.5 Issues raised in cost consultant reports on specific Schedule B Properties**

[78] The frailty and unreliability of the invoices rendered by Rose & Thistle were illustrated by the analysis of the invoices rendered for three specific Schedule B Properties.

##### **Bannockburn (1185 Eglinton)**

[79] Bannockburn acquired the property at 1185 Eglinton Avenue East on December 17, 2010. The Bannockburn development was intended to consist of two residential condominium towers with a block of townhouses. Demolition of the previous property on the site was performed, but no other work took place.

[80] BTY Group reviewed the Rose & Thistle accounting ledger for hard construction costs on the project. The Inspector reported that on December 31, 2010 Rose & Thistle issued an invoice to Bannockburn in the amount of \$467,719.60 for services provided between December 7 and 31, 2010 – i.e. the invoice included the 10 day period prior to the acquisition of the property. The Rose & Thistle invoice included items for demolition disposal, development approval expenses and project management fees. In the Supplement to its Fifth Report the Inspector stated:

The amount of this invoice matched exactly the amount transferred to Rose & Thistle from Bannockburn. Moreover, Bannockburn did not purchase 1185 Eglinton Avenue until December 17, 2010, ten days after the invoice shows that work commenced. In her email commenting on the Fifth Report, Ms. Walton explained that Rose & Thistle engaged consultants and began work on a property before the purchase of that property closed.

The amounts listed on the December 31, 2010 invoice from Rose & Thistle to Bannockburn cannot be reconciled to the transaction list appended to the [BTY Group] Bannockburn Report. In particular, there are no demolition costs and less than \$25,000 in development costs recorded on the ledger provided to BTY for the period prior to December 31, 2010.

##### **30 Fraser Avenue; 7-15 Fraser Avenue**

[81] Fraser Properties Corp. owned land located at 30 Fraser Avenue in Toronto; Fraser Lands Ltd. owned the adjacent property at 7-15 Fraser Avenue. Dr. Bernstein made an equity contribution of \$16,024,960 to Fraser Properties. As early as its First Report, the Inspector had reported:

Fraser Properties transferred \$10,281,050 to Rose & Thistle and received transfers of \$1,215,100 from Rose & Thistle. Rose & Thistle retained \$9,065,950 paid by Fraser Properties.

[82] In its report the BTY Group stated that the Fraser Avenue properties housed existing one and two story buildings, with the plan being to renovate the existing buildings and construct two new commercial buildings. The BTY Group reviewed and reported on the accounting ledgers of Rose & Thistle. In the Supplement to its Fifth Report the Inspector stated:

Rose & Thistle provided the Inspector with invoices to Fraser Lands Ltd. totaling \$300,896 and invoices to Fraser Properties Ltd. totaling \$1,598,580...

It appears that the ledger provided by Rose & Thistle to BTY does not support the amounts invoiced to Fraser...

Rose & Thistle received transfers of \$9,080,850 from the Companies that own the Fraser Property, issued invoices totaling \$1,899,477 with respect to alleged work performed on the Fraser Property and provided BTY with records showing that it had actually incurred expenses totaling \$395,532 in respect of the Fraser property.

#### **1485 Dupont**

[83] In its report on the property at 1485 Dupont (Dupont Developments) the BTY Group stated that the accounting ledgers provided by Rose & Thistle showed hard construction cost bill payments to contractors of \$805,036.20 and soft construction costs payments to contractors of \$113,383.91. As was the case in all of its reports, the BTY Group stated that it had not undertaken a review of invoices or cancelled cheques to substantiate the payments noted in the ledger as paid. In the Supplement to its Fifth Report the Inspector stated:

The Inspector also notes that Ms. Walton's construction cost figure does not appear to account for amounts that are owed to contractors but not paid. For example, the Respondents delivered an affidavit of Yvonne Liu stating that Rose & Thistle completed various construction work on the property at 1485 Dupont Avenue ("the DuPont Property"). Construction liens in the aggregate amount of \$821,297 have been registered against the DuPont Property. The Inspector has not evaluated the validity of these lien claims. However, the existence of substantial lien claims in respect of DuPont undermines the assertion that funds transferred to Rose & Thistle from the [Schedule B] Companies were used to pay for construction at DuPont.

#### **A.6 Ms. Walton's comments on the cost consultant reports**

[84] In her June 21, 2014 affidavit, Ms. Walton commented on each of the reports prepared by the cost consultants and she gave general descriptions of the work performed on each property. Notwithstanding that Ms. Walton spent extensive time in her affidavit dealing with each property, she did not append to her affidavit the back-up documentation to support the amounts

charged by Rose & Thistle to each project which the Inspector had been requesting since last October.

#### **A.7 Conclusion on the Rose & Thistle invoices**

[85] Ms. Walton deposed that “as confirmed by the third party cost consulting reports, the value of all work completed by Rose and Thistle has been confirmed”. In her Factum she pointed to the cost consultant reports as establishing that Rose & Thistle had spent specific amounts on construction costs. The IQS and BTY Group cost consultant reports do not allow any such conclusion to be drawn – they dealt only with the amounts which were recorded in the books and records provided by Rose & Thistle to the cost consultants without providing any independent audit or verification of the accuracy or validity of those amounts.

[86] In paragraph 10 of the October 25, 2013 Order of Newbould J. the Respondents were required to “provide forthwith a full accounting of *all monies* received, disbursed, owed to and owed from the Schedule B Corporations and The Rose & Thistle Group Ltd. since September, 2010 to the present.” That order required the Respondents to account for all monies owed by Schedule B Companies pursuant to invoices rendered by Rose & Thistle. The Waltons have failed to do so. The Waltons have left unanswered the repeated demands of the Inspector for documentation to back-up and support those invoices, and Ms. Walton has filed cost consultant reports which assumed the accuracy of those invoices, instead of providing an independent audit of their accuracy.

[87] Rose & Thistle no doubt provided some construction and maintenance work for the Schedule B Companies, but the Waltons bore the burden of establishing the validity and accuracy of the invoices which Rose & Thistle rendered for those services. Not only have they failed to do so, but one can only conclude from the refusal of the Waltons over the past nine months to provide back-up for the Rose & Thistle invoices – both to the Inspector and to their own cost consultants - that back-up for the full amounts of those invoices simply does not exist.

[88] I therefore accept the view of the Inspector expressed in its Fifth Report, and I find that the Respondents have not produced the documentation needed to perform a detailed reconciliation of the alleged construction and maintenance expenses to the cash transfers to determine whether those transfers related to construction and maintenance work that Rose & Thistle actually performed for Schedule B Companies.

[89] I make a similar finding in respect of the management fees charged by Rose & Thistle. Those fees were charged as a percentage of the construction costs incurred. Without an accounting of the accuracy of the construction costs actually incurred, an assessment of the reasonableness of the management fees is not possible. However, I will accept the reconciliation of management fees in the amount of \$1 million reached by the Inspector with the Respondents for revenue-producing properties as reported in the Inspector’s Third Report.

[90] Taken together, those two findings mean that of the \$30.6 million in invoices rendered by Rose & Thistle to the Schedule B Companies, the Respondents have established the validity and reasonableness of only \$1 million of them – i.e the reconciliation relating to management fees for revenue-producing properties. The Respondents have failed to prove, on the balance of probabilities, that the remaining invoices covered work or services actually performed by Rose & Thistle for Schedule B Companies, notwithstanding that the information needed to do so remained in the possession and control of the Respondents.

**B. Placing two mortgages on the Don Mills Road Schedule B Properties without the Applicants' consent**

[91] On July 31 and August 1, 2013, two mortgages of \$3 million each were registered against the Schedule B Properties at 1450 Don Mills Road and 1500 Don Mills Road. Notwithstanding that the agreements between the parties for these properties required that any decisions concerning the refinancing of the properties required the approval of Dr. Bernstein, Norma Walton did not tell Dr. Bernstein that the mortgages were placed on the properties. In his November 5 Reasons appointing a receiver, Newbould J. dealt with those mortgages:

[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.

...

[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.

[92] The Respondents appealed the November 5 Order to the Court of Appeal; Norma Walton represented herself on the appeal. She submitted to the Court of Appeal that Newbould J. had erred in describing her involvement in the two unauthorized Don Mills mortgages as “theft”. In rejecting that argument the Court of Appeal stated:

We also do not accept that the application judge’s use of the word “theft” is necessarily a mischaracterization of some of the conduct of Ms. Walton. However, even if the word “theft” is considered inappropriate given its criminal connotation, Ms. Walton’s own affidavit acknowledges a knowing misappropriation of funds in respect of at least one property. Whatever one might choose to call that conduct, it provided powerful evidence

that Dr. Bernstein's interests in the property were being unfairly prejudiced by the conduct of the Waltons. The application judge's use of the word "theft" does not, in our view, taint his factual findings or the manner in which he exercised his discretion.<sup>20</sup>

[93] In her Factum on these motions Ms. Walton stated that "there is no question that the borrowing of \$6 million from the Don Mills properties was contrary to the contracts between Walton and Bernstein". However, she filed an affidavit in which she sought to correct "a fundamental misconception that has pervaded this litigation from the beginning concerning my knowledge of the payment of funds from the \$6 million of mortgages." Ms. Walton deposed:

What I want to make clear, though, is that I never knew the sum of \$2,161,172 had been ultimately paid out to me and my companies from that \$6 million until after the Inspector completed his work. That complete lack of knowledge or intention was not made clear in the October 31 affidavit I filed and as such I am correcting that now...

In her affidavit Ms. Walton blamed the inadequacy of the Respondents' accounting software at the time, and she contended that at the time of the Don Mills Road mortgages she made "the assumption that the Bernstein-Walton properties were funding the Bernstein-Walton properties and the non-Bernstein properties were funding the non-Bernstein properties."

[94] For several reasons I do not accept Ms. Walton's explanation.

[95] First, Ms. Walton offered no new evidence on the point that was not before Newbould J. or the Court of Appeal, apart from her denial that she knew about the payments out.

[96] Second, Ms. Walton's contention that she had assumed the Bernstein properties were only funding Bernstein properties flies in the face of the overwhelming evidence presented by the Inspector that when most funds were advanced into the Schedule B Companies by the Applicants, the Respondents immediately transferred them out to Rose & Thistle and, in many cases, to Schedule C Companies. Throughout these proceedings Norma Walton has presented herself to the Court, through her affidavits and through her submissions, as the person who was in charge of the entire enterprise, whether it be the operation of Schedule B Companies, Rose & Thistle or the Schedule C Companies. In paragraph 38 of her June 21, 2014 affidavit, Ms. Walton clearly acknowledged that she was the one who had managed the jointly owned portfolio of Schedule B Properties. On her cross-examination Ms. Walton admitted that she had authorized the transfer of monies out of the Schedule B Companies to Rose & Thistle, including by getting on the computer and making electronic transfers herself.<sup>21</sup>

---

<sup>20</sup> 2014 ONCA 428, para. 12.

<sup>21</sup> Cross-examination of Norma Walton conducted July 8, 2014, QQ. 95-96.

[97] Her husband, Ronauld Walton, did not file an affidavit in these proceedings, nor did the Chief Financial Officer of the Rose & Thistle group of companies, Mario Bucci.<sup>22</sup> Their failure to file evidence is most significant, and I infer from that failure that neither Ronauld Walton nor Mario Bucci could offer evidence which would assist the Respondents in establishing a defence to the Applicants' allegations. Nor have they stepped forward to contend that the improper transfers of monies out of the Schedule B Companies were the result of directions or orders given by someone other than Norma Walton.

[98] Third, on her July 8, 2014 cross-examination Ms. Walton admitted that she was the one who had provided the Devry Smith Frank law firm with instructions on the two Don Mills Road mortgage transactions,<sup>23</sup> including directing that the proceeds from the Don Mills mortgages be paid into the Rose & Thistle bank account.<sup>24</sup> Those admissions support a finding, which I make, that Ms. Walton knowingly directed the proceeds from the two Don Mills mortgages to be paid into the Rose & Thistle bank account and that she did so knowing that such payments would be in breach of the obligations of the Waltons to Dr. Bernstein.

[99] Fourth, Ms. Walton failed to appreciate that in her efforts to remove the moniker of "theft" from her conduct in respect of the two \$3 million mortgages, she only compounded the difficulty of her legal position vis-à-vis the Applicants. In her affidavit Ms. Walton deposed that "every single day transfers between our companies were occurring and there was no visibility with our accounting software as to each company's position vis-à-vis the transfers of funds". Yet, over the course of three years from September 24, 2010 until June 27, 2013, Ron and Norma Walton entered into a series of agreements with the Applicants which contained provisions representing that (i) monthly reports would be made - which implied that the accounting systems used by the Schedule B Companies would be adequate to provide accurate, detailed monthly accountings of the funds advanced to the Schedule B Companies - and (ii) that the Schedule B Company would only be used to purchase, renovate, lease, and refinance the specified property. Also, on an ongoing basis, Norma Walton was representing to Dr. Bernstein that she was able to calculate his financial position in Schedule B Property projects. For example, her April 15, 2012 email to Dr. Bernstein represented that "Spadina will net you \$6.66 million plus accrued interest to repay your mortgages; plus \$1.12 million to repay your capital; plus \$754,000 to pay your profits, for a total of \$8.534 million."

[100] If, as Ms. Walton now deposed, the Respondents' accounting system was inadequate to ascertain the position of each Schedule B Company vis-à-vis the transfers of funds, then by entering into a series of agreements with the Applicants containing those representations, and by

---

<sup>22</sup> As of Ms. Walton's cross-examination on July 8, 2014, Mr. Bucci remained the CFO of Rose & Thistle; Q. 45.

<sup>23</sup> Walton CX, QQ. 72-73.

<sup>24</sup> *Ibid.*, QQ. 74-83.

making such specific representations about financial returns in her periodic updates to Dr. Bernstein, Norma Walton would have engaged in a pattern of deceitful misrepresentation leading the Applicants to believe that the Respondents knew what was happening with the monies advanced, when they did not because of the lack of visibility within their accounting system. In trying to concoct an implausible excuse for her conduct concerning the two Don Mills mortgages, Norma Walton ended up damning her own position.

[101] Fifth, as part of the Don Mills Road mortgage transaction documents Ms. Walton falsely certified that only she and her husband were the shareholders of Global Mills Inc. In fact Dr. Bernstein's company, DBDC Global Mills Ltd., was a 50% shareholder. Ms. Walton testified that Dr. Bernstein had instructed her not to disclose his shareholding interest in Schedule B Companies.<sup>25</sup> Ms. Walton produced no documents to support that allegation,<sup>26</sup> and I reject it.

[102] Sixth, in paragraph 101 of her Factum Ms. Walton submitted, in respect of the two \$3 million Don Mills mortgages, that "there was no attempt to hide this and everything was completely transparent on the books and records of our companies. The Inspector found it easy to trace exactly what had happened to this money given that transparency." That was a breathtaking statement by Ms. Walton, and it demonstrated her continued willingness to distort the truth. In fact, Ms. Walton had given no prior notice to Dr. Bernstein about her intention to place the two mortgages on the Don Mills properties. She hid that transaction from Dr. Bernstein. There was no transparency. The transaction only came to light as a result of Mr. Reitan's searches of title as part of a larger concern by the Applicants over the Respondents' lack of transparency about what they were doing with the Applicants' funds. Even then, the true facts about the two mortgage transactions did not emerge until Ms. Walton was compelled to disclose them in the early stages of this proceeding. For Ms. Walton to now attempt to spin those facts in her favour shows her complete lack of understanding about what it means to tell the truth. There really is no other way to put the matter.

[103] Her distortion of the facts in respect of the Don Mills Road mortgages echoed her conduct which I described in a June 20, 2014 decision regarding the dispute between two mortgagees on 875 and 887 Queen Street East. I found that Norma Walton had materially misrepresented the true state of affairs to one of the mortgagees, RioCan:

Norma Walton's representation that the lender had deposited the certified cheque - a representation which was re-transmitted to RioCan with the intention that RioCan rely upon it - was misleading in a very material respect. Why? Because the lender,

---

<sup>25</sup> *Ibid.*, Q. 87

<sup>26</sup> Walton did produce a February 25, 2013 email in which she requested Dr. Bernstein to resign as a director for Wynford, Spadina and Eglinton: Walton Motion Record, Vol. 1, p. 123.

Woodgreen, which had deposited the cheque, had immediately returned the funds to Red Door Lands, ostensibly taking the position that its deposit of the cheque had not constituted an acceptance of payment against principal of the mortgage. That sequence of events can be gleaned from the communications which had flowed back and forth between Walton and Kesten about which RioCan knew nothing.<sup>27</sup>

[104] In sum, I do not accept Ms. Walton's continued protestations that she had a complete lack of knowledge that funds from the two \$3 million mortgages on the Don Mills Road properties had been misappropriated to the use of Walton and her companies. The voluminous evidence placed before me on this motion leads me to have absolutely no doubt that Norma Walton not only knew, in detail, what was taking place with the transfer of funds from those two mortgages, but that those transfers took place at the direction of, and under the control of, Norma Walton. Norma Walton knowingly put in place the two Don Mills Road mortgages of \$3 million each without the required approval of Dr. Bernstein and she knowingly misappropriated some of the proceeds of those mortgages to her own personal use and the use of companies which she owned, but in which Dr. Bernstein had no ownership interest.

[105] Unfortunately, Ms. Walton's continued efforts to repair her reputation in respect of the Don Mills Road mortgage transactions by distorting the truth makes it clear to me that it will never be possible to secure from her a true accounting of what happened to the funds advanced by the Applicants.

#### **VI. Issues concerning the Waltons using the Applicants' funds for Schedule C Properties**

[106] The Applicants seek relief against what are called the Schedule C Properties - i.e. properties owned by, or controlled by, Ron and Norma Walton, usually through a company in which Dr. Bernstein had no ownership interest. At the hearing the Respondents disputed including some of the properties in the Applicants' list of Schedule C Properties, contending that they did not own them. I will address that issue in **Section XI.B** of these Reasons. Suffice it to say, at this point of time, that the reason the Applicants included a property in the list of Schedule C Properties against which they sought relief was because the Rose & Thistle website represented that the property was owned by the Waltons or Rose & Thistle.

[107] In its Fourth Report the Inspector identified seven properties owned by Walton Schedule C Companies for which it could ascertain that funds transferred from a Schedule B Company to Rose & Thistle were transferred, in turn, to the Schedule C Company to acquire the property. Froese addressed the Inspector's findings in his report. Froese's high level comment was:

---

<sup>27</sup> 2014 ONSC 3732, para. 21.

We reviewed the tracing performed by the Inspector and agree that some funds from the applicants can be traced through the Rose & Thistle clearing account to Schedule C Companies and that these funds were used for the purchase of properties. However, the tracing performed by the Inspector does not address other funds received by the Schedule C Companies and transferred to Rose & Thistle or transferred through Rose & Thistle to Schedule B Companies.

...

The net result is that, in relation to the seven properties, approximately \$2 million of funds flowed from Dr. Bernstein through the Rose & Thistle clearing account to the Schedule C Company account, where the funds were available at the time the properties were purchased. It should be noted that no funds trace to the purchase of the properties owned by Academy Lands and Front Church, and that less funds trace to the College Lane property than are determined by the Inspector as a result of co-mingling of funds.

I shall consider Froese's comments on the analysis performed by the Inspector for specific properties below.

[108] Mr. Reitan, in his affidavit sworn June 26, 2014, deposed that the following amounts of the Applicants' funds were used to purchase or refinance some of the Schedule C Properties:

- (i) \$330,750 for the purchase of 14 College Street and \$987,165 for the refinancing of 14 College Street;
- (ii) \$1.032 million for the purchase of 3270 American Drive;
- (iii) \$1.6 million for the purchase of 2454 Bayview Avenue;
- (iv) \$937,000 for the purchase of 346E Jarvis Street<sup>28</sup> and the repayment of Dr. Bernstein's mortgage on 346F Jarvis Street;
- (v) \$2.337 million for the purchase of 44 Park Lane Circle, the personal mansion of Norma and Ronauld Walton;
- (vi) \$221,000 for the purchase of 2 Kelvin Street and \$115,950 for the purchase of 0 Luttrell Avenue; and,
- (vii) \$371,200 for the purchase of 26 Gerrard Street East.

---

<sup>28</sup> That is, the unit bearing PIN 21105-0166, the parcel register for which is found at the Inspector's Fourth Report, Tab J.

## A. 14 College Street

### Inspector

[109] College Lane Ltd. was a Walton Schedule C Company. On July 5, 2011, College Lane purchased 14 College Street, Toronto, for \$5.6 million, financed largely by a mortgage in the amount of \$5.5 million. The Inspector conducted two tracing analyses on this property: the first focused on the acquisition of the property in July, 2011, and the second dealt with the discharge of a mortgage on July 4, 2012.

[110] In its Fourth Report the Inspector reported that on June 30, 2011, five days prior to the acquisition of 14 College Street, the opening balance in the Rose & Thistle account was \$18,266. The Inspector reported that the Applicants made equity or mortgage advances to several Schedule B Companies shortly before that date which were quickly followed by transfers from the Schedule B Companies' accounts to the Rose & Thistle account: (i) \$220,650 on June 30 from Bannockburn; (ii) \$223,150 on June 30 from Twin Dragons; (iii) \$91,350 from Riverdale; and (iv) \$56,550 from Wynford Professional Center Limited. The Inspector also noted that on June 30, 2011, \$216,250 was transferred from two Walton Companies to Rose & Thistle, and on June 30, 2011, several transfers out occurred to various Schedule B Companies and Walton Companies from Rose & Thistle. The Inspector reported that it had traced \$330,750 of the Applicants funds into the purchase of the College Lane property on July 5, 2011.

[111] In its April 25 Supplement to the Fourth Report the Inspector reported on its further analysis for this property which led it to conclude that approximately \$983,475, primarily sourced from funds paid to Schedule B Companies by the Applicants (Donalda Developments Ltd. and Fraser Properties Corp.), were transferred to Rose & Thistle and then forwarded to College Lane which, in turn, used the funds to discharge a mortgage which had been granted to Windsor Bancorp on July 4, 2012.

### Froese

[112] In respect of Inspector's report that it had traced \$330,750 of the Applicants funds into the purchase of the College Lane property, Froese stated:

The co-mingling of Schedule C Company funds and Schedule B Company funds does not permit a direct tracing of the \$330,750 to College Lane, *although a portion is traceable*, depending on the assumptions applied to the tracing. (emphasis added)

I accept the Inspector's analysis on this issue. Although there was co-mingling in Rose & Thistle at the time of funds from Schedule B and C Companies, the vast majority of the funds had originated with Schedule B Companies which the Inspector could trace to specific advances of the Applicants' funds.

[113] Froese stated, in respect of the Inspector's report that \$983,475 of Applicants' funds had been transferred to College Lane, that a third-party financing of \$715,650 partially offset that amount and that further post-acquisition (July 5, 2011) transfers between College Lane and Rose & Thistle resulted in a net balance of \$1,070,536 owing from College Lane to Rose & Thistle as at December 31, 2013:

In our view the \$1,070,536 net amount is the appropriate amount owing to Rose & Thistle from Academy Lands (sic). This includes funds co-mingled in the Rose & Thistle clearing account, some of which were funds deposited from Dr. Bernstein to Schedule B Companies.

As I will discuss below, I do not accept giving precedence to the post-acquisition net transfer state of accounts advocated by Froese.

#### **B. 3270 American Drive (United Empire Lands)**

##### **Inspector**

[114] On March 11, 2013, United Empire Lands, a Walton Schedule C Company, purchased 3270 American Drive, Toronto, for \$6.7 million, with mortgages totaling \$5.67 million registered against title.

[115] The Inspector reported that funds totaling approximately \$1.032 million, primarily sourced from funds advanced by the Applicants to a Schedule B Company – West Mall Holdings Ltd. – were transferred to the Rose & Thistle account on March 8, 2013 and, that same day, transferred to United Empire Lands. Those funds could be tied to a \$1.649 million March 7 Applicants' equity investment in West Mall which was transferred in three installments on March 7 and 8 to the Rose & Thistle account. One of those installments was the \$1.032 million transferred on March 8 from Rose & Thistle to United Empire Lands.

##### **Froese**

[116] In his report Froese stated:

The Inspector identified a March 8, 2013 transfer of \$1,032,000 from West Mall Holdings Ltd. to Rose & Thistle that he concluded was sourced from the Applicants funds. On the same day, a transfer of \$1,032,000 of funds from Rose & Thistle to United Empire Lands Ltd. provided the funds to United Empire to close the purchase of the 3270 American Drive property on March 11, 2013.

*We do not disagree with this analysis.* However, it does not take into account funds received from Christine DeJong Medical Professional Corporation for an investment in United Empire that were used in part to fund Schedule B Companies and which were being repaid to United Empire through the \$1,032,000 transfer. (emphasis added)

Christine DeJong brought her own cross-motion and filed an affidavit. She deposed that she thought the payments she was making to United Empire Lands would be used to acquire the American Drive property.

[117] Froese also stated in his report:

Based on the above information, United Empire funds of \$706,850 were transferred to Rose & Thistle and used in part to fund Schedule B Companies. Schedule B funds of \$1,046,000 were transferred through Rose & Thistle to United Empire, in part as repayment of the \$706,850.

### **C. 2454 Bayview Drive (Academy Lands Ltd.)**

#### **Inspector**

[118] Academy Lands Ltd., a Walton Schedule C Company, purchased property at 2454 Bayview Avenue, Toronto, on December 21, 2011 for \$8 million, with a charge in the amount of \$6.2 million registered in favour of Business Development Bank of Canada. Accordingly, \$1.8 million had to be otherwise financed in order to acquire the Bayview property.

[119] The Inspector reported that on December 12, 2011, the amount of \$1.6 million was transferred from the Rose & Thistle Account to Academy Lands.

[120] A week earlier, on December 6, 2011, the closing balance in the Rose & Thistle Account had been only \$97,880. The Inspector reported that on December 5, 2011, the Applicants paid into the account of Royal Agincourt Company, a Schedule B Company, an equity investment in the amount of \$1.782 million. Between December 5 and December 13, 2011, the amount of \$1.73 million was transferred out of that account into the Rose & Thistle bank account. On December 8, 2011, the Applicants made a mortgage advance of \$706,050 to Tisdale Mews Inc., another Schedule B Company, which, on the same day, was transferred from that bank account to the Rose & Thistle bank account.

[121] The Inspector expressed the view that the transfers from the Royal Agincourt account and the mortgage advance from the Tisdale Mews account to Rose & Thistle were the primary sources of the funds for the transfer of \$1.6 million to Academy Lands on December 12 which, in turn, funded the acquisition of 2454 Bayview on December 21, 2011.

#### **Froese**

[122] Froese made several comments about the Inspector's analysis. First, Froese stated:

*We agree that \$1.6 million and \$110,350 traced to Academy Lands. However, these funds were fully returned to Rose & Thistle during the period of the Inspector's analysis in the following two days. This is an example of a "snapshot" tracing being accurate in*

and of itself but not reflecting relevant transactions within several days of the period selected by the Inspector. (emphasis added)

Froese concluded: "Accordingly Academy Lands did not retain any funds from Dr. Bernstein in December 2011 when it purchased 2454 Bayview."

[123] I am not prepared to accept that statement. Gaps in the evidence do not permit the making of such a forceful assertion. Let me explain why.

[124] A review of the Academy Lands bank account statement for the month of December, 2011 certainly shows that the December 12 "transfer in" of \$1.6 million from Rose & Thistle was the main source of the \$1.986 million balance which existed on December 20, the day before the acquisition of the Bayview property. The \$1.986 million was withdrawn by way of a certified cheque on December 20. The next day – the day of closing - an identical amount was deposited "at the counter" back into the Academy Lands account. The identity of amounts of the December 20 withdrawal and December 21 deposit back-in would support an inference, which I draw, that the same money withdrawn on December 20 was re-deposited the following day into the Academy Lands account.

[125] On December 21 – the day of closing - there was a transfer of \$322,800 from the Academy Lands account to the Rose & Thistle account. Unfortunately, neither the Inspector's report nor the Froese report investigated the specific use of those funds. The Froese Report did attach the Rose & Thistle bank statement which showed that the \$322,800 deposit was the source for over a dozen payments of various amounts over the course of that day which reduced the account's balance to just slightly more than \$30,000. I was not pointed to evidence which would explain those various transfers out of the Rose & Thistle account, specifically whether they had anything to do with payments made on the closing of the purchase of the Bayview property.

[126] Froese also stated that they had been informed that the vendor of the Bayview property, Dibri Inc., had provided \$1.75 million of financing to Academy Lands in an unregistered vendor take-back mortgage that was not registered until 2014: "As a result, little or no funds were required to close the purchase of the property." On this point, I have reviewed Exhibit 2 to the Froese Report. It does not contain a statement of adjustments for the closing of the acquisition of Academy Lands and the copy of the charge is obviously a mere draft. The other closing documents contained in Exhibit 2 did not refer to a vendor take back mortgage.

#### **D. 346 Jarvis, Unit E (1780355 Ontario Inc.)**

##### **Inspector**

[127] The tracing analysis performed by the Inspector in its Fourth Report traced parts of two April 15, 2013 advances by the Applicants – \$1.286 million into Dewhurst and \$1.452 million into Eddystone – into the bank account of Rose & Thistle (\$641,500 and \$866,700 respectively).

The Inspector reported that transfers to Schedule C Companies and Ms. Walton from Rose & Thistle around that time amounted to \$1.194 million consisting of \$937,000 to 1780355 Ontario, \$111,550 to Plexor Plastics (a Walton company) and \$110,000 to Norma Walton.

[128] The Inspector reported that shortly after the transfers totaling \$937,000, Norma and Ron Walton purchased a property at 346E Jarvis, Toronto, using 1780355 Ontario Inc.

#### **Froese**

[129] Froese stated that he agreed with the Inspector that \$937,000 traced through the Rose & Thistle clearing account to 1780355 Ontario. Froese stated that as of December 31, 2013 the net amount owing to Rose & Thistle by 1780355 Ontario was \$496,897. That led Froese to state:

*In summary, we agree with the Inspector's tracing of \$937,000 of Dr. Bernstein's funds through Schedule B Company accounts to the Rose & Thistle clearing account and to 178 Inc. In our view, however, the \$496,897 net amount owing from 178 Inc. to Rose & Thistle is the appropriate amount to consider owing to Rose & Thistle from 178 Inc. (emphasis added)*

#### **E. 44 Park Lane Circle**

##### **Inspector**

[130] The Waltons own a large mansion in the Bridle Path area of Toronto on 44 Park Lane Circle which they acquired on June 26, 2012 for \$10.5 million. Two mortgages totaling \$8 million were registered against title that day.

[131] On June 25, 2012, Rose & Thistle transferred \$2,584,850 into Ms. Walton's personal account and that day she transferred \$2.5 million to acquire 44 Park Lane Circle. The \$2,584,850 transfer was largely sourced from (i) a June 15 equity investment by the Applicants of \$2,320,963 into Red Door Developments (875 Queen St. East) which was transferred that same day to Rose & Thistle and (ii) a June 25 \$675,000 equity investment made by the Applicants in respect of 1450 Don Mills which was deposited directly into the Rose & Thistle account.<sup>29</sup>

##### **Froese**

[132] Froese did not dispute the Inspector's analysis concerning the use of the Applicants' advance to Red Door Developments; Froese did not address the advance to 1450 Don Mills.

---

<sup>29</sup> On June 25, 2012, two of the deposits made into the Rose & Thistle bank account were for \$675,000 and \$1.662 million; they were followed immediately by a transfer out of \$2.337 million.

### **Evidence of Ms. Walton about the acquisition of the property**

[133] In her June 21, 2014 affidavit, Ms. Walton explained how she and her husband came to own the property at 44 Park Lane Circle. She deposed:

We purchased the 6.2 acre property at 44 Park Lane Circle in June 2012 for \$10.5 million with the intention of making money on the property, similar to our last house we bought at 92 Truman<sup>30</sup> and similar to the commercial properties we purchase on a regular basis. It was never our intention to remain in the residence long-term, and we lived there with our four children through major renovations to save living costs and expenses.

Looking at the marketing brochure prepared by a realtor retained by the Respondents for a potential sale of 44 Park Lane Circle – Exhibit SS to Ms. Walton’s June 21, 2014 affidavit – it is difficult to be moved by Ms. Walton’s protestations of the hardship of living through renovations. The pictures of the house show a palatial mansion finished to the highest standards with only the best of luxury amenities.

[134] Ms. Walton candidly admitted that she and her husband had used some of the money provided by Dr. Bernstein for the 875 Queen Street East property to acquire their residence at 44 Park Lane Circle:

We used the proceeds of sale provided by Dr. Bernstein to us when he bought into our 875 Queen Street property. We had a cost base of \$6.65 million and he bought in at a price of \$9.5 million. The \$2.215 million he invested to purchase 50% of the shares in 875 Queen Street East was used by us to fund the purchase of 44 Park Lane Circle, as this money was due to us, such money representing the equity we had created in the property and disclosed to Dr. Bernstein prior to his purchase. This money was not to be used to complete the Queen Street project as it was part of the purchase price for Dr. Bernstein to buy in.

As Ms. Walton clarified in her July 3, 2014 affidavit, they had invited Dr. Bernstein to buy into that project “many months after we had contracted to buy” the property, not after they had actually bought the property. In fact, as her June 8, 2012 email to Dr. Bernstein disclosed, Ms. Walton only had the property under “conditional contract” at the time she solicited an investment from him.

[135] In its Third Report dated January 15, 2014, the Inspector set out the explanation it had received from Walton for the 875/887 Queen Street East transaction:

---

<sup>30</sup> The Waltons sold their 92 Truman house about a year after they had acquired the Park Lane Circle.

From June 15 to 25, 2012, Rose & Thistle transferred the \$2.3 million paid by Dr. Bernstein to itself and established an inter-company receivable due from Rose & Thistle to Red Door in that amount. Ms. Walton subsequently delivered an invoice dated June 30, 2012... that purported to charge fees to Red Door in the amount of approximately \$2.1 million effectively offsetting the inter-company debt. Ms. Walton subsequently advised the Inspector that the purpose of the transaction was to adjust her equity to draw and the agreed-upon increase in value between the time she purchased the company and Dr. Bernstein's buy-in. An adjustment to Ms. Walton's equity account on the books of the company has been recommended by the company's external accountant. The Inspector questioned the propriety of Rose & Thistle delivering an invoice purportedly charging fees as a mechanism to reflect a distribution of equity to a shareholder. Upon being challenged by the Inspector, Ms. Walton reversed the invoice and reinstated the receivable due from Rose & Thistle. In addition, an increase was recorded to Ms. Walton's equity on the balance sheet adding approximately \$2.2 million as a fair market value adjustment. The Inspector notes that paragraph 13 of the agreement between the parties provides that equity is to be distributed to the shareholders only after the property is developed and sold. The receivable due from Rose & Thistle remains outstanding and Ms. Walton has yet to explain the basis upon which Rose & Thistle removed cash from this company to create the receivable in the first place.

[136] I do not accept Ms. Walton's contention that they were entitled to use Dr. Bernstein's equity contribution to 875 Queen Street East to fund the acquisition of their Park Lane Circle residence. Her explanation does not accord with the representations which were made in the June 25, 2012 agreement between Norma Walton and Ron Walton, on the one part, and Dr. Bernstein, on the other, for the Queen Street East properties. Attached to that June 25, 2012 agreement was a table setting out the capital required for the project. The table recorded total capital required of \$11.64 million. Included in that required capital was \$2.215 million for "development monies invested to date". The chart represented that three sources of funds would be used to satisfy the required capital: (i) a \$7 million mortgage; (ii) \$2.32 million from Dr. Bernstein; and, (iii) \$2.32 million from Ron and Norma Walton.

[137] In her evidence, Ms. Walton seemed to suggest that the reference to the required capital of \$2.215 million for "development monies invested to date" somehow signaled to Dr. Bernstein that when he signed the agreement he knew, or should have known, that the Waltons would extract some "earned equity" from the project. Ms. Walton canvassed this point with Dr. Bernstein on her cross-examination of him which led to the following exchange:

Q. 1811. Ms. Walton: I'm going to suggest to you that this email, coupled with this statement, shows that your buy-in to the Queen Street property was at a price that was higher than the cost base because of the work that the Walton Group had done on the property in the two years prior that they had it under contract?

A. Dr. Bernstein: My agreement to purchase in was at the cost of purchasing the properties and the cost out-of-pocket of monies spent or to be spent to get to the closing. That is what it was for.

Q. 1812: Dr. Bernstein, I know you're saying that now, but did you ever say, "Norma, I like the project, but I want to be in at the purchase price and I don't want to pay any development monies of 2.215 million?"

A: No, because I took this to say that you spent \$2.215 million in bringing the property to where it was.

Q. 1813: Did you do any due diligence on that 2.215 million?

A: I trusted you and your comments and your documentation that you spent that money.

Q. 1814: Okay, but you...

A: Did I ask you to verify it? No. Did I trust you? Yes, I did.

Q. 1815: So you bought into the property understanding that there was already \$2.215 million of value inherent in the purchase price?

A. Absolutely not. I bought into the property because it says here you spent \$2.215 million to that point or that will have been spent with the closing, along with legal fees and land transfer tax, municipal and Ontario land transfer tax and other fees and disbursements of \$65,000. That's what I bought into.

...

Q. 1817: Let me rephrase. Are you unhappy that you agreed to buy in at nine and a half million dollars?

A: If the circumstances are all in place... Are you asking me about today?

Q. 1818: Yes

A: From my understanding today, you didn't spend \$2.215 million. From my understanding today, you did not secure Red Door to do anything and move value. From my understanding today, what you told me here is not true.

[138] Dr. Bernstein testified that when he invested in the Queen Street East project he was not aware that he was not buying in at the original cost base of the property, as contended by Ms. Walton.<sup>31</sup>

[139] Section 4 of the Queen Street East agreement provided that Dr. Bernstein wished to own 50% of the shares in the companies, Red Door Developments Inc. and Red Door Lands Ltd., in exchange for providing 50% of "the equity required to complete the project". Section 4

---

<sup>31</sup> Bernstein CX, QQ. 1752-3; 1811.

stipulated that “[T]he company will issue sufficient shares such that Bernstein has 2,320,963 and Walton has 2,320,963 voting shares of the same class”. Section 4 stipulated that Dr. Bernstein would receive shares issued from the company’s treasury, not acquire shares from the Waltons which were already issued and outstanding. Both Ron and Norma Walton are lawyers; I have no doubt that they understand the basics of corporate law.

[140] Section 7 of the agreement dealt with the equity contributions - Dr. Bernstein was required to provide his by June 20, 2012, and the Waltons were required to provide theirs “in a timely manner as required as the project is completed”.

[141] Section 15 of the agreement specifically dealt with the use of funds advanced to the Red Door Companies:

The Company will only be used to purchase, renovate and refinance the property at 875 and 887 Queen Street East, Toronto, Ontario or such other matters solely relating to the Project and the Property.

[142] As to the ability of the parties to extract their capital from the Queen Street East project, Section 13 stated:

Once the Project is substantially completed to the point that all of the Property has been sold, both parties will be paid out their capital plus profits and Walton will retain the company for potential future use.

[143] Norma Walton deposed in paragraph 51 of her June 21, 2014 affidavit that the money she and her husband had extracted out of the Red Door Companies following Dr. Bernstein’s advance of equity was money which “was due to us, such money representing the equity we had created in the property and disclosed to Dr. Bernstein prior to his purchase”. In her July 3, 2004 affidavit she contended that “the increase in value from the time we contracted to purchase to the time we invited Dr. Bernstein to partner with us was ours alone as we were the sole owners of the company at that time.” Those assertions are flatly contradicted by the plain language of the agreement with Dr. Bernstein to which Ron and Norma Walton put their signatures. Also, the plain language of the agreement flatly contradicted her statement that Dr. Bernstein’s “money was not to be used to complete the Queen Street project as it was part of the purchase price for Dr. Bernstein to buy in.”

[144] Moreover, in her June 8, 2012 email to Dr. Bernstein soliciting his investment in the property, Norma Walton made no mention of her intention to use his investment to fund the Waltons’ “extraction of equity” so that they could buy a home on Park Lane Circle.

[145] Based upon Norma Walton’s June 21, 2014 evidence, I can only conclude that when Norma and Ron Walton signed the June 25, 2012 agreement with Dr. Bernstein for the 875/887 Queen Street East project, they fully intended to use the funds advanced by Dr. Bernstein to

fund, in part, their own acquisition that day of their 44 Park Lane Circle personal residence. They did not disclose to Dr. Bernstein their intended use of his funds. To the contrary, in the agreement they signed with him on June 25, 2012, they led Dr. Bernstein to believe that the funds he advanced would be used solely for the project at 875/887 Queen Street East and that neither he nor his co-venturers, Norma and Ron Walton, would be able to withdraw their capital from that project until it had been sold. By signing the agreement with Dr. Bernstein on June 25, 2012, and then proceeding immediately to appropriate the funds he advanced to their own use later that day to acquire their mansion at 44 Park Circle Park Lane Circle, Norma and Ron Walton deceived Dr. Bernstein and unlawfully misappropriated Dr. Bernstein's funds to their own personal use. In short, the Waltons defrauded Dr. Bernstein.

### **Evidence of Norma Walton about the ownership interests of others in 44 Park Lane Circle**

[146] Ms. Walton deposed that she and her husband currently were in the process of severing the 44 Park Lane Circle property into two separate parcels. In her December 17, 2013 affidavit Ms. Walton deposed that the property was owned by her husband and herself and that no shareholders owned an interest in the property. However, on the net worth statement attached as Exhibit "MM" to her June 26, 2014 affidavit, Ms. Walton had divided the property into two parts – 44a and 44b – and listed \$5.77 million in preferred shares invested in "44b" Park Lane Circle. On December 18, 2013 Newbould J. ordered that the Respondents could not deal with 44 Park Lane Circle without further order of the Court.

[147] Mr. Reitan deposed that Ms. Walton must have sworn false evidence on December 17, 2013, or the Waltons were in breach of Justice Newbould's order of December 18, 2013 or Exhibit MM to Ms. Walton's June 26, 2014 affidavit was false.

[148] Based upon a review of the entire record, I think the answer lies in a fourth explanation. In her evidence and at the hearing Ms. Walton went to considerable pains to state that she intended to take care of all of her creditors – except Dr. Bernstein – because she had promised to make good on their investments as preferred shareholders in various Schedule C Companies which no longer possessed any equity to pay their shareholders. Many of the affidavits and statements filed by the preferred shareholders stated that they had agreed with Ms. Walton that she could pay them from the proceeds of sale from other Walton properties, even though the Schedule C Corporations in which they had invested lacked any equity to pay them out as preferred shareholders. I conclude that Ms. Walton's reference in her net worth statement to \$5.77 million of preferred shareholders in "44b" Park Lane Circle was her way of saying to the preferred shareholders that she would protect them out of the proceeds of the severed "44b" portion of the Park Lane Circle property once it was sold. That evidence demonstrates that if Ms. Walton thinks it fit to pay a creditor, she will work to do so; if she does not, she won't. In Ms. Walton's worldview, her discretion is absolute, and her creditors must abide by the exercise of her discretion and the preferences she accords certain creditors.

### **Renovations to 44 Park Lane Circle**

[149] The evidence also disclosed that funds originating in a Schedule B Company, Tisdale Mews, were used to fund \$268,104.57 in renovations to the Waltons' 44 Park Lane Circle home. Ms. Walton justified the use of those funds by stating that "Rose & Thistle funded 100% of the \$268,104.57 purchases before any cheques were sent out of the Tisdale Mews account" and, overall, Rose & Thistle transferred more money to Tisdale Mews than it had received from that Schedule B Company. In his November 5 Reasons Newbould J. considered that evidence from Ms. Walton and concluded that "no reasonable explanation has been provided" for the use of the Tisdale Mews funds.

### **F. 2 Kelvin Street and 0 Luttrell Avenue**

#### **Inspector**

[150] 6195 Cedar Street Ltd., a Walton Schedule C Company, purchased 2 Kelvin Street, Toronto, on April 17, 2012, for \$1.8 million, with a mortgage in the amount of \$1.44 million registered against title.

[151] The Inspector reported that funds totaling approximately \$221,000, primarily sourced from funds paid by the Applicants to a Schedule B Company, were transferred to the Rose & Thistle account on April 17, 2012 and, in turn, transferred that day to Cedar. The opening balance in the Rose & Thistle account on April 17 was \$10,285. A \$700,000 equity investment made by the Applicants to Fraser Lands Ltd. that day was transferred out of that Schedule B Company's account to the Rose & Thistle account.

#### **Froese**

[152] Froese stated: "We agree with the Inspector that \$221,000 traces through the Rose & Thistle clearing account to 6195 Cedar, with a limited amount of co-mingling in the clearing account in or around April 17, 2012."

#### **Applicants' evidence**

[153] Mr. Reitan deposed that the property at 0 Luttrell was adjacent to the one at 2 Kelvin Street. A Walton company, Bible Hill Holdings Ltd., purchased the Luttrell property on November 15, 2012. Norma Walton did not disclose the Respondents' ownership interest in that property in her affidavit sworn December 17, 2013; she only later admitted that ownership interest as a result of inquiries from Applicant's counsel. Mr. Reitan also deposed, in paragraph 164 of his June 26, 2014 affidavit, that up to \$152,950 of a \$318,392 November 13, 2012 contribution by Dr. Bernstein to Salmon River Properties Ltd. in respect of 0 Trent Avenue was transferred through the Rose & Thistle account to Bible Hill Holdings Ltd. to finance the

acquisition of O Luttrell. Having reviewed the supporting documents filed by Reitan to reach that conclusion, I accept his analysis.

#### **G. 26 Gerrard Street (Gerrard House Inc.)**

##### **Inspector**

[154] Gerrard House Inc., a Schedule C Company, purchased 26 Gerrard Street, Toronto, on December 20, 2011, for \$5.5 million, at which time two charges were registered totaling \$4.95 million.

[155] The Inspector reported that it appeared that funds totaling approximately \$371,200, primarily sourced from funds paid by the Applicants to the Schedule B Companies, were transferred to the Rose & Thistle account on December 20, 2011 and, that same day, were transferred to Gerrard House.

[156] The opening balance in the Rose & Thistle account on December 20 was \$40,369. Most of three mortgage advances made by the Applicants that day to three Schedule B Companies were transferred to the Rose & Thistle account: \$278,200 from Liberty Village Properties Ltd.; \$39,900 from Riverdale; and, \$120,400 from Wynford.

##### **Froese**

[157] Froese agreed with the Inspector that “\$371,200 traces through the Rose & Thistle clearing account to Gerrard House, with a very limited amount of co-mingling in the clearing account on December 19 and 20, 2011.”

#### **H. The Froese critique of the Inspector’s “snapshot” approach**

[158] In its report Froese criticized the Inspector’s tracing analysis because it was a “snapshot” tracing which, while accurate in and of itself, did not reflect the history of other transfers into and out of Rose & Thistle and a Schedule C Company. Froese expressed the view that the determination of the amount owing to or from Rose & Thistle to a Schedule C Company should be based upon the net amount owing as at December 31, 2013.

[159] The Inspector responded to this criticism in its Fifth Report emphasizing that “the tracing charts at Appendix F are intended to provide a snapshot of activity at a particular point of time. Funds transferred to or from the relevant company outside of the time period are not captured.”

[160] Let me comment on two principles which guided Froese’s analysis – one implied; the other stated. First, Froese made no comment on the propriety of the Respondents’ pooling funds advanced by the Applicants with other Schedule B Company funds, Rose & Thistle funds, Schedule C Company funds, and amounts advanced by third party investors in respect of

Schedule C Companies. Second, Froese was of the view that the appropriate way to approach the issue of who owed whom what involved looking at the state of the various net balance accounts amongst the Schedule B Companies, Rose & Thistle and Schedule C Companies at a particular point of time. In his report Froese frequently used December 31, 2013 as that point of time.

[161] While I understand the technical reasons why Froeses followed those principles when conducting his analysis, the principles did not take into account the critical feature of the context surrounding all of those inter-company transfers of the Applicants' funds – they should never have happened. The contracts between the Applicants and the Respondents contained provisions designed to ensure that funds advanced by the Applicants to a Schedule B Company did not leak out from that company's account and that third-party investment funds did not leak into the Schedule B Companies. The Waltons utterly ignored those contractual obligations, with several consequences:

- (i) Funds advanced by the Applicants to Schedule B Companies in fact ended up going to Walton-owned Schedule C Companies, a fact acknowledged by Froese;
- (ii) The pooling of the Applicants' funds with others by the Respondents has caused significant difficulties in ascertaining precisely what happened with all of the funds advanced by the Applicants. That difficulty was caused by the Respondents systematically ignoring their contractual obligations. The Respondents had complete control over all of the funds. The co-mingling of the Applicants' funds with others was a problem solely of the Waltons' making; and,
- (iii) To contend that one should look at the net balances owed between Rose & Thistle and a Schedule C Company at a more recent point of time, rather than focusing on transfers which made available Applicants' funds for Schedule C Companies to acquire properties, ignored the fact that the transfer of Schedule B Company funds to Schedule C Companies at times when a Schedule C property was acquired should never have happened in the first place and that "but for" the transfer of Applicants' funds to Schedule C Companies, the latter would not have been able to acquire the Schedule C Property.

In my view, for the Respondents to use an expert's report to argue that the Inspector's analysis of the tracing of Applicants' funds into Schedule C Companies lacked absolute precision does not help the Respondents' case at all. It amounted to nothing more than chipping away at the edges of inter-company transfers which the Waltons should never have made. It also reinforced the utter failure of the Waltons to discharge the onus on them of explaining precisely what had happened with the Applicants' funds. For the Waltons to be able to rely on net inter-company balances at, say December 31, 2013, in opposition to the Applicants' claims for relief against Schedule C Companies, they would have to demonstrate that all of the Applicants' funds which

were transferred at an earlier point of time into a Schedule C Company to fund its acquisition of a property ultimately found their way back into the Schedule B Company from which they originated and were used only by that Schedule B Company. That the Respondents have not done, or even tried to do. As a result, I do not accept the opinion proffered by Froese that the better way of assessing transfers to Schedule C Companies is to ascertain the net balance owing by or to a Schedule C Company at some point of time long after the Applicants' funds had been made available to the Schedule C Company to acquire a property – a benefit to the Waltons and a detriment to Dr. Bernstein.

### **I. The “trending up” of transfers to the Schedule C Companies**

[162] The Inspector performed an overall analysis of the net amounts transferred from Schedule B Companies to Rose & Thistle and from Rose & Thistle to Schedule C Companies during the period October, 2010 to December, 2013. The net amount transferred from Schedule B Companies to Rose & Thistle was \$23.68 million and the net amount transferred from Rose & Thistle to Schedule C Companies was \$25.37 million. The Inspector stated, in its Fifth Report:

The Inspector's analysis shows a consistently increasing net transfer from the [Schedule B] Companies to Rose & Thistle. In other words, even if some amounts were transferred to the Companies by Rose & Thistle, these returns did not keep pace with the steady flow of funds from the Companies to Rose & Thistle and from Rose & Thistle to the Walton Companies.

[163] In its Fifth Report the Inspector included a chart and graph which compared the net amount of transfers from the Schedule B Companies to Rose & Thistle with the net amount of transfers from Rose & Thistle to Walton Companies for each month from October, 2010, when the Applicants made their first investment, to December, 2013. The Inspector reported:

The graph depicts the net amount transferred as at the end of each month. The graph indicates a steady trend upwards. That is, the net amount transferred from [Schedule B] Companies increased, on a month over month basis for most months. The transfers from Rose & Thistle to Walton Companies increased in most months in a similar ratio....

The timing and quantum of the transfers described above is not consistent with the Respondents' contention that the transfers to Rose & Thistle represent payment for, among other things, more than \$20 million worth of construction work performed by or on behalf of Rose & Thistle for the benefit of the Companies.

If the transfers had been related to construction work, a substantial portion of the funds taken from the Companies would have to have been used to pay construction costs, including contractors (if the work was subcontracted) or suppliers and labor (if the work was performed by Rose & Thistle). Only the profit earned by Rose & Thistle on the construction would have been available for transfer to the Walton Companies. However, throughout the period examined, the amount transferred to the Walton Companies and the amount transferred from the Companies increased at approximately the same pace. In

every month examined, the amounts transferred to the Walton Companies represented a significant percentage of the amount transferred from the Companies. There is no evidence that the Respondents had sufficient resources to fund both the transfers to the Walton Companies and the work shown on the invoices that they have proffered to justify those transfers.

**J. Preferred Shareholders of some Schedule C Companies**

[164] What evidence was filed on these motions to explain the sources of funding available to the Schedule C Companies other than the funds of the Applicants which were transferred by the Waltons out of the Schedule B Companies? Ms. Walton deposed that there was \$14,107,876 of 42 “innocent third party investors’ money” in the Schedule C Companies consisting of preferred shareholders, common shareholders and debtors. A chart summarizing those investments - Exhibit MM to her June 21, 2014 affidavit - only recorded \$7.7 million in investments and it did not provide any back-up documentation to verify the investments.

[165] Ms. Walton also filed affidavits or statements from 30 preferred shareholders in five Schedule C Companies: Front Church Properties, Academy Lands, The Rose & Thistle Group, Cecil Lighthouse and 1793530 Ontario. Each shareholder deposed to the “value” of his or her preferred shares (or in some cases loans) in Schedule C Companies. The particulars are set out in Appendix “B” to these Reasons.

[166] I am not prepared to accept that the “value” each shareholder attributed to his or her shares reflected that actual amount invested by the shareholder. Some of the affidavits strongly suggested that shareholders were including capital appreciation and accrued dividends or distributions in the “value” of their investments. For example, Christine DeJong deposed that she had advanced \$716,906 to United Empire, a Schedule C Company, in January, 2013, and stated that the value of her shares, according to the Respondents, was now \$992,750. However, taking that “value” evidence from preferred shareholders at its highest, it disclosed a “value” of \$8,780,817 attributed by those shareholders to their investments in the five Schedule C Companies.

**K. Summary of findings on transfers of funds to Schedule C Companies**

[167] I accept, in large part, the tracing analysis performed by the Inspector on the Schedule C Companies described above. I find that in the instances identified by the Inspector, in a brief period of time the Waltons directed the transfer of funds advanced by the Applicants from a Schedule B Company to a Walton-owned Schedule C Company, through Rose & Thistle, and the Schedule C Company used those funds to purchase a property. In the result, I find that the following amounts of the Applicants’ funds were used to purchase or discharge encumbrances on Schedule C Properties:

- (i) 14 College Street: \$1,314,225 (\$330,750 + \$983,475);

- (ii) 3270 American Drive: \$1.032 million;
- (iii) 2454 Bayview: \$1.6 million;
- (iv) 346E Jarvis St.: \$937,000;
- (v) 44 Park Lane Circle: \$2.5 million;
- (vi) 2 Kelvin Street: \$221,000;
- (vii) 0 Trent: \$152,900; and,
- (viii) 26 Gerrard Street: \$371,200.

[168] I also accept the following conclusion of the Inspector:

[T]he Inspector has concluded that the Respondents used new equity invested in, and mortgage amounts advanced to, the [Schedule B] Companies by the Applicants to fund the ongoing operations of other Companies and the Walton Companies. Almost every time the Applicants advanced funds to one of the Companies, a significant portion of those funds was transferred to Rose & Thistle. In some instances, funds could be traced directly into a Walton Company. In other instances, funds could not be traced directly because the Applicants' funds were co-mingled with other funds in the Rose & Thistle account. However, the Inspector has concluded that the Applicants' investment in the Companies was a major source of funds for the Walton Companies.

### **C. Other issues concerning Schedule C Properties**

#### **C.1 Galloway Road**

[169] Highland Creek Townes Inc., a Walton company, owned the property at 232 Galloway Road, Toronto. On May 18, 2011, Dr. Bernstein, through his company 368230 Ontario limited, advanced a mortgage loan to Highland Creek. The principal amount of the mortgage was \$4.05 million, advanced in two tranches. The mortgage matured on June 30, 2012. It was guaranteed by Norma and Ron Walton.

[170] Mr. Reitan deposed that his review of the title for the property disclosed that Ms. Walton had caused the discharge of Dr. Bernstein's mortgage in August, 2012 notwithstanding that the full amount of the principal had not been repaid. There was no dispute that the discharge was done without Dr. Bernstein's knowledge, consent or approval. When this discharge was discovered, Dr. Bernstein pressed Ms. Walton to pay out his mortgage on Galloway. Dr. Bernstein emailed Ms. Walton on October 1, 2013, asking what she had done with the \$6 million in mortgages on the Don Mills Road properties and he continued:

You promised to pay out the Galloway mortgage by September 30. I do require, and I did expect the funds. When can this be paid out?

[171] Ms. Walton's email response of the same date ignored that question and, instead, pressed Dr. Bernstein to stop his public litigation and move their dispute into "a private setting immediately". That prompted the following response from Dr. Bernstein:

Dear Norma;

And the \$6M is located \_\_\_\_ ?? \_\_\_\_

And the Galloway mortgage is being paid out on \_\_\_\_ ?? \_\_\_\_

I cannot get answers asking you directly – what other options do I have?

[172] On his July 9, 2014 cross-examination Dr. Bernstein testified that he still had not been paid out on the Galloway mortgage.<sup>32</sup>

[173] Ms. Walton's unilateral discharge of Dr. Bernstein's mortgage on the Galloway property without the payment in full of the amount due under the mortgage provided another example of Ms. Walton's pattern of breaching her contracts with Dr. Bernstein, as well as a pattern of oppressive conduct by Norma and Ronauld Walton, as directors and officers of corporations, against the interests of Dr. Bernstein as a corporate creditor.

## **C.2 30/30A Hazelton**

[174] The Respondents seek court approval to sell 30 Hazelton, a Schedule C Property, to 1659770 Ontario Inc., the corporate profile for which lists Jennifer Coppin as the director and officer. George Crossman, a lawyer at Beard Winter LLP, deposed that in 2009 he had been involved in a real estate transaction in which Jennifer Coppin offered to purchase his client's condominium unit through 1659770 Ontario Inc. Ms. Coppin was charged criminally in respect of that transaction, it being alleged that she had altered the agreement of purchase and sale to inflate the purchase price to secure higher financing. Mr. Crossman deposed that he understood it was a term of Ms. Coppin's probation that she not engage in any further real estate dealings.

## **VII. Explanations Proffered by Ms. Walton for the Use of the Applicants' Funds**

[175] Ms. Walton proffered several explanations for the Respondents' use of the Applicants' funds, some of which I have already considered. Nonetheless, this section will summarize and consider each proffered justification.

---

<sup>32</sup> Bernstein CX, Q. 1198.

**A. Dr. Bernstein was a silent partner and did not insist on the strict observance of the agreements**

[176] A major theme of Ms. Walton's affidavits was that Dr. Bernstein wanted to be a silent partner with the result that over the years he did not insist upon strict compliance with the agreements' reporting obligations. That led Ms. Walton to contend in her factum: "Bernstein acquiesced to Walton managing the portfolio in Walton's sole discretion".

[177] The evidence did disclose that during the initial two years of the parties' business relationship, Dr. Bernstein appeared to be content with receiving only periodic reports from Ms. Walton or answers to specific questions which his accountants posed. As Dr. Bernstein stated on his cross-examination, "I just assumed you were following protocols for our agreements..."<sup>33</sup>

[178] By September, 2012 Dr. Bernstein and his accountants were beginning to ask more pointed questions, including requesting financial statements for the Schedule B Companies. By March, 2013, Dr. Bernstein was requiring the Respondents to secure his approval for payments over \$50,000 from Schedule B Companies as stipulated by the agreements. In June, 2013 Mr. Reitan requested detailed information about Dr. Bernstein's investments and raised specific concerns with Ms. Walton. Although this course of conduct would prevent Dr. Bernstein from relying on the Respondents' failure to provide monthly reports in the early part of their relationship as an event of default under the agreements, Dr. Bernstein most certainly did not waive his entitlement to receive any reports under the agreements. When Dr. Bernstein began to request them, he was entitled to receive them.

[179] The evidence also disclosed that even in September, 2013, as the relationship between the parties was breaking down and Dr. Bernstein was becoming quite vocal in his demand for a proper accounting of his money, Norma Walton was not prepared to adhere to the terms of her agreements with Dr. Bernstein. Those agreements stipulated that no refinancing of a property would take place without his approval. On September 20, 2013, Ms. Walton emailed Dr. Bernstein advising that the \$3.27 million mortgage on 140/150 Queen's Plate Drive was coming due at the end of the month and that she had arranged a new mortgage for \$3.35 million which would close in early October. Ms. Walton had signed the term sheet for the replacement mortgage on September 18, 2013, without first securing Dr. Bernstein's approval. Dr. Bernstein emailed her on September 23 insisting that she comply with the terms of their agreement and obtain his approval for any decisions regarding refinancing before they were made. Ms. Walton's response was telling because it revealed her complete unwillingness to follow the contractual terms which bound her:

---

<sup>33</sup> *Ibid.*, Q. 1318.

We are up against a deadline such that if we do not refinance, Carevest will call our loan. I have been working hard to arrange refinancing and initially we tried to get BDC on board but they won't provide funds without site plan approval. Hence I arranged for Stephen to provide the mortgage. I would assume that is agreeable given the alternative is calling the loan, no?

Even when Dr. Bernstein subsequently agreed to refinance on the basis of a new \$3.27 million mortgage, Ms. Walton proceeded to put in place a mortgage for an increased amount, \$3.35 million.<sup>34</sup>

[180] From this I conclude that Ms. Walton was prepared to ignore not only the contractual language which bound her, but also the express instructions of her co-investor. Instead, Ms. Walton simply did as she saw fit irrespective of her legal obligations.

**B. The pooling of funds was permissible or at least not wrongful**

[181] Ms. Walton deposed that when she was managing the jointly-owned portfolio of companies, she used Rose & Thistle "as a clearinghouse account to smooth cash flow across the portfolio." In its First Report the Inspector recorded the explanation Ms. Walton had provided for the pooling of funds:

Ms. Walton confirmed to the Inspector that equity contributions to, and income received by, the [Schedule B] Companies were centralized and co-mingled in the Rose & Thistle account, which Ms. Walton described as a "clearing house". Ms. Walton provided the following explanations for this practice:

- (a) Since the Properties are at various stages of development, some are cash flow positive and others cash flow negative. The transfers to and from the Rose & Thistle account "smooth out" the cash flow of the companies; and,
- (b) Rose & Thistle does not bill for services that it provides on a regular basis and some transfers were in the nature of payments for services that have been provided but not yet invoiced.

[182] In its Fifth Report (July 1, 2014) the Inspector reported:

The Respondents provided the Applicants with a pro forma setting out the anticipated cost of completing planned development and/or construction on each project. The Applicants invested 50% of the budget shown on the pro forma but these funds were dispersed among the [Schedule B] Companies and Walton Companies. Accordingly, the

---

<sup>34</sup> See the email exchanges at Motion Record of the Applicants, Volume 3, Tab 119.

funds invested by the Applicants in a Company did not remain available to that Company.

Since the Companies did not retain the amounts that the Applicants invested, almost every Company required outside funding in order to complete the work shown on the relevant pro forma. These funds appear to have been drawn in some cases (including those illustrated in Appendix F to the Fourth Report) from new equity investments and mortgage advances by the Applicants. In other words, new advances to one Company appear to have been used to fund the existing obligations of other Companies or Walton Companies.

[183] On his cross-examination Froese stated that the companies managed by the Respondents did not have any controls in place designed to prevent the co-mingling of funds or the movement of funds from Schedule B Companies to Rose & Thistle and on to Schedule C Companies. Froese stated that depending on the arrangement between the parties and the companies, you would expect controls to be in place if the arrangements called for that.<sup>35</sup>

[184] In its Fifth Report the Inspector discussed the consequences of the pooling or co-mingling of funds advanced to the Schedule B Companies by the Applicants:

The Inspector notes that the Respondents' position that they are owed funds by the [Schedule B] Companies is premised on the assumption that every Company is responsible for every other Company's debts to Rose & Thistle. The Respondents assert that if Company A owed Rose & Thistle \$1 million and Company B had \$1 million in its bank account, they were entitled to take payment from Company B for the debt owed by Company A. This is significant since the contract governing investment into each Company provided that the Respondents were to provide equity funding once the Applicants' equity investment was exhausted. *The co-mingling of funds therefore had two important consequences: (i) the Applicants' equity investments were exhausted much more quickly because they were used to fund alleged obligations across the portfolio and not only to fund one Company; (ii) the Respondents were able to delay their own equity contributions by transferring funds from other Companies instead of injecting new equity into the relevant Company.* (emphasis added)

[185] Notwithstanding the voluminous email correspondence from Ms. Walton to Dr. Bernstein reporting on the progress of projects, it was not until June 13, 2013 that she told him that the funds he was advancing to the Schedule B Companies were being pooled amongst those companies, transferred to Rose & Thistle and also transferred to Schedule C Companies, when she responded to Mr. Reitan's June 7, 2013 complaint letter.

---

<sup>35</sup> Froese CX, QQ. 91-96.

[186] The pooling or co-mingling of funds was a critical breach of the obligations which Norma and Ron Walton owed to Dr. Bernstein under their agreements. In her factum Ms. Walton submitted: “It never occurred to Walton that Bernstein would object to the pooling of funds”. I completely reject that submission; it is not in the least credible. One would have thought that the “specific-purpose” clauses contained in each of the agreements for the Schedule B Companies which the Waltons – both lawyers – had signed over the course of three years would have provided Ms. Walton with good reason to think that Dr. Bernstein would object to the pooling of funds since such pooling contravened those agreements. Ms. Walton’s protestation of innocent, but mistaken, belief on this issue simply was not credible.

[187] In addition, based on the evidence adduced I find that:

- (i) The Applicants were not aware that the Respondents were withdrawing funds from the Schedule B Companies’ bank accounts for any purpose other than the costs of the associated property;
- (ii) The Applicants did not know that funds from Schedule B Companies were transferred or diverted to the Rose & Thistle “clearing house” bank account because the Respondents, in particular Ms. Walton, deliberately hid those transfers from the Applicants; and,
- (iii) The Waltons deliberately did not tell the Applicants that they were using funds advanced by the Applicants to Schedule B Companies for their own personal purposes and benefit and for the benefit of the Schedule C Companies which they owned or controlled.

### **C. Production of the general ledgers of the Schedule B Companies**

[188] As an exhibit to her June 21, 2014 affidavit Ms. Walton produced the detailed general ledgers for each of the Schedule B Companies. She viewed the production of the general ledgers as amounting to a full accounting of the Applicants’ funds as previously ordered by this Court. It was not. Those general ledgers had been produced to the Inspector last October. They did not enable an analysis of the Applicants’ funds transferred from the Schedule B Companies to Rose & Thistle, and then to the Schedule C Companies, so they did not satisfy the Respondents’ obligation to provide a full accounting of how the Respondents had used the Applicants’ funds.

### **D. The Respondents previously had provided a full accounting**

[189] Ms. Walton submitted that the Respondents had provided a full accounting of the use of the Applicants’ funds and sought a declaration to that effect. This was an argument which Ms. Walton had made on several other occasions, as summarized in my Reasons of May 20, 2014:

To date the respondents have failed to comply with orders of this Court requiring them to provide an accounting of monies received from the applicants. The trail starts with the October 25, 2013 order of Newbould J. where, at paragraph 10, he ordered "that the Respondents shall provide forthwith a full accounting of *all monies* received, disbursed, owed to and owed from the Schedule "B" Corporations and The Rose & Thistle Group Ltd. since September, 2010 to the present".

In her affidavit sworn December 17, 2013, Walton deposed, in response to the applicants' allegation that she had failed to provide a full accounting, that "I have provided all information/documentation to the Receiver/Manager", and she proceeded to give some details, concluding: "The Receiver/Manager is in possession and control of all financial documents held by the Walton Group in relation to the Schedule B Companies, and all documents related to the Rose and Thistle Group have been provided to him." In his endorsement made January 20, 2014, Newbould J. rejected Walton's contention that the respondents had provided a full accounting. He concluded they had not, and he ordered:

Ms. Walton is to provide the accounting ordered in paragraph 10 of the order of October 25, 2013 no later than January 31, 2014. Delivering records to the Manager is not an accounting.

Notwithstanding that clear finding and further order by Newbould J., in her notice of motion dated March 31, 2014, Walton sought an order that the applicants "clarify what is meant by the term 'a full accounting of all monies received, disbursed, owed to and owed from Schedule 'B' Corporations and The Rose and Thistle Group Ltd. since September 2010 to the present' as found in the October 25, 2013 Order." In her affidavit of that date Walton deposed:

I have heard the Applicants complain a number of times to the Court that I have not provided an accounting as ordered on October 25, 2013. I have sworn an affidavit wherein I explain what I provided by October 28, 2013 to fulfill this requirement.

As noted, back on January 31 Newbould J. held that the respondents had not delivered the ordered accounting and directed them to do so. They have not done so. Moreover, it is not for the applicants to explain the meaning of an order of this Court; that job falls to the judges of this Court. When Walton raised this point at a recent hearing before me, I informed her that a full accounting would involve explaining what had happened to every penny of the money invested by Dr. Bernstein with the respondents. That has not occurred, and that most serious failure by the respondents weighs heavily in considering what part, if any, of the net proceeds of the sale from the Gerrard Street Property should be made available to them for their personal use or benefit.<sup>36</sup>

---

<sup>36</sup> 2014 ONSC 3052, paras. 97-100.

As I have found above, and will discuss further below, the Respondents still have not provided the ordered accounting.

[190] Finally, on this point, in his order dated November 1, 2014, Newbould J. directed the Respondents to pay the Inspector's fees. They failed to do so. In a March 21, 2014 Order Newbould J. directed the Inspector to examine the Respondents about their non-payment of fees. The Inspector commenced his examination of Norma Walton on April 11, 2014. Prior to the examination Ms. Walton had not produced documentation relating to her financial situation; at the examination Ms. Walton gave numerous undertakings to produce such documentation. As of the date of the Inspector's Fifth Report (July 1, 2014), Ms. Walton had fulfilled or partially fulfilled 8 of the 39 undertakings given at her examination. According to the Inspector, the remaining 31 undertakings remained entirely unsatisfied, including the important undertaking to provide copies of bank statements relating to the Walton Schedule C Companies. In its Fifth Report the Inspector stated that Ms. Walton had advised she would answer the balance of her undertakings once she had filed her evidence for the July 16 hearing. At the hearing I inquired whether Ms. Walton had delivered those outstanding undertaking answers. She had not.

#### **E. The charts attached to the June 21, 2014 Norma Walton affidavit**

[191] In paragraphs 10 through to 14 of her June 21, 2014 affidavit, Norma Walton attempted to account for the \$23.68 million in net transfers from Schedule B Companies to the Rose & Thistle Group, and in paragraph 49(1) of her Factum Ms. Walton argued that "everything that was transferred from the jointly owned properties to Rose and Thistle had been accounted for as monies used by Rose and Thistle to purchase, renovate or manage the joint portfolio."

##### **E.1 Construction work billed by Rose & Thistle**

[192] The chart contained in paragraphs 11 and 13 of her affidavit, as well as Tab A to her Factum (which I will call the "Reconciliation Chart"), recorded that \$8.5 million of construction work had been performed by Rose & Thistle for Schedule B Companies between January, 2011 and February, 2012, specifically for the Spadina, Eglinton, Wynford and Atlantic properties. Ms. Walton stated that she had prepared the Reconciliation Chart with the assistance of Mr. Bucci, the CFO of Rose & Thistle; she did not explain why Mr. Bucci had failed to provide any evidence in this proceeding, especially evidence which would provide an accounting of the Applicants' funds.

[193] Ms. Walton deposed that she was unable to complete the analysis for the construction work performed on projects after February, 2012 because she was still awaiting the reports prepared by her cost consultants. That explanation made no sense and I do not accept it. As described above, the cost consultants simply relied upon accounting summaries provided to them by Rose & Thistle. Put another way, the cost consultants merely used information already in the possession of Rose & Thistle to prepare their reports. It therefore makes no sense that Rose &

Thistle would be unable to use information already in its possession to explain the total amount of construction costs which it contended it had incurred on behalf of the Schedule B Companies.

[194] In her Factum Ms. Walton argued that Rose & Thistle was entitled to up to an additional \$17.070 million for construction costs based on the cost consulting reports.<sup>37</sup> I give no credence whatsoever to that argument. On the contrary, I found earlier in these Reasons that the Respondents had failed to account for and to justify the amount of the construction costs invoiced by Rose & Thistle to the Schedule B Companies.

## **E.2 Management fees**

[195] Ms. Walton explained that \$1.183 million of the net transfer could be explained by management fees which Rose & Thistle had billed to the Schedule B Companies. Earlier in these Reasons I accepted the reconciliation between the Inspector and the Respondents of \$1 million in management fees.

## **E.3 Property maintenance costs**

[196] Ms. Walton's Reconciliation Chart also recorded \$2.58 million in property maintenance costs performed by Rose & Thistle. In the Supplement to its Fifth Report the Inspector stated:

Ms. Walton's chart includes property maintenance fees charged to the Properties. The Inspector understands that these costs represent costs incurred by Rose & Thistle on behalf of the [Schedule B] Companies with respect to maintenance of the various Properties. The Inspector has not been provided with back-up documentation in respect of these fees.

I find that the Respondents have not established, on a balance of probabilities, that they incurred such maintenance costs on behalf of Schedule B Companies.

## **E.4 Deposits paid by Rose & Thistle for Schedule B Properties**

[197] The Reconciliation Chart also recorded \$6.657 million in deposits paid by Rose & Thistle for the purchase of Schedule B Properties. The Inspector, in the Supplement to its Fifth Report, stated:

The Inspector understands that in some cases Dr. Bernstein funded the deposits by payments directly into the Rose & Thistle account. Accordingly, Ms. Walton appears to state that the Waltons funded their share of deposits on some properties by drawing funds out of other [Schedule B] Companies. These transfers do not appear to represent payment

---

<sup>37</sup> Walton Factum, paras. 49(f), (g) and (i).

for services rendered by R&T because all such services appeared to be shown elsewhere on Ms. Walton's chart.

Put simply, Ms. Walton's chart, if correct, appears to indicate that Dr. Bernstein funded his share of the listed deposits directly and the Walton's share of those deposits indirectly (since the Waltons used funds that Dr. Bernstein had previously contributed to another company).<sup>38</sup>

[198] Let me express my profound displeasure and frustration at the way the Waltons' "evidence" on this point was developed. Last year the Waltons were ordered to provide a full accounting of the funds advanced by Dr. Bernstein. They failed to do so, as was found by both Newbould J. and myself in earlier reasons. Yet, in her June 26, 2014 Affidavit and her Factum filed July 15, 2014, Ms. Walton, for the first time, argued, through her Reconciliation Chart that Rose & Thistle had paid for \$6.657 million in deposits for Schedule B Properties for which accounting recognition previously had not been given. That spawned a flurry of responding submissions from other parties on the point, both before and after the hearing, ultimately culminating with Ms. Walton massaging a reply chart put in by the Applicants (Mr. Reitan's Schedule "E") to contend that the Waltons in fact had injected \$8.933 million in equity into the Schedule B Companies, an assertion for which the Waltons had adduced no concrete, forensically verifiable evidence!

[199] That is no way in which to perform an accounting.

[200] Since last October the Waltons have been subject to an order of this Court requiring them to account. For eight months they ignored that order. Frankly, what appears on Ms. Walton's Reconciliation Chart should have been put before the Inspector last October so that proper consideration could have been given to the arguments set out in it. I am thoroughly unimpressed by Ms. Walton's last minute effort to "jam through" an accounting. Her breach of the previous accounting order, together with the last minute nature of her accounting attempt, combine to justify a high degree of skepticism towards the arguments embedded in the Reconciliation Chart.

[201] Returning to the property purchase deposits, I would observe that the "back-up" Ms. Walton provided for these deposits at Exhibit B to her June 26, 2014 affidavit in large part consisted of Rose & Thistle bank account statements, certain entries on which bore handwritten asterisks, unaccompanied by any other explanation. I infer that the asterisked entries corresponded with the deposits recorded on Schedule A to her Factum. Her Exhibit B also contained copies of a number of Rose & Thistle cheques, only some of which seemed to have anything to do with deposits for purchases of land. However, Ms. Walton failed to show how

---

<sup>38</sup> Ms. Walton understood that all monies provided by Dr. Bernstein to the Schedule B Companies, whether directly or through Rose & Thistle, would be included in the \$78.48 million "transferred to Rose & Thistle" total.

those payments made by Rose & Thistle were recorded on the books and records of Rose & Thistle and the relevant Schedule B Company, a most material omission in her argument.

[202] In any event, I do not accept Ms. Walton's argument on this point. In Appendix E to its Fourth Report the Inspector reported that for the period under review it had identified \$78.42 million in transfers from Schedule B Companies to Rose & Thistle and \$54.739 million in transfers from Rose & Thistle to Schedule B Companies, for a net transfer of \$23.68 million from Schedule B Companies to Rose & Thistle. Ms. Walton contended, in her July 15, 2014 Factum, that the \$23.68 million in net transfers from Schedule B Companies should be reduced by, or could be partially accounted for by, \$6.657 million in deposits made by Rose & Thistle in respect of Schedule B Properties. According to her Reconciliation Chart, those deposits spanned the period from September, 2010 (Eglinton) to April, 2013 (620 Richmond). Had Rose & Thistle transferred to Schedule B Companies funds for deposits on Schedule B Properties – whether Bernstein funds or non-Bernstein funds – one reasonably would expect that those deposits would have been taken into account in the transfers from Rose & Thistle to Schedule B previously reported by the Inspector because the books and records of Rose & Thistle would have recorded such inter-company transfers. To take them into account again, as Ms. Walton seemed to argue, would amount to double-counting or, as put by the Inspector in the Supplement to his Fifth Report, it would mean that “Dr. Bernstein funded his share of the listed deposits directly and the Walton's share of those deposits indirectly (since the Waltons used funds that Dr. Bernstein had previously contributed to another company)”. In sum, I do not accept Ms. Walton's submission that deposits of \$6.657 million should be recognized to reduce the net transfer amount due from Rose & Thistle to the Schedule B Companies as found by the Inspector.

#### **E.5 Equity withdrawals**

[203] The Reconciliation Chart also recorded \$3.615 million representing a December 2011 and June, 2012 “Dr. Bernstein purchase from Walton in the schedule B” [Tisdale and 875 Queen Street East] of \$1.4 million and \$2.215 million respectively. Ms. Walton deposed that those amounts related to Dr. Bernstein “buying into a company after we had already owned the company for a period of time”. That “earned equity”, according to Ms. Walton, further reduced the net transfers from Schedule B Companies to Rose & Thistle. I do not accept Ms. Walton's submission on that point. I will turn now to the Respondents' “earned equity” argument in which two properties figured prominently – the property at 875/887 Queen Street East held by Red Door Developments Inc. and Red Door Lands Inc. (which I discussed earlier in the context of 44 Park Lane Circle), as well as the Tisdale Mews property at 78 Tisdale Avenue.

#### **875/887 Queen Street East**

[204] In Section VI.E of these Reasons I rejected Ms. Walton's argument that she had been entitled to withdraw \$2.32 million in “earned equity” from funds advanced by Dr. Bernstein for

875/887 Queen Street East and, instead, found that the Waltons had misappropriated to their own personal use on June 25, 2012 funds advanced by Dr. Bernstein to acquire their personal residence at 44 Park Circle Park Lane Circle and, by so doing, Norma and Ron Walton had deceived Dr. Bernstein and engaged in fraud.

### **78 Tisdale Avenue**

[205] In his Third Report dated January 15, 2014, the Inspector set out the explanation it received from Ms. Walton for the Tisdale transaction:

In the case of Tisdale, Ms. Walton purchased the property for approximately \$1.4 million. Rose & Thistle performed development work on the property before Dr. Bernstein invested in it. In the relevant agreement between the parties dated January 11, 2012... Dr. Bernstein bought 50% of the shares of Tisdale based on an agreed-upon value of approximately \$6.7 million. Ms. Walton therefore had one half of that amount, approximately \$3.35 million in equity in Tisdale immediately after Dr. Bernstein's investment. Rose & Thistle delivered an invoice to Tisdale dated January 1, 2012... that purported to charge fees to Tisdale in the amount of approximately \$4.4 million. Ms. Walton subsequently advised the Inspector that the purpose of the transaction was to effectively adjust her equity to draw out the increase in value between the time she purchased the company and Dr. Bernstein's buy-in. An adjustment to Ms. Walton's equity account on the books of the company has been recommended by the company's external accountant. The Inspector questioned the propriety of Rose & Thistle delivering an invoice purportedly charging fees as a mechanism to reflect a distribution of equity to a shareholder. Upon being challenged by the Inspector, Ms. Walton reversed the invoice and an increase was recorded to Ms. Walton's equity on the balance sheet adding approximately \$4.4 million as a fair market value adjustment. The Inspector understands that Ms. Walton relies upon this increase in her equity account as a basis to explain several expenses that she caused Tisdale to pay. The Inspector notes the paragraph 13 of the agreement between the parties provides that equity is to be distributed to the shareholders only after the property is developed and sold.

[206] I do not accept Ms. Walton's explanation that she was entitled to treat funds advanced by Dr. Bernstein for Tisdale as a return of equity to her. Again, the agreement the Waltons signed with Dr. Bernstein did not permit such conduct. Section 7(a) stated that Dr. Bernstein would provide \$1.48 million of his 50% share of the joint \$3.342 million equity investment upon signing, while section 7(b) stated that "Walton has already provided the bulk of their equity and they will provide another \$191,000 in a timely manner as required as the Project is completed". Section 13 did not permit the payment out of capital until the project was "substantially completed". Consequently, the Waltons' extraction of some of the funds advanced by Dr. Bernstein on the basis that they were entitled to a return of capital or payment out of their equity was in breach of their clear contractual obligations to Dr. Bernstein. They had no right to do so.

[207] Further, as in the case of 875/887 Queen Street East, the Waltons did not inform Dr. Bernstein that they intended to treat some of his equity injection as a return of capital to them.<sup>39</sup> By failing to so inform Dr. Bernstein, at a time when they represented to Dr. Bernstein that no capital would be withdrawn until the substantial completion of the project, the Waltons deceived and defrauded Dr. Bernstein.

#### **Comments by Froese on equity contributions**

[208] In its report Froese stated:

Based on information attached to each Agreement, over the period from 2010 to 2013, expected funding available at the date of purchase of the Bernstein properties exceeded the funds required to purchase the properties by approximately \$55.5 million. That is, the pro forma information showed that there was significant excess funding available to commence work on the projects. As well, Walton was to initially advance approximately \$14.5 million as compared to the \$75.2 million to be advanced by Dr. Bernstein as an equity investment (plus mortgage financing for certain properties).

The co-mingling of funds through the Rose & Thistle clearing account resulted in a portion of the \$55.5 million of excess funding at the date of purchase to carry the properties without further funding requests of the shareholders, and also without the immediate need for Walton contributions.

As previously noted, the agreements between Dr. Bernstein and the Waltons contained clauses which provided that the Schedule B Company would “only be used to purchase, renovate and construct, and sell” the specified property or “such other matters solely relating to the Project and the Property.” While Froese’s comments about the co-mingling of funds reflected a theoretical view about how funds could be used, they ignored the specific provisions in each of the agreements between Bernstein and the Waltons about how the funds had to be used.

[209] Froese also stated:

This analysis supports the position of Norma Walton that Dr. Bernstein expected, or reasonably should have expected, there to be a significant disparity in the initial investment in the Bernstein properties, with Walton to fund future costs required to complete each project.

With respect, such an assertion fell outside the proper scope of the opinions which Froese was in a position to express, especially because there was no evidence to support such an assertion.

---

<sup>39</sup> Norma Walton’s email of December 27, 2011 made no mention of the Waltons extracting equity from Tisdale: CX Bernstein, Ex. 18.

## **E.6 Conclusion**

[210] In conclusion, I find that the Reconciliation Chart filed by Ms. Walton did not assist her in accounting for the net transfers from the Schedule B Companies to Rose & Thistle. At the end of the day, the Respondents have only justified an adjustment of \$1 million to the Inspector's net transfer figure based upon the reconciliation of management fees reached with the Inspector.

## **F. It was the receivership which caused the Applicants financial harm**

[211] On several occasions during this proceeding Ms. Walton has contended that it was the Applicants' decision to seek the appointment of receiver which caused them financial harm. She argued that had the Applicants allowed the Waltons to deal with the portfolio, everyone would have been financially happy. In her June 21, 2014 affidavit, Ms. Walton again stated that a valuation of the portfolio of Schedule B Properties the Respondents had commissioned from Colliers right after the receivership order was made showed an appraised value of the portfolio of \$328.34 million. That appraisal was not placed before me in evidence; I am unable to comment upon it.

[212] Moreover, Ms. Walton's submission on this point ignored the simple fact that it was the conduct of the Respondents in breaching the agreements by co-mingling funds and applying some of the Applicants' funds for unintended purposes, including self-dealing in favour of the Respondents' personal interests, that lies at the root of the current situation. The receivership order was designed to mitigate the harm caused by the Respondents' wrongful conduct.

## **VIII. Analysis: Overview**

[213] I intend to proceed with the analysis of the parties' claims by considering the groups or packages of relief sought by them. The relief sought by the Applicants has evolved since the service of their initial February Notice of Motion. Much of the relief requested by the Applicants at the July hearing originated in their Consolidated Notice of Cross-Motion/Notice of Motion dated February 14, 2014, which was originally returnable on March 5, 2014. For a variety of reasons that hearing was adjourned until this past July. In their June 13, 2014 Fresh as Amended Consolidated Notice of Motion, Notice of Cross-Motion and Notice of Return of Application the Applicants expanded the scope of the relief to include some not requested by the Applicants in their initial February Notice of Motion.

[214] At the hearing the Applicants amended and expanded the relief sought in two further respects. First, the Applicants advised that they had reached an understanding with the mortgagees of some of the Schedule C Properties, as a result of which they were amending the relief requested in respect of those properties. Second, the Applicants submitted a form of draft order which went through three iterations during the course of the hearing and which further

expanded the relief they sought. Ms. Walton took issue with what she described as the “creeping” amendments the Applicants sought to make to their claims.

#### **IX. Motion to amend the Notice of Application**

[215] The Applicants sought an order granting them leave to issue and serve the Fresh as Amended Notice of Application attached to their June 13, 2014 Consolidated Notice of Motion. Ms. Walton submitted that it was inappropriate for Dr. Bernstein to continually seek to amend his application to claim ever-expanding relief. She submitted that apart from any “ancillary matters” flowing from the orders last year appointing the Inspector and the Manager, Dr. Bernstein should not be entitled to assert additional claims. Ms. Walton submitted:

This is Bernstein’s seventh proposed amendment to the application. He is not entitled to continue to amend the application every time he decides he wants something further from Walton. The proper route for him now is to come back through the receivership for anything he wants within the receivership, and to launch a statement of claim if he intends to sue for damages after the Schedule B accounting is completed. It is improper form to claim damages through the seventh amendment to an application when the relief originally sought has been finally determined.

[216] I do not accept Ms. Walton’s submission. The Respondents have ignored the October, 2013 Order to account. As a result, the Inspector had to expand the scope of its work, and only through the Inspector’s investigations did a clearer – albeit still incomplete – picture emerge about how the Respondents had dealt with the Applicants’ funds.

[217] As I read the Applicants’ proposed Fresh as Amended Notice of Application, they are making the amendments in light of the evidence which has emerged through the Inspector’s reports. That is a proper basis upon which to amend, and I therefore grant the Applicants leave to issue and serve their proposed Fresh as Amended Notice of Application.

#### **X. Analysis: Relief involving Schedule B Companies/Properties and the Individual Respondents**

##### **A. The relief sought**

##### **The Applicants**

[218] Both the Applicants and Ms. Walton sought relief in respect of the Schedule B Companies and Properties. On their part, the Applicants sought the following relief in their Notice of Motion in respect of the Schedule B Companies and against the Individual Respondents:

- (i) An order that the issued and outstanding shares in the Schedule "B" Companies held by the Waltons be cancelled where shareholder equity had not been contributed by them;
- (ii) An order for restitution and repayment to the Applicants by the Respondents in the amount of \$78,420,418 for breach of contract, unlawful misappropriation and unjust enrichment;
- (iii) An order for restitution and repayment by the Respondents to the Applicants and/or the Schedule B Companies, as appropriate, in respect of the fees of Schonfeld Inc., in its capacity as Inspector and Manager in this proceeding, and of its counsel Goodmans LLP;
- (iv) An interim order directing the Respondents to disclose any agreements not heretofore disclosed to cross-collateralize any obligations of the Schedule B Companies, the Schedule C Properties or 44 Park Lane Circle, Toronto, Ontario; and,
- (v) An order that Schonfeld Inc. be appointed as Receiver over the Respondents, Norma Walton and Ronauld Walton, for the purpose of ensuring payment in accordance with any judgment of the Court in this proceeding.

[219] In the third iteration of the draft judgment and order filed by the Applicants at the July hearing, they sought orders granting the following additional relief:

- (i) the continuation of the Orders of Newbould J dated October 4, 2013, October 25, 2013, November 5, 2013, December 18, 2013 and March 21, 2014, except as modified by any order made by these Reasons;
- (ii) holding the Respondents jointly and severally liable for restitution payable to the Applicants in the amount of \$78,420,418 for all funds diverted from the Schedule B Companies and payment to the Applicants of the balance of those funds not otherwise recovered by the Applicants from the sale of the Schedule B Properties;
- (iii) indemnification by the Respondents of the Schedule B Companies and Applicants for all principal amounts, plus interest, costs and penalties incurred by or on behalf of the Schedule B Companies, in respect of unauthorized mortgages registered on the Properties, with that amount to be fixed;
- (iv) indemnification by the Respondents of the Schedule B Companies and Applicants for all amounts due and owing to creditors and lien claimants of the Schedule B Properties and Companies, including costs, penalties and interest, of the Schedule B Companies, with that amount to be fixed;

- (v) declaring that the Applicants had priority over any unauthorized interests in the Schedule B Companies; and,
- (vi) allowing the Applicants to elect to treat funds advanced by them to the Schedule B Companies, or any of them, as shareholder loans for the purposes of enforcement of their remedies.

**Ms. Walton**

[220] On her part, Ms. Walton requested orders containing the following relief:

- (i) a declaration that the Respondents had provided a full accounting of Dr. Bernstein's invested funds in the Schedule B Companies in full satisfaction of the October 25, 2013 Order;
- (ii) removal of The Rose and Thistle Group Ltd. from the operation of paragraphs 3(b) and (c) of the October 25, 2013 Order; and,
- (iii) a determination by the Court, by way of the trial of an issue, of the amount of money due from the Schedule B Companies to The Rose and Thistle Group Ltd. for work done and not yet paid and an Order that the amount due be paid from sale proceeds of the Schedule B properties.

**B. Analysis**

**B.1 Accounting**

[221] I have found above that the Respondents have not provided the accounting mandated by this Court's October 25, 2013 Order.

[222] Ms. Walton sought to remove from the ambit of the October 25 Order the Respondent, The Rose & Thistle Group Ltd., on the basis that the company was owned jointly by her husband and herself and "no longer has any banking relationship with the Bernstein-Walton portfolio of properties." Since the Respondents have failed to provide the Court-ordered accounting, and since Rose & Thistle was the conduit through which funds of the Applicants were directed by the Waltons from the Schedule B Companies to Schedule C Companies, there is no basis to remove Rose & Thistle from the operation of paragraphs 3(b) and (c) of the October 25, 2013 Order. On the contrary, it is necessary that Rose & Thistle remain subject to that order so that tracing efforts can continue.

[223] Accordingly, I dismiss those portions of Ms. Walton's motion.

[224] The Applicants' request for an order that the Respondents disclose any cross-collateralization agreements not already disclosed is necessary for the proper performance of the accounting order, and I grant it.

## **B.2 Transfers between Rose & Thistle and Schedule B Companies**

[225] I have found that of the \$23.6 million in net transfers from Schedule B Companies to Rose & Thistle identified by the Inspector, the Respondents had only justified a reduction of \$1 million in that number by reason of management fees billed. It follows that I dismiss Ms. Walton's audacious – but forensically unsupported – request for a trial of an issue of the amount of money the Schedule B Companies owed to Rose & Thistle. While in sports the best defence sometimes might be a good offence, that strategy does not work when parties who are subject to a court accounting order fail to comply with it. Ms. Walton seems to fail to appreciate the gravity of the situation in which she and her husband find themselves.

## **B.3 Restitution and damages**

[226] The Applicants sought an order for restitution and repayment to them by the Respondents in the amount of \$78,420,418 for breach of contract, unlawful misappropriation and unjust enrichment, which they translated in their draft order into a request for an order that the Respondents were jointly and severally liable for restitution payable to the Applicants in the amount of \$78,420,418 for all funds diverted from the Schedule B Companies and that they pay to the Applicants the balance of those funds not otherwise recovered by the Applicants from the sale of the Schedule B Properties

[227] I am not prepared to grant such an order at this time because I am not satisfied that adequate argument was placed before the Court on this issue. Applying the different measures of damages for breach of contract, unlawful misappropriation and unjust enrichment could result in quite different damage awards on the facts of this case. I think the Court requires more assistance on this point than was provided by the parties at this hearing, and I therefore defer to a later date consideration of this part of the Applicants' claim. For the same reason I am not prepared to grant, at this time, the Applicants' related request for an order that the Respondents indemnify the Schedule B Companies and the Applicants for all amounts due and owing to creditors and lien claimants of the Schedule B Properties and Companies, with that amount to be fixed.

[228] However, I think the evidence justifies granting two forms of relief which relate to the entitlement as between the parties to sale proceeds.

[229] First, the Applicants sought an order that the issued and outstanding shares in the Schedule B Companies held by the Respondents be cancelled where they had not contributed shareholder equity. Ms. Walton submitted that the Respondents had paid \$100 for their shares in

the Schedule B Companies,<sup>40</sup> as a result of which, she contended that the Waltons were entitled to an accounting of monies from the joint portfolio in the same way that Dr. Bernstein was.<sup>41</sup> Ms. Walton further submitted that Dr. Bernstein's claim to cancel the shares owned by the Waltons in Schedule B Companies was premature because the Inspector had not yet provided confirmation of the equity invested in the Schedule B Companies by Ms. Walton. Accordingly, Ms. Walton submitted that there was no basis for the cancellation of the shares.

[230] I reject Ms. Walton's argument. The various agreements Dr. Bernstein entered into with the Waltons stipulated that shares in a Schedule B Company would be issued on the basis of one share for each dollar of equity invested. For example, the October 4, 2012 agreement concerning Fraser Properties Corp. and Fraser Lands Ltd. (7-15 and 30 Fraser Avenue) provided that 16,572,063 shares would be issued to each of Dr. Bernstein and the Waltons, with Section 7 stating that the \$33,144,124 of equity would be paid at stipulated times, with the Waltons' \$14,107,062 payable "to the Company in a timely manner as required as the Project is completed". The payment of \$100 by the Waltons to the Fraser companies would not support the issuance to them of 16,572,063 shares in those companies, but only the issuance of 100 shares. I therefore order that the Waltons' shareholder interests in each of the Schedule B Companies be calculated by reference to the equity contribution provisions contained in each Schedule B Company agreement and that the shares issued to the Waltons be limited to those for which they have actually paid; any other shares should be cancelled. From the evidence filed to date, that will result in *de minimis* shareholdings of the Waltons in most Schedule B Companies and therefore limit – quite properly – their ability to participate in any distributions from those companies once all creditors have been paid.

[231] Second, I grant the Applicants' request for an order appointing Schonfeld Inc. as Receiver over the Respondents, Norma Walton and Ronauld Walton, but with a somewhat different scope than that requested. The net worth statement filed by Ms. Walton on these motions represented that the only source of net worth available to the Waltons consisted of their equity in Schedule B and C Properties and Companies. Ms. Walton made it quite clear in her evidence that she wished to dispose of the Schedule C Properties in order to prefer her non-Bernstein creditors. In Section XI.D below I find that the Applicants have demonstrated a strong *prima facie* claim of unjust enrichment against the Waltons in respect of certain Schedule C Properties up to a possible claim of \$22.6 million. Until proper consideration can be given to those claims and the respective interests of all creditors of the Waltons, it is necessary to ensure

---

<sup>40</sup> Walton Factum, para. 72.

<sup>41</sup> In its Third Report the Inspector described Rose & Thistle invoices of \$6.6 million to Tisdale and Red Door purportedly for the distribution to the Waltons of their portion of the equity in those companies. I rejected Ms. Walton's "earned equity" argument.

that the Waltons cannot dispose of their Schedule C Property. A receiver is required for that purpose.

[232] The Waltons have not complied with this Court's accounting order and, as I noted earlier in these Reasons, Ms. Walton failed to answer key undertakings about her personal finances, including failing to provide copies of her bank account statements. It is necessary to appoint a receiver over the books and records of the Waltons both to preserve information about their financial affairs and to make such information available to their creditors for tracing purposes who are faced with sorting out the mess created by the Waltons.

[233] Consequently, I appoint Schonfeld Inc. as receiver of all the property of the Waltons, of whatever kind, as well as of their books and records. However, the appointment of Schonfeld shall be on an interim basis only. In my view, a court officer, such as a receiver, should only be allowed to wear so many hats, otherwise unworkable conflicts of interest inevitably arise. Dr. Bernstein is not the only creditor of the Waltons. Accordingly, I order that Schonfeld Inc. be replaced as receiver of the Waltons within 120 days of the date of this order but, until then, Schonfeld Inc. can exercise the full powers of such a receiver.

#### **B.5 Unauthorized mortgages indemnification request**

[234] In respect of the Applicants' request for orders requiring the Respondents to indemnify them and the Schedule B Companies in respect of "unauthorized mortgages", insufficient specific evidence and argument was provided on this point to enable its consideration.

#### **B.6 Priority of claims/shareholder loans**

[235] I am not prepared to grant, at this point of time, the Applicants' request for an order that they have priority over "any unauthorized interests in the Schedule B Companies". The request was too vague, and the evidence and argument on this point was not adequately developed. As well, it was not clear whether any person who might be claiming such an "unauthorized interest" had been given notice of the motion.

[236] The Applicants sought an order that they be permitted to elect to treat funds advanced by them to the Schedule B Companies as shareholder loans for the purposes of enforcement of their remedies. Again, this point was not adequately developed. There were references in the evidence to the Applicants already having converted their equity advances into shareholder loans. If that in fact occurred, the need for a Court order is not apparent. In any event, the relief sought might affect the priority of claims by creditors of Schedule B Companies, and that issue is better left to the claims process administered by the Manager.

**B.7 Inspector's fees**

[237] Previous orders of this Court required the Waltons to pay for the costs of the Inspector. Save for a partial payment from the proceeds of the recent sale of one Schedule C Property, the Waltons have failed to do so. The Applicants have been left to fund the activities of the Inspector, a position they should not have been put in. Accordingly, I grant an order for restitution and repayment by the Respondents to the Applicants and/or the Schedule B Companies, as appropriate, in respect of the fees of Schonfeld Inc., in its capacity as Inspector in this proceeding, and of its counsel Goodmans LLP.

[238] As to the Applicants' request for a similar order in respect of the fees of the Manager and its counsel, I see no need to vary the terms of the Appointment Order at this time. The Applicants may renew their request, if the need arises, as the realization process conducted by the Manager comes closer to completion.

**B.8 Continuation of prior orders of this Court**

[239] Finally, for the sake of clarity, the Orders of Newbould J. dated October 4, 2013, October 25, 2013, November 5, 2013, December 18, 2013 and March 21, 2014 shall continue in full force and effect, except as otherwise modified by the specific orders made in these Reasons.

**XI. Analysis: Relief involving Schedule C Companies and Properties****A. The relief sought****Applicants**

[240] In their Notice of Motion the Applicants sought the following relief in respect of Schedule C Properties:

- (i) An order that the Orders of this Court dated December 18, 2013 and March 21, 2014 be amended to add all the properties listed in Schedule C of the Notice of Motion;
- (ii) An interim Certificate of Pending Litigation and a blanket charge respecting the property municipally known as 44 Park Lane Circle, Toronto, Ontario and the Schedule C Properties in which the Respondents have an interest;
- (iii) A declaration that the property at 44 Park Lane Circle, Toronto, Ontario and the Schedule C Properties in which the Respondents have an interest and/or the proceeds from the sale of 44 Park Lane Circle, Toronto, Ontario and/or the Schedule C Properties in which the Respondents have an interest are subject to a constructive and/or resulting trust from the date of purchase in favour of the Applicants;

- (iv) An order tracing the funds from the Applicants to and through the accounts of the Schedule B Companies, the accounts of Rose & Thistle, the personal accounts of Norma and Ronald Walton, the trust account of Walton Advocates, the trust account of Devry Smith Frank LLP, former real estate counsel for the Waltons, and otherwise into 44 Park Lane Circle, Toronto, Ontario and the Schedule C Properties;
- (v) An order declaring 44 Park Lane Circle, Toronto, Ontario and the Schedule C Properties in which the Respondents have an interest as the proceeds of the funds from the Applicants;
- (vi) An order that the Applicants may seize and sell 44 Park Lane Circle, Toronto, Ontario and the Schedule C Properties in which the Respondents have an interest, subject to the enforceable rights of prior registered charges and liens on the properties;
- (vii) An order that Schonfeld Inc. be appointed as Manager of the Schedule C Properties in which the Respondents have an interest for the purposes of the relief sought; and,
- (viii) An order that the Respondents are jointly and severally liable for restitution in the amount of \$1,518,750, plus interest at the rate set out in the relevant mortgage documents and costs on a full indemnity basis as set out in the relevant mortgage documents, in respect of the mortgage discharge from title of the property at 232 Galloway Road and payment of that amount to the Applicants

[241] In the third iteration of the draft judgment and order submitted by the Applicants at the July hearing, the Applicants requested the following additional relief:

- (i) The amendment of the Orders of this Court dated December 18, 2013 and March 21, 2014 *nunc pro tunc* to include 26 specified Schedule C Properties, save and except those properties that have been sold pursuant to an order of this Court;
- (ii) a declaration that the Respondents had not transferred the following Schedule C Properties to arm's-length third parties, but had retained an interest in 346C and D Jarvis Street, 14/17 Montcrest, 19 Tennis Crescent and 646 Broadview Avenue;
- (iii) an order specifying that in respect of any Schedule C Property for which leave is granted to issue a certificate of pending litigation, a charge would be registered on title to those properties in favor of the Applicants, in subsequent priority to any security interests, trusts, liens, charges and encumbrances, statutory or otherwise in favor of any person validly registered on title as of the date of the order;
- (iv) an order that the certificates of pending litigation and charges sought did not apply to ten Schedule C Properties in respect of which the Applicants had reached an understanding with the mortgagees of those properties;

- (v) the imposition of a constructive trust on the following Schedule C Properties in favour of the applicants as at the date of purchase of the properties for the proportionate share of the purchase price that the following amounts represented and for any proportionate share of the increase in value to the date of realization:

- a. 2454 Bayview Avenue: \$1.6 million
- b. 346E Jarvis Street: \$937,000
- c. 14 College Street: \$1,314,225
- d. 26 Gerrard Street: \$371,200
- e. 2 Kelvin Avenue: \$221,000
- f. 3270 American Drive: \$1,032,000; and,
- g. 44 Park Lane Circle: \$2,337,850,

save and except those properties which had been sold pursuant to court order, and that the constructive trust so ordered in favour of the Applicants was subordinate only to *bona fide* secured creditors with valid registered security interests on title of the property;

- (vi) the Respondents and the Schedule C Companies/Properties in which the Respondents had any interest as at July 16, 2014, the date of the hearing, were jointly and severally liable for all losses suffered by the Applicants in respect of funds advanced by the Applicants to the Schedule B Companies;
- (vii) the Respondents and the Schedule C Companies/Properties in which the Respondents currently have an interest are jointly and severally liable in the amount of \$23,680,852 for net proceeds diverted from the Schedule B Companies and received by the Schedule C Companies/Properties and shall pay to the Applicants the balance of those funds not otherwise recovered by the Applicants from the sale of the Schedule B Properties.

[242] As mentioned, at the July hearing the Applicants advised they were amending the relief sought in respect of certain Schedule C Properties based upon an understanding they had reached with the mortgagees of those properties: 19 Tennis Crescent; 1 William Morgan Drive; 44 Park Lane Circle; 346 Jarvis Street, Unit 2; 346E Jarvis Street; 777 St. Clarens Avenue; 260 Emerson Avenue; 3270 American Drive; 2454 Bayview Avenue; and, 30 and 30A Hazelton Avenue. Under the agreement, the Applicants would not pursue against those properties their requests for (i) certificates of pending litigation, (ii) the power to seize and sell those properties, and (iii) the

appointment of Schonfeld Inc. as Manager of those properties. In return, the draft provisions stipulated that the mortgagees would provide written notice to the Applicants forthwith upon receiving from the owner of the property a letter of intent, agreement of purchase and sale or a request to deliver a discharge statement of any applicable mortgages. The proceeds of the sale of any property sold by the owner and approved by the Court first would be paid to the mortgagee in such amounts necessary to satisfy all claims that the mortgagee might have on the property pursuant to the terms of the mortgage, with the balance to be paid to the Manager to be held in trust pending further order of the Court. Where a mortgagee sold the property, the proceeds would be paid out to satisfy any encumbrances, usual costs and expenses of the sale and all claims of the mortgagee, with the balance of the net proceeds of sale to be paid to the Manager.

### **Respondents**

[243] Norma Walton sought orders containing the following relief in respect of the Schedule C Properties:

- (i) The vacating of the second Order of March 21, 2014, in its entirety, and the Order of December 18, 2013, as they related to any restrictions being placed on the Respondents' ability to sell their Schedule C Properties;
- (ii) in the alternative, an order approving the sales of the following Schedule C Properties in accordance with the agreements of purchase and sale attached to Ms. Walton's motion record: 2 Kelvin Avenue; 24 Cecil Street; 66 Gerrard Street East; 2454 Bayview Avenue; 3270 American Drive; 30 Hazelton Avenue; and 30A Hazelton Avenue;
- (iii) payment of the net proceeds from sale of those Schedule C Properties to the shareholders of the Respondents and the creditors of the Respondents, as the Respondents may direct, until those shareholders and creditors are paid in full;
- (iv) if the Court considered it to be helpful, an order that Froese Forensic Partners Ltd. be appointed as Monitor to review the Schedule C Properties and to provide oversight of the sales process on behalf of the Court, with its costs to be paid by the Respondents from sale proceeds; and,
- (v) an order amending Schedule "C" in this proceeding *nunc pro tunc* to remove from Schedule "C" the following properties: 620 Richmond Street West; 875 Queen Street East; 3775 St. Clair Ave. E.; 14/17 Montcrest; 185 Davenport Road; 1246 Yonge Street; 17 Yorkville; 19 Tennis Crescent; 646 Broadview Avenue; 3 Post Road; and 2 Park Lane.

**B. Which properties fall into the category of “Schedule C Properties”?**

[244] The Applicants sought relief against properties in which they alleged the Waltons had an interest based on the Respondents’ representation that those properties were Rose & Thistle projects on the website of that company. Disputes arose as to whether the Waltons had interests in certain properties. Before proceeding with the analysis of the requests for substantive relief in respect of Schedule C Properties, an identification of the properties against which relief should be granted must first be made.

**B.1 Properties in respect of which there is no dispute**

[245] In their initial February Notice of Motion the Applicants sought relief against 25 Schedule C Properties. Three of those properties were sold pursuant to Court order: 65 Front Street East; 26 Gerrard Street East; and 14 College Street. The Waltons were permitted by Court order to refinance 66 Gerrard Street East.

[246] There was no dispute that the Respondents possessed an interest in the following unsold Schedule C Properties: 3270 American Drive, Mississauga; 2 Kelvin Avenue; 346 Jarvis Street, Suites A, B and E; 1 William Morgan Drive; 324 Prince Edward Drive; 24 Cecil Street; 30 and 30A Hazelton Avenue; 777 St. Clarens Avenue; 252 Carlton Street and 478 Parliament Street; 66 Gerrard Street East; 2454 Bayview Avenue; 319-321 Carlaw; 0 Luttrell Ave.; 260 Emerson Avenue; and, 44 Park Lane Circle.

**B.2 Removal of 16 Montcrest Blvd. and 346D Jarvis Street from the Applicants’ request**

[247] By letter dated July 25, 2014, counsel advised that the Applicants would not be pursuing relief against 16 Montcrest Blvd. and 346D Jarvis Street: the Applicants had agreed to discharge the certificates of pending litigation registered against those properties pursuant to my Interim Order.

**B.3 No evidence of Walton interest in property**

[248] At the hearing the Applicants advised that to date they had not discovered any interest held by the Waltons in the following properties which had been identified by them as Schedule C Properties: 3775 St. Clair Avenue East; 185 Davenport Road; 1246 Yonge Street; 17 Yorkville; 3 Post Road; and 2 Park Lane Circle Road.

**B.4 Disputed properties**

[249] The Applicants sought relief against the following three Schedule C Properties in respect of which disputes existed as to whether the Waltons continued to possess an interest in them: 346 Jarvis Street, Unit C; 646 Broadview Avenue; and 19 Tennis Crescent.

**19 Tennis Crescent**

[250] The title register for 19 Tennis Crescent listed 1673883 Ontario Inc. as the owner, as a result of a May 22, 2009 transfer of title from the Waltons and Carreiros. The corporate profile for 1673883 Ontario Inc. showed Ron Walton as a director and officer. Although it appears that he was the first director at the time of incorporation in September, 2005, Ron Walton has continued as a director and officer notwithstanding the subsequent appointment of other directors in 2011.

[251] Ms. Walton deposed that in 2011 they sold the holding company which owned that property and “if the purchasers have not changed the corporate records to remove my husband as a Director, that is news to me. Neither of us has had any ownership or management of that property since it was sold.” That assertion is very difficult to reconcile with the inclusion of the 19 Tennis Crescent property on the December, 2013 list of “Our Investment Portfolio” shown on the Rose & Thistle website.

**646 Broadview Inc.**

[252] 646 Broadview Inc. is shown as the registered owner of 646 Broadview Avenue as a result of an April 29, 2014 transfer from 1636483 Ontario Inc. I accept the evidence of Mr. Reitan that the Waltons enjoyed functional control over 1636483 Ontario,<sup>42</sup> but I have no evidence that they continued to possess an interest in the property following the April, 2014 sale.

**346 Jarvis Street, Unit C**

[253] The parcel register for 346 Jarvis Street, Unit C, lists Carlos and Colette Carreiro as owners. Carlos Carreiro worked for Rose & Thistle for a period of time and was a co-director with Ms. Walton in a few companies – Urban Amish Interiors Inc., Loft Raum Inc. and Carcol. Mr. Carreiro filed an affidavit in support of the Respondents on these motion in which he listed his place of residence as 18 Sword Street, Toronto.

[254] In his affidavit Mr. Carreiro did not address the issue of the ownership of 346 Jarvis Street, Unit C. The parcel registers showed that the Carreiros acquired the unit on November 5, 2010 from the Waltons’ company, 1780355 Ontario Inc., for the consideration of \$666,514. A charge was then registered against title that same day in favor of the Equitable Trust Company in the amount of \$559,872. On her cross-examination Ms. Walton undertook to produce any document showing the consideration paid for 346C Jarvis.<sup>43</sup> She did not fulfill that undertaking,

---

<sup>42</sup> Reitan June 26, 2014 affidavit, paras. 98 to 101.

<sup>43</sup> Walton CX, Q. 218.

merely stating that “I have produced all documentation regarding that purchase evidencing the monies paid.”

### **Order regarding disputed properties**

[255] The evidence concerning these three properties disclosed that the Waltons at one point owned or controlled the properties and it was unclear whether the properties subsequently were transferred to *bona fide* arm’s-length purchasers for value. I therefore intend to include the three properties within the ambit of the orders I make below concerning “Schedule C Properties”, but I direct the Manager to give notice of this Order to the registered owners of those three properties within 15 days of the date of this Order. If, within 60 days of the date of this Order, the registered owner of a property provides the Manager with evidence that it acquired the properties from the Waltons for fair market value and that the Waltons no longer have any kind of interest in the property, then the property shall be released from the operation of this Order.

### **B.5 Conclusion**

[256] For the balance of these Reasons, any reference to “Schedule C Properties” means those properties which are listed on Appendix “A” to these Reasons. As set out below, I will grant relief against those Schedule C Properties. As well, I vary the Orders of this Court made December 18, 2013 and March 21, 2014 to include all such Schedule C Properties.

### **C. Specific constructive trust claims**

#### **C.1 Governing legal principles**

[257] Unjust enrichment claims have three elements: (i) an enrichment of the defendant; (ii) a corresponding deprivation of the plaintiff; and, (iii) the absence of a juristic reason for the enrichment. Enrichment involves the conferral of a tangible benefit – a payment or an avoidance of an expense – on the defendant. In *Garland v. Consumer Gas Co.* the Supreme Court of Canada set down a two-part approach to considering the element of want of juristic reason. First, the plaintiff must show that no juristic reason from an established category exists to deny recovery. The established categories which can constitute juristic reasons include a contract, a disposition of law, a donative intent, and other valid common law, equitable or statutory obligations. If there is no juristic reason from an established category, then the plaintiff has made out a *prima facie* case under the juristic reason component of the analysis. The *prima facie* case is rebuttable, however, where the defendant can show that there is another reason to deny recovery. Here, the court can look to all of the circumstances of the transaction in order to

determine whether there is another reason to deny recovery. Courts generally have regard to two factors: the reasonable expectations of the parties and public policy considerations.<sup>44</sup>

[258] The constructive trust is a remedial device available where an unjust enrichment has occurred and also as a remedy for oppressive conduct.<sup>45</sup> The remedial constructive trust is a broad and flexible equitable tool used to determine beneficial entitlement to property. In nature it is a proprietary remedy: where a claimant can demonstrate a link or causal connection between his or her contributions and the acquisition, preservation, maintenance or improvement of the disputed property, a share of the property proportionate to the unjust enrichment can be impressed with a constructive trust in his or her favour. The claimant must demonstrate a "sufficiently substantial and direct" link, a "causal connection" or a "nexus" between the plaintiff's contributions and the property which is the subject matter of the trust. The primary focus is on whether the contributions have a "clear proprietary relationship". The plaintiff must also establish that a monetary award would be insufficient in the circumstances, and in this regard the court may take into account the probability of recovery, as well as whether there is a reason to grant the plaintiff the additional rights that flow from the recognition of property rights. The extent of the constructive trust interest should be proportionate to the claimant's contributions.<sup>46</sup>

[259] Tracing is an identification process which can assist in ascertaining property over which a constructive trust may be imposed or property which represents the proceeds of other property subject to a constructive trust. Tracing is the process by which the plaintiff traces what has happened to his property, identifies the persons who have handled or received it, and justifies his claim that the money which they handled or received can properly be regarded as representing his property.<sup>47</sup> Accordingly, a claimant must demonstrate that the assets being sought in the hands of the recipient are either the very assets in which the claimant asserts a proprietary right or a substitute for them.<sup>48</sup> If there is confusion in the tracing, the onus is on the fiduciary to identify his own funds.<sup>49</sup>

[260] Finally, a remedial constructive trust is a discretionary remedy. Two consequences flow from that. First, a constructive trust will not be imposed where an alternative, simpler remedy is available and effective. Second, a constructive trust will not be imposed without taking into account the interests of others who may be affected by the granting of the remedy. On this point,

---

<sup>44</sup> 2004 SCC 25, paras. 44 to 46.

<sup>45</sup> *C.I. Covington Fund Inc. v. White* (2000), 10 B.L.R. (3d) 173 (Ont. S.C.), para. 48.

<sup>46</sup> *Kerr v. Barranow*, 2011 SCC 10, paras. 50 to 53.

<sup>47</sup> *Boscawen v. Bajwa*, [1995] 4 All E.R. 769 (C.A.), p. 776.

<sup>48</sup> *B.M.P. Global Distribution Inc. v. Bank of Nova Scotia*, 2009 SCC 14, para. 75.

<sup>49</sup> See the tracing principles summarized in *Re Kolari* (1982), 36 O.R. (2d) 473 (D.C.J.), para. 33.

it is well-established that the beneficiary of a constructive trust cannot assert its proprietary interest against a person who came into possession of the property *bona fide* and for value.<sup>50</sup>

## C.2 Application to the facts

[261] The Applicants rested their claim for the imposition of constructive trusts on two main grounds. First, the Applicants submitted that the Respondents had received benefits from the diversion of the Applicants' equity contributions by acquiring value in 44 Park Lane Circle and the Schedule C Properties without contributing their own funds. According to the Applicants, the Respondents' benefits corresponded directly with the Applicants' deprivation and no juristic reason existed for the Respondents' retention of the benefits conferred by the Applicants.

[262] Second, the Applicants submitted that the Waltons were directors of each of the Schedule B Companies, managed those companies' day-to-day affairs and exercised complete control over the funds invested by the Applicants in the Schedule B Companies. Under such circumstances, according to the Applicants, the Waltons owed fiduciary duties to the Schedule B Corporations to use the funds invested by the Applicants in the best interests of the corporations. Since those were closely-held, specific-purpose corporations, their best interests were shaped, in large part, by the terms of the agreements between the Applicants and Respondents. According to the Applicants, the diversion of funds out of the Schedule B Company by the Waltons for their own purposes was a breach of their fiduciary duties and constituted conduct which was oppressive to the Applicants' interests as shareholders.

[263] Ms. Walton opposed this part of the Applicants' claim on several grounds. First, Ms. Walton submitted that before the Applicants could seek such relief against the Schedule C Properties, including 44 Park Lane Circle, they should name as parties the companies which owned those properties and serve the companies' shareholders, mortgagees and lien holders. I disagree. The Waltons own or control the companies which own the Schedule C Properties, save perhaps for three properties for which I have made special provision in Section X1.B.4. So, the companies are on notice. The Applicants do not seek to prime existing interests registered against title to the Schedule C Properties. As to the preferred shareholders, many obviously have had notice of these motions since they filed affidavits and statements in support of the Waltons and the DeJongs made submissions opposing the relief sought by the Applicants. More importantly, I regard the issue of the priority of claims against a specific Schedule C Property as an issue for determination in the receivership which I intend to order over those properties.

---

<sup>50</sup> *Tracy (Representative ad litem of) v. Instalogs Financial Solutions Centers (B.C.) Ltd.*, 2010 BCCA 357, para. 28.

[264] I accept the arguments made by the Applicants. The Waltons breached their contractual obligations to Dr. Bernstein and their fiduciary duties to the Schedule B Companies by pooling the funds advanced by the Applicants to the Schedule B Companies with Rose & Thistle and Schedule C Company funds. I have accepted, in large part, the tracing analysis performed by the Inspector and I have found that in the instances identified by the Inspector, in a brief period of time the Waltons directed the transfer of funds advanced by the Applicants from a Schedule B Company to a Walton-owned Schedule C Company, through Rose & Thistle, and the Schedule C Company used those funds in respect of a Schedule C Property. I specifically found that the following amounts of the Applicants' funds were used to purchase or discharge encumbrances on Schedule C Properties:

- (i) 14 College Street: \$1,314,225;
- (ii) 3270 American Drive: \$1.032 million;
- (iii) 2454 Bayview: \$1.6 million;
- (iv) 346E Jarvis St.: \$937,000;
- (v) 44 Park Lane Circle: \$2.5 million;
- (vi) 2 Kelvin Street: \$221,000;
- (vii) 0 Trent: \$152,900; and,
- (viii) 26 Gerrard Street: \$371,200.

The use by the Waltons of those funds of the Applicants to acquire those Schedule C Properties or to discharge registered encumbrances resulted in the unjust enrichment of the Waltons. There was absolutely no juristic reason for that use of the Applicants' funds. On the contrary, such use of the funds breached the Waltons' contractual obligations to the Applicants; in some cases I have found it amounted to fraud.

[265] The DeJongs argued that Dr. Bernstein did not suffer any detriment in respect of his funds used to acquire 3270 American Drive because in return for advancing those funds to a Schedule B Company – West Mall Holdings – Dr. Bernstein got what he had bargained for – issued shares of West Mall Holdings with its property encumbered as represented in the capital requirements terms of his agreement with the Waltons. I do not accept that submission. Dr. Bernstein did not get what he bargained for, which was the obligation of the Waltons only to use those funds for the development of the West Mall Holdings property. Instead of so doing, the Waltons stripped the funds out of West Mall Holdings to acquire 3270 American Drive, an unauthorized use of the funds which benefitted them.

[266] The DeJongs also opposed the granting of a constructive trust over 3270 American Drive on the basis that they were *bona fide* purchasers without notice of Dr. Bernstein's claim. I do not accept that submission. In January, 2013, the DeJongs advanced funds to United Empire Lands to purchase commons shares in the company. The Waltons transferred the Applicants' funds to United Empire Lands after the DeJongs had acquired their shares in United Empire Lands and just three days before that company acquired 3270 American Drive, with the result that the Applicants' constructive trust interest in the property arose after, not before, the DeJongs purchased their shares in United Empire Lands.

[267] Consequently, I grant constructive trusts in favour of the Applicants in respect of each of the Schedule C Properties listed above for the proportionate share of the purchase price that those amounts represented as at the date of purchase of the properties and for any proportionate share of the increase in value to the date of realization, except that no such trust shall attach to a property already sold and where no proceeds of sale remain in the hands of the Manager. I do not consider any other remedy to afford an effective alternative in the circumstances; the evidence disclosed that the potentially exigible assets of the Waltons were limited to their interests in the Schedule C Companies and related properties.

#### **D. Claims for a receivership order and certificates of pending litigation**

[268] The state of the evidence at this point of time does not permit the making of constructive trust orders for fixed amounts in respect of other Schedule C Properties. The Inspector's tracing analysis was limited to the properties above. However, two aspects of the evidence support making a finding, which I do, that the Applicants have demonstrated a strong *prima facie* case of unjust enrichment of up to a possible claim of \$22.6 million against the Waltons in respect of the other Schedule C Properties.

[269] The first aspect of the evidence consists of the Inspector's findings, which I accepted, that during the period from October 2010 to October 2013 the Waltons directed the transfer of \$23.6 million (net) from the Schedule B Company Accounts to a bank account belonging to Rose & Thistle and transfers of \$25.4 million (net) from the Rose & Thistle Account to companies that they owned without the Applicants – the companies which owned the Schedule C Properties. The second aspect is the Inspector's conclusion, which I accepted, that the Waltons used new equity invested in, and mortgage amounts advanced to, the Schedule B Companies by the Applicants to fund the ongoing operations of Rose & Thistle and the Schedule C Companies and that the Applicants' investment in the Schedule B Companies was a major source of funds for the Walton Schedule C Properties/Companies.

[270] That evidence is sufficient to support an order, which I make, granting leave to the Applicants to issue certificates of pending litigation against all Schedule C Properties. Under section 103 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, a certificate of pending litigation may be issued by the court where a proceeding is commenced in which an interest in land is in

question. A court must exercise its discretion by looking at all of the relevant matters between the parties in determining whether or not to issue the certificate. If reasonable claims are put forward in an action for a constructive trust in respect of a property, a certificate of pending litigation may issue pending trial. The party seeking the certificate need not prove its case at this point. The test is met where there is sufficient evidence to establish a reasonable claim to an interest in the land based upon the facts and on which the plaintiff could succeed at trial.<sup>51</sup> The Applicants have met that test.

[271] As well, that evidence is sufficient to support an order, which I make, appointing Schonfeld Inc. as receiver – or “Manager”, as in the case of Schedule B Properties – over all Schedule C Properties. While at this point of time the tracing analysis has not progressed to the stage to enable the granting of specific, fixed amount constructive trusts over the other Schedule C Properties, the evidence justifies the appointment of a receiver over all Schedule C Properties in order to sell them and deal with the competing claims against the proceeds of sale, including the Applicants’ strong claims of constructive trusts over the remaining Schedule C Properties.

[272] Ms. Walton opposed the appointment of a receiver over the Schedule C Companies in part arguing that the money of innocent third parties, the preferred shareholders of the Schedule C Companies, should be protected by other means. Ms. Walton submitted that it was clear from the affidavits and statements filed by the preferred shareholders that “those 34 people are due money from the Waltons and those 34 people are trusting the Court not to permit Bernstein to take their money”. Ms. Walton continued:

None of those 34 people nor the DeJongs are supportive of the receivership over the Walton properties. All of those 36 people are familiar with the Waltons’ real estate expertise, being investors with the Waltons. All of them have indicated they want the Waltons to be able to sell their properties themselves to garner from the properties maximum value to increase the amount of money available to pay them back their monies. The Waltons have already negotiated sales of a number of their properties, pending court approval for those transactions.

Ms. Walton also opposed the appointment of receiver over, or the issuance of a certificate of pending litigation against, any Schedule C Property because that could trigger a default in mortgages registered against those properties.

[273] I do not accept those arguments. The Waltons caused the current problems by ignoring their contractual obligations with, and fiduciary duties owed to, investors by co-mingling investment funds and appropriating some of the funds to their own benefit. The task now facing the Court is, in part, to put in place a process which will minimize the damage caused by the

---

<sup>51</sup> *Transmaris Farms Ltd. v. Sieber*, [1999] O.J. No. 300, para. 62.

Waltons unlawful conduct and which will deal fairly with all competing interests. Ms. Walton, in her evidence, disclosed her intention to prefer improperly the interests of other creditors over those of Dr. Bernstein, for it was her position that the claims of preferred shareholders and debtors of Schedule C Companies should rank first in priority over any claim which Dr. Bernstein might have in the proceeds of sale from any Schedule C Property. As Ms. Walton put it, Dr. Bernstein should not be “permitted to leapfrog over the claims of the innocent third party investors”. In paragraph 86 of her Factum Ms. Walton also stated that she intended to apply all proceeds of sale from the severed Park Lane Circle properties to pay her “investors and debtors”, except for Dr. Bernstein. Further, quite unnecessary problems arose when Ms. Walton arranged the sale of the Gerrard Street and Front Street properties earlier this year; those problems resulted in parties incurring unnecessary expenses. In light of those circumstances, I see no basis upon which to allow Ms. Walton to exercise any control over the future operation of the Schedule C Properties. She and her husband must be removed from dealing with Schedule C Properties and that task put in the hands of a court-appointed receiver who will take into account the interests of all claimants against the properties.

[274] It follows from that conclusion that I do not grant that part of Ms. Walton’s motion seeking court approval of contracts for the sale of the following Schedule C Properties: 24 Cecil; 66 Gerrard; 2 Kelvin Avenue; 2454 Bayview Avenue; and 30A Hazelton. The power to list and sell those properties now is placed in the hands of the Manager, Schonfeld Inc.

[275] The Applicants also seek an order tracing their funds through the accounts of the Schedule B Companies, the accounts of Rose & Thistle, the personal accounts of Norma and Ronauld Walton, the trust account of Walton Advocates, the trust account of Devry Smith Frank LLP concerning transactions involving the Waltons, and otherwise into 44 Park Lane Circle and the other Schedule C Properties.

[276] Ms. Walton opposed that request for several reasons. First, she submitted that Dr. Bernstein lacked the standing to bring a tracing claim on behalf of the Schedule B Companies because he was merely a shareholder in those companies. In her submission, only the Manager had such authority on behalf of the jointly owned companies. Second, Ms. Walton submitted:

Dr. Bernstein’s companies provided money to buy into the jointly owned properties in accordance with the pro forma and deal terms on offer. In exchange he received 50% of the equity and a shareholders loan back. He got what he bargained for. His shareholdings in the Schedule B Companies and properties have not yet been accounted for.

...

Bernstein’s tracing claim appears to assert that the jointly owned companies did not get what they bargained for and that they are entitled to their money back from the Waltons. That is not a claim he can bring on their behalf because he does not control those companies; the Receiver does.

I reject those submissions. Dr. Bernstein advanced the funds to the Schedule B Companies; he is entitled to know what happened to his money which the evidence showed the Waltons had mis-used and mis-appropriated.

[277] Ms. Walton advanced a third ground in opposition to the granting of a tracing order, drawing upon the analysis of Froese. Ms. Walton submitted that one should look at the totality of the inter-company transfers, rather than one point in time, because often within a few weeks of certain transfers there were transfers back which eliminated any debt or tracing claim over all. Ms. Walton submitted that the analysis performed by Froese disclosed that, at most, the maximum amount of the tracing claim available to the Applicants was \$1.968 million. She proposed that that sum could be paid into Court from the sale Schedule C Properties pending a trial of the issue. Ms. Walton continued:

Walton submits that the best way to address these tracing issues is to prepare an accounting once all Schedule B Properties are sold showing what if anything is due from any of those companies to Rose and Thistle and vice versa. At that time monies due from Schedule B Companies to Rose and Thistle can be used to satisfy monies due from Rose and Thistle to other Schedule B Companies. Otherwise the risk of double counting and double recovery is significant. If Bernstein receives money from Walton's properties and then receives the same money back from the Schedule B Properties when the accounting is completed, that provides him with a double recovery.

I reject that argument. I have accepted, in large part, the tracing analysis performed by the Inspector and I have not accepted the criticism made by Froese of the Inspector's "snapshot" tracing analysis. Further, it was always open to the Waltons to provide the accounting directed by this Court last October, yet they failed to do so. Their failure to do so requires the granting of further relief.

[278] I conclude that it is necessary to grant the tracing order sought by the Applicants in order to gain, if possible, a better understanding of how the Waltons used the Applicants' funds. I therefore grant the order sought. To which I add that the order appointing Schonfeld Inc. as Manager of the Schedule C Properties shall also include a specific provision that the Schedule C Companies which own those properties provide to the Manager, within 15 days of the date of this Order, full access to all their books and records. That will ensure that all entities which were part of the system created by the Waltons to circulate and mis-use the Applicants' funds are subject to an obligation to make full disclosure of all their books and records so that a full tracing of the Applicants' funds can occur.

[279] Finally, as noted above, the Applicants reached an understanding at the hearing with the mortgagees of certain Schedule C Properties, identified in paragraph 3 of the draft order submitted to the Court on July 18, 2014. Although I have appointed a receiver over all those properties, I will give effect to part of the understanding reached by ordering that the standard stay of proceedings shall be lifted as against the mortgagees of those properties in respect of

which the understanding was reached – and any other mortgagee in respect of which a similar understanding may be reached hereafter - but only on the basis that the net proceeds of the sale of any such Schedule C Property sold by a mortgagee, or a private receiver appointed by a mortgagee pursuant to the rights available to it under its respective mortgage, shall be paid out as follows:

- (i) to discharge any valid encumbrance, including any liens or other mortgages, registered in priority to any mortgage held by a mortgagee that is registered against the property;
- (ii) to satisfy all usual costs and expenses of the sale of the property, including but not limited to real estate commissions and legal fees;
- (iii) to any mortgagee on that property in such amounts as are necessary in order to satisfy all claims that such mortgagee may have on that property pursuant to the terms of their respective mortgages; and,
- (iv) the balance of the net proceeds of sale of any property shall be paid to the Manager, to be held in trust, pending further order of the Court.

Lifting the stay of proceedings on those terms should enable those mortgagees which are prepared to co-operate with the Manager to exercise their rights under their mortgages, while ensuring an orderly and fair realization of those properties.

#### **E. The discharged Galloway mortgage**

[280] There is no dispute that the Waltons discharged the Applicants' mortgage on the Galloway property without paying it off in full. Up until the eve of this litigation Ms. Walton was assuring Dr. Bernstein that she would pay the balance of the mortgage. She never did. Consequently, the Applicants are entitled to an order that the Respondents are jointly and severally liable for restitution in the amount of \$1,518,750, plus interest at the rate set out in the relevant mortgage documents and costs on a full indemnity basis as set out in the relevant mortgage documents, in respect of the mortgage discharged from the title of the property at 232 Galloway Road, and the Respondents shall pay that amount to the Applicants.

#### **F. The cross-motion by the DeJongs**

##### **F.1 Background and relief sought**

[281] Christine DeJong Medical Professional Corporation ("CDJ"), C2M2S Holding Corp. ("C2M2S") and DeJong Homes Inc. brought a cross-motion for an order that the issued and outstanding shares of the Waltons in United Empire Lands (3270 American Drive, Mississauga), in which CDJ was a co-owner, be canceled because the Waltons had not contributed shareholder

equity or, alternatively, an order approving the transfer of the Waltons' interest in United Empire Lands to the DeJongs, free and clear of any claim by the Applicants, in accordance with a June, 2014 settlement agreement reached with the Waltons.

[282] Christine DeJong is an obstetrician and gynecologist whose practice is operated through CDJ. She and her husband, Michael DeJong, through their respective corporations, have been investing with the Waltons for the better part of a decade. Like Dr. Bernstein, CDJ had entered into agreements with the Waltons which contemplated equal shareholdings in corporations incorporated for the specific purpose of holding a particular piece of property. According to Ms. DeJong, CDJ holds common shares in United Empire Lands Ltd., Prince Edward Properties Ltd. and St. Clarens Holdings Ltd./Emerson Developments Ltd., as well as preferred shares in Lesliebrook Holdings Ltd. and Academy Lands Ltd. Ms. DeJong deposed that the value of the CDJ investments, based upon information provided by the Waltons, totaled \$3.691 million. Ms. DeJong attached the share certificates issued to CDJ; she did not attach copies of the cheques or wire transfers recording her investment in the companies (save for a deposit receipt for an investment in United Empire Lands).

[283] Michael DeJong, through a February 25, 2013 cheque from C2M2S to Front Church Properties Ltd., invested with the Waltons and received, in return, preference shares in Academy Lands issued to C2M2S and DeJong Homes. According to information provided by the Waltons, the "value" of the original \$617,000 investment was now \$786,776.47.

[284] According to Ms. DeJong, in January, 2013, CDJ made a capital contribution of \$992,750 to United Empire Lands to obtain 50% of the common shares in the corporation, the sole asset of which was to be the property at 3270 American Drive, Mississauga. CDJ infused \$716,906 in new capital and, according to Ms. DeJong, transferred \$275,844 from an existing investment in a Walton company which owned 2 Park Lane Circle and 3 Post Road. Evidence of the deposit of the \$716,906 CDJ cheque into United Empire Lands' bank account was adduced. CDJ had entered into a February, 2013 agreement with the Waltons concerning that investment which was substantially similar in form and content to the agreements the Waltons used for Dr. Bernstein's investments. Christine and Michael DeJong became officers and directors of United Empire Lands on December 20, 2013.

[285] Ms. DeJong deposed that in January, 2014, Norma Walton, without consulting the DeJongs, exchanged the preferred shares held by CDJ in Lesliebrook Holdings (1131 and 1131A Leslie Road) for preferred shares in Academy Lands (2454 Bayview Avenue) and exchanged shares held by C2M2S and DeJong Homes in Front Church Properties (54 Front Street East) for shares in Academy Lands.

[286] Ms. DeJong deposed that in May, 2014, Mario Bucci, the CFO of the Rose & Thistle Group, provided her with bank statements for United Empire Lands which showed that no sooner had her investment of \$716,906 been deposited into the United Empire Lands bank

account, than it was transferred out to the Rose & Thistle Group over the course of three days. Ms. DeJong complained that the Waltons had breached their agreement concerning the United Empire Lands because the Waltons had failed to make the capital contribution stipulated in that agreement. For that reason, Ms. DeJong sought the cancellation of the Waltons' shares in United Empire Lands.

[287] In May, 2014, the DeJong's counsel pressed Ms. Walton for an explanation about the use of the funds invested in United Empire Lands. Ms. Walton commissioned Froese Forensic Partners to prepare a May 23, 2014 report which reviewed the use of funds received from CDJ for investment in United Empire Lands. In the summary portion of its report Froese stated:

DeJong proceeds of \$716,906 were deposited to United Empire's credit union account on January 28, 2013 and \$706,850 was transferred from that account to Rose & Thistle over the four-day period from January 28 to 31, 2013... The use of these funds by Rose & Thistle is summarized in Schedule 1. In summary, these funds were co-mingled with \$230,850 from Schedule B Companies (companies owned jointly by Dr. Bernstein and the Waltons) and \$25,610 from other sources. Of these co-mingled funds, \$746,775 was transferred to Schedule B Companies.

Assuming that deposits from Schedule B Companies were used to fund disbursements to Schedule B Companies, which is consistent with the timing of deposits and disbursements through the Rose & Thistle account, approximately \$515,000 of the DeJong funds were transferred to Schedule B Companies and the balance to Walton-related companies.<sup>52</sup>

[288] The Waltons have offered to transfer their shares in the capital of United Empire Lands to the DeJongs in exchange for a release of the DeJongs' claims respecting the property at 3270 American Drive, Mississauga. The DeJongs have sought court approval for that June 20, 2014 settlement agreement. The DeJongs are concerned that should the settlement not be approved, the mortgagee of the property may exercise power of sale rights which would severely prejudice the interest of the DeJongs and their corporations. The DeJongs have completed an application to obtain takeout financing from Manulife.

## **F.2 Analysis**

[289] I am not prepared to grant the relief sought by the DeJongs. The proposed settlement agreement would prefer the DeJongs' interests as creditors of the Waltons over other creditors in respect of 3270 American Drive and, in the circumstances, I conclude that such a preference would be unfair to other creditors including, but not limited to, Dr. Bernstein. The legal

---

<sup>52</sup> I would note that this report prepared by Froese was not properly adduced as an expert's report in accordance with the *Rules of Civil Procedure*.

entitlement, if any, of the DeJongs, as preferred shareholders, to the proceeds from the sale of 3270 American Drive should be dealt with in the claims process for that property.

[290] Although I dismiss the DeJongs' motion, I will not order any costs against them. Like others, they stand at the receiving end of the Waltons' misconduct.

## **XII. Other relief sought**

[291] Finally, the Applicants sought an order that the application commenced in Court File No. CV-14-501600 be transferred to the Commercial List and combined with the within application. Details of the application were not provided, save that the Notice of Motion described it as a "companion" application. Nevertheless, all proceedings as between Dr. Bernstein and the Waltons, and their respective companies, as well as any litigation involving Schedule B Companies/Properties and Schedule C Companies/Properties, should be managed together by one judge on the Commercial List. I therefore transfer Court File No. CV-14-501600 to the Commercial List and direct that steps be taken to transfer any other such kind of proceeding to the Commercial List. The parties should contact Newbould J. for the appointment of a new case management judge.

## **XIII. Conclusion**

[292] For the reasons set out above, I have granted, in large part, the motions brought by the Applicants, and I have dismissed the motion brought by Ms. Walton. I have also dismissed the DeJongs' motion.

[293] I will not be returning to my office until September 3, 2014. However, I am prepared to review and issue the order implementing these Reasons before that date. Counsel and the parties shall consult on the form of order and send an electronic copy for my consideration through Mr. DiPietro at the Commercial List Office. If the parties are unable to settle the order, I am prepared to hold a brief telephone conference call to deal with the matter.

[294] Since the Applicants substantially succeeded on these motions, they may serve and file, to my attention through Judges' Administration, 361 University Avenue, written cost submissions by Wednesday, August 20, 2014. Ms. Walton may serve and file responding written cost submissions by Friday, August 29, 2014. The cost submissions shall not exceed 10 pages in length, excluding Bills of Costs.

- Page 97 -

[295] Finally, I wish to thank the parties for providing electronic copies of all materials filed on these motions. I cannot overstate the assistance which electronic copies bring to the judgment writing process, including the portability of the materials.

(original signed by)

D. M. Brown J.

**Date:** August 12, 2014

**Appendix "A"****List of Schedule C Properties against which relief is granted**

1. 3270 American Drive, Mississauga
2. 0 Luttrell Ave.
3. 2 Kelvin Avenue
4. 346 Jarvis Street, Suites A, B, C and E
5. 1 William Morgan Drive
6. 324 Prince Edward Drive
7. 24 Cecil Street
8. 30 and 30A Hazelton Avenue
9. 777 St. Clarens Avenue
10. 252 Carlton Street and 478 Parliament Street
11. 66 Gerrard Street East
12. 2454 Bayview Avenue
13. 319-321 Carlaw
14. 260 Emerson Avenue
15. 44 Park Lane Circle
16. 19 Tennis Crescent
17. 646 Broadview Inc.

## Appendix "B"

### Evidence or Statements from Preferred Shareholders in Schedule C Companies

	Name of Shareholder	Schedule C Company	Amount
1.	Phil Aber	Front Church Properties	\$100,000 "value" <sup>53</sup>
2.	John and Myrne Rawlings (parents of Norma Walton)	Not identified	\$395,000 loans
3.	John and Myrne Rawlings	Front Church Properties	\$165,500 "value"
4.	Maria and Joseph Memme	Academy Lands Ltd.	\$281,000 "value"
5.	Maria and Joseph Memme	Rose & Thistle	\$100,000 loan
6.	Saul Spears	1793530 Ontario Inc.	\$67,648 "value"
7.	Peggy Condos	Cecil Lighthouse Ltd.	\$10,000 "value"
8.	Dennis Condos	Front Church Properties and Cecil Lighthouse	\$350,000 "value"
9.	Ange Boudle	Front Church Properties and Academy Lands	\$400,960 "value"
10.	Triane Boudle	Front Church Properties	\$125,000 "value"
11.	Mark Goldberg	Academy Lands	\$150,000 "value"
12.	John Geikins	Rose & Thistle Group Ltd.	\$50,000 "value"
13.	Vane Plesse	Cecil Lighthouse	\$117,675 "value"
14.	Michelle Tessaro	Front Church Properties	\$154,864 "value"
15.	Carlos Carreiro	Academy Lands	\$285,000 "value"
16.	Howard Beck	1793530 Ontario Inc.	\$101,472 "value"

<sup>53</sup> Some shareholders deposed to the "value" of their shares. They did not identify the amount which they had initially invested or provide evidence of that investment. They used the term "value" in a way which suggested that they were including anticipated capital appreciation and dividends promised or accrued in the amount of the "value".

17.	Danny Servos	Front Church Properties	\$356,907 "value"
18.	Ken and Grace Bugg	Front Church Properties and Academy Lands	\$650,000 "value"
19.	Gideon and Irene Levytam	Front Church Properties and Cecil Lighthouse	\$730,000 "value"
20.	Michele Peng	Cecil Lighthouse	\$62,800 "value"
21.	Sheila Korchynski	Front Church Properties	\$52,525 "value"
22.	John and Sheila Korchynski	Front Church Properties	\$105,000 "value"
23.	Cary Silber	1793530 Ontario Inc.	\$16,912 "value"
24.	Duncan Coopland	Front Church Properties and Cecil Lighthouse	\$721,500 "value"
25.	Barbara Naglie	Front Church Properties and 1793530 Ontario	\$117,778 "value"
26.	Harvey Naglie	Front Church Properties	\$225,788 "value"
27.	Carmen and Paul Duffy	The Rose & Thistle Group Ltd., 1793530 Ontario and Front Church Properties	\$409,599 "value"
28.	Dian Cohen	Academy Lands	\$100,000 "value"
29.	Jill Penny	Front Church Properties	\$165,000 "value"
30.	Gerry Gotfrit <sup>54</sup>	Front Church Properties; 1793530 Ontario	\$172,639 "value"
31.	Fareed Ansari	Atala Investments Inc., 30A Hazelton Inc., <sup>55</sup> William Morgan Lands	\$2.040 million "value"
	<b>TOTAL "VALUE"</b>		<b>\$8,780,817</b>

<sup>54</sup> Two affidavits were filed by Mr. Gotfrit, with some overlap in the numbers. I have only included the information in the affidavit containing the highest "value".

<sup>55</sup> I would observe that in paragraphs 20(l) and (m) of her December 17, 2013 affidavit, Norma Walton made no mention of any other shareholders in this company apart from her husband and herself.

**B**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial List**

THE HONOURABLE	)	TUESDAY, THE 12th
	)	
JUSTICE D.M. BROWN	)	DAY OF AUGUST, 2014

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

**JUDGMENT AND ORDER**

**THIS RETURN OF APPLICATION, MOTION AND CROSS-MOTION**, brought by the Applicants for various heads of relief, was heard on July 16-18, 2014 at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Return of Application, Motion and Cross-Motion and the proposed Fresh as Amended Notice of Application of the Applicants, the Notice of Motion of the Respondent Norma Walton, the Affidavit of James Reitan sworn June 26, 2014 and the Exhibits

thereto, the Affidavit of Norma Walton sworn June 26, 2014 and the Exhibits thereto, the Affidavits of various shareholders in companies controlling the Schedule C Properties and the Exhibits thereto, the Affidavit of James Reitan sworn July 3, 2014 and the Exhibits thereto, the Affidavit of Norma Walton sworn July 3, 2014 and the Exhibits thereto, the Affidavit of Carlos Carreiro sworn July 3, 2014 and the Exhibits thereto, the Affidavit of Yvonne Lui sworn July 3, 2014 and the Exhibits thereto, the Affidavit of Steven Williams sworn July 3, 2014 and the Exhibits thereto, the Affidavit of Talea Coghlin sworn July 4, 2014 and the Exhibits thereto, the Affidavit of George Crossman sworn July 4, 2014 and the Exhibits thereto, the Reports of the Inspector Schonfeld Inc. and the Affidavit of Christine Dejong sworn July 8, 2014 and upon hearing from counsel for the Applicants, the Respondents, the Inspector, the Dejongs, certain of the Schedule C Mortgagees and from Norma Walton, counsel for the Respondents Ronauld Walton, the Rose & Thistle Group Ltd. and Eglinton Castle Inc. appearing but making no submissions, and for reasons for decision released this day,

1. THIS COURT ORDERS that the time for service of the notice of motion and motion record is hereby abridged so that this motion was properly returnable on July 16-18, 2014, and hereby dispenses with further service.

#### **CONTINUATION OF ORDERS**

2. THIS COURT ORDERS that the Orders of the Court dated October 4, 2013, October 25, 2013, November 5, 2013, December 18, 2013 and March 21, 2014 continue in full force and effect, except as modified by this Order.

### **FRESH AS AMENDED NOTICE OF APPLICATION**

3. THIS COURT ORDERS that the Applicants are granted leave to issue and serve a Fresh as Amended Notice of Application, in the form attached to the Applicants' Consolidated Notice of Motion dated June 13, 2014.

### **COMBINATION OF APPLICATIONS**

4. THIS COURT ORDERS that the application commenced in Court File No. CV-14-501600 be transferred to the Commercial List and combined with the within application, to be heard at a time to be determined by this Court.

### **THE RESPONDENTS' ACCOUNTING**

5. THIS COURT ORDERS that the Respondents shall disclose forthwith any agreement to cross-collateralize any obligation of the Schedule B Companies or the Schedule C Properties.

### **SHAREHOLDINGS IN THE SCHEDULE B COMPANIES**

6. THIS COURT ORDERS that the Waltons' shareholder interests in each of the Schedule B Companies be calculated by reference to the equity contribution provisions contained in each Schedule B Company agreement and that the shares issued to the Waltons be limited to those for which they have actually paid and that any other shares be cancelled.

### **THE SCHEDULE C PROPERTIES**

7. THIS COURT ORDERS that the Orders of this Court dated December 18, 2013 and March 21, 2014 be amended to apply to all the properties at the following municipal addresses (collectively, the "Schedule C Properties"):

- (a) 3270 American Drive, Mississauga, Ontario;

- (b) 0 Luttrell Ave., Toronto, Ontario;
- (c) 2 Kelvin Avenue, Toronto, Ontario;
- (d) 346 Jarvis Street, Suites A, B, C, E and F, Toronto, Ontario;
- (e) 1 William Morgan Drive, Toronto, Ontario;
- (f) 324 Prince Edward Drive, Toronto, Ontario;
- (g) 24 Cecil Street, Toronto, Ontario;
- (h) 30 and 30A Hazelton Avenue, Toronto, Ontario;
- (i) 777 St. Clarens Avenue, Toronto, Ontario;
- (j) 252 Carlton Street and 478 Parliament Street, Toronto, Ontario;
- (k) 66 Gerrard Street East, Toronto, Ontario;
- (l) 2454 Bayview Avenue, Toronto, Ontario;
- (m) 319-321 Carlaw, Toronto, Ontario;
- (n) 260 Emerson Ave., Toronto, Ontario;
- (o) 44 Park Lane Circle, Toronto, Ontario;
- (p) 19 Tennis Crescent, Toronto, Ontario; and
- (q) 646 Broadview Avenue, Toronto, Ontario.

8. THIS COURT ORDERS that the following properties are removed from all restrictions imposed on dealings with those properties pursuant to the Order of this Court dated July 18, 2014:

- (a) 3775 St. Clair Avenue East, Toronto, Ontario;
- (b) 185 Davenport Road, Toronto, Ontario;
- (c) 1246 Yonge Street, Toronto, Ontario;
- (d) 17 Yorkville, Toronto, Ontario;
- (e) 3 Post Road, Toronto, Ontario;
- (f) 2 Park Lane Circle Road, Toronto, Ontario;
- (g) 14/16/17 Montcrest Boulevard, Toronto, Ontario; and
- (h) 346 Jarvis Street, Suite D, Toronto, Ontario;

9. THIS COURT ORDERS that, for greater certainty, any restriction imposed on any person from dealing with any of the properties listed in paragraph 8 of this Order, pursuant to the Order of this Court dated July 18, 2014, is vacated.

10. THIS COURT ORDERS that Schonfeld Inc. shall, within 15 days of the date of this Order, give notice of this Order to the registered owners of the following properties (the "Disputed Properties"):

- (a) 19 Tennis Crescent, Toronto, Ontario;
- (b) 646 Broadview Avenue, Toronto, Ontario;

(c) 346 Jarvis Street, Suite C, Toronto, Ontario; and

(d) 252 Carlton Street and 478 Parliament Street, Toronto, Ontario.

11. THIS COURT ORDERS that if, within 60 days of the date of this Order, a registered owner of a Disputed Property provides evidence to Schonfeld Inc., to the satisfaction of Schonfeld Inc., that it acquired that Disputed Property for fair market value and that the Waltons no longer hold any interest of any kind in that Disputed Property, that Disputed Property shall be released from the other terms of this Order, and that paragraphs 8 and 9 of this Order shall apply to that Disputed Property.

#### **CONSTRUCTIVE TRUSTS AND TRACING**

12. THIS COURT ORDERS constructive trusts in favour of the Applicants in respect of each of the Schedule C Properties listed below for the proportionate share of the purchase price that those amounts represented as at the date of purchase of the properties and for any proportionate share of the increase in value to the date of realization:

- (a) 14 College Street – \$1,314,225;
- (b) 3270 American Drive – \$1,032,000;
- (c) 2454 Bayview Avenue – \$1,600,000;
- (d) 346 Jarvis Street, Suite E – \$937,000;
- (e) 44 Park Lane Circle – \$2,500,000;
- (f) 2 Kelvin Street – \$221,000;

(g) 0 Luttrell Avenue – \$152,900; and

(h) 26 Gerrard Street – \$371,200,

except that no such trust will attach to any such property already sold pursuant to an Order of this Court and where there are no proceeds held in trust by Schonfeld Inc.

13. THIS COURT ORDERS that the Applicants shall be permitted to trace funds provided by the Applicants into and through the accounts of the Schedule B Companies, the accounts of the Respondent the Rose & Thistle Group Ltd., the personal accounts of the Respondents Norma and/or Ronauld Walton, the trust account of Walton Advocates and/or the trust account of Devry Smith Frank LLP, and otherwise into the companies which own the Schedule C Properties.

#### **APPOINTMENT OF SCHONFELD AS RECEIVER/MANAGER OF THE SCHEDULE C PROPERTIES**

14. THIS COURT ORDERS that Schonfeld Inc. is appointed as receiver/manager (the “Manager”), without security, of the Schedule C Properties, all proceeds thereof and revenue derived therefrom and the bank accounts of the companies which own or control the Schedule C Properties (the “Schedule C Companies”), save and except any Schedule C Property already sold pursuant to an Order of this Court and where there are no proceeds held or to be held by Schonfeld Inc.

15. THIS COURT ORDERS that, except as modified by this Order, the terms of the Order of this Court dated November 5, 2013 shall apply *mutatis mutandis* to Schonfeld’s appointment as Manager pursuant to paragraph 14 of this Order.

16. THIS COURT ORDERS that the Manager's Borrowing Charge and the Manager's Charge in respect of the Schedule C Properties shall rank in subsequent priority to any all security interests, trusts, liens, charges, mortgages and encumbrances, statutory or otherwise, in favour of a mortgagee or any other Person validly registered on title of the Property. The Manager's Borrowing Charge and the Manager's Charge shall not be registered on title to the Property and shall not, if no stay is in place pursuant paragraph 18 hereof, otherwise impair a mortgagee's ability to sell or lease the Property.

17. THIS COURT ORDERS that, without limiting the generality of the terms governing the appointment of Schonfeld Inc. as Manager of the Schedule C Properties, the Waltons, and any person acting at their instruction, shall, within 15 days of the date of this Order, provide full access to all of the books and records of Schedule C Companies to Schonfeld Inc.

18. THIS COURT ORDERS that the stay of proceedings contained in paragraph 12 of the November 5, 2013 Order of this Court does not apply to stay any proceedings that may be brought by the following mortgagees on the following properties (the "Schedule C Carve-Out Properties") to enforce the terms of their mortgages, including to exercise a power of sale or to appoint a receiver in respect of those properties as those mortgagees may be entitled to, subject to the terms of this Order:

<b>Mortgagee</b>	<b>Property</b>
The Equitable Trust Company, now Equitable Bank	19 Tennis Crescent, Toronto, Ontario PIN: 21065-0069 (LT)
The Equitable Trust Company, now Equitable Bank B & M Handelman Investments Ltd. E. Manson Investments Limited	1 William Morgan Drive, Toronto, Ontario PIN: 10369-0019 (LT)

Mortgagee	Property
Bamburgh Holdings Ltd. 4055845 Canada Inc. Paul Herbert Professional Corporation 558678 Ontario Ltd. Gertner, Jeffrey Handelman, Robert	
Home Trust Company B & M Handelman Investments Ltd. Barry Alan Spiegel Trust Orenbach, Joanna Orenbach, Jonathan Bamburgh Holdings Ltd. Lizrose Holdings Ltd. 1391739 Ontario Ltd. Natme Holdings Inc. E. Manson Investments Ltd. 558678 Ontario Ltd.	44 Park Lane Circle, Toronto, Ontario
The Equitable Trust Company, now Equitable Bank	346 Jarvis Street, #2, Toronto, Ontario PIN: 21105-0162 (LT)
B. & M. Handelman Investments Limited Bamburgh Holdings Ltd Paul Herbert Yerusha Investments Inc. Eroll Gordon Scotiatrust ITF SDRSP 491-02252-0 (Weingarten)	346 E Jarvis Street, Toronto, Ontario
Martha Sorger 1363557 Ontario Limited	777 St. Clarens Avenue, Toronto, Ontario
Martha Sorger 1363557 Ontario Limited	260 Emerson Avenue, Toronto, Ontario

<b>Mortgagee</b>	<b>Property</b>
Equitable Trust Company, now the Equitable Bank, c/o Harbour Mortgage Corp.	3270 American Dr., Mississauga Ontario
Business Development Bank of Canada	2454 Bayview Avenue, Toronto, Ontario
Firm Capital Credit Corporation	30 and 30A Hazelton Avenue, Toronto, Ontario

or any other mortgagee or Schedule C Property which the Applicants agree or the Court orders be added to this list.

19. In the event that any mortgagee on any Schedule C Carve-Out Property sells or otherwise realizes value from a disposition of the Schedule C Carve-Out Property, the net proceeds of such a sale or disposition shall be applied as follows:

- (a) to discharge any valid encumbrance, including any liens or other mortgages, registered in priority to any mortgage held by a mortgagee that is registered against that property;
- (b) to satisfy all usual costs and expenses of the sale of the property, including but not limited to real estate commissions and legal fees;
- (c) to any mortgagee on that property in such amounts as are necessary in order to satisfy all claims that such mortgagee may have on that property pursuant to the terms of their respective mortgages; and
- (d) the balance of the net proceeds of sale or disposition of any property shall be paid to the Manager, to be held in trust, pending further order of the Court.

**COSTS OF THE INSPECTOR**

20. THIS COURT ORDERS restitution and repayment by the Respondents to the Applicants and/or the Schedule B Companies in respect of all funds and to be paid by the Applicants and/or the Schedule B Companies, as appropriate, in respect of the fees and disbursements of Schonfeld Inc., in its capacity as Inspector in this proceeding, and of its counsel Goodmans LLP.

**232 GALLOWAY ROAD**

21. THIS COURT ORDERS that the Respondents are jointly and severally liable to the Applicants for restitution in the amount of \$1,518,750 plus interest at the rate set out in the relevant mortgage documents and costs on a full indemnity basis as set out in the relevant mortgage documents in respect of the mortgage discharged from title of the property at 232 Galloway Road, and shall pay that amount to the Applicants.

**OTHER RELIEF SOUGHT BY THE APPLICANTS**

22. THIS COURT ORDERS that the Applicants' motion for an order that the Respondents are jointly and severally liable for restitution payable to the Applicants in the amount of \$78,420,418 for all funds diverted from the Schedule B Companies and that they pay to the Applicants the balance of those funds not otherwise recovered by the Applicants from the sale of the Schedule B Properties is adjourned to a date to be scheduled.

23. THIS COURT ORDERS that the Applicants' motion for an order that the Respondents indemnify the Schedule B Companies and the Applicants for all amounts due and owing to creditors and lien claimants of the Schedule B Properties and Companies, with that amount to be fixed, is adjourned to a date to be scheduled by this Court.

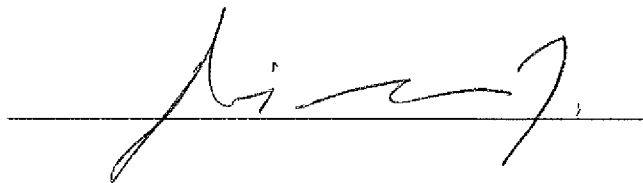
24. THIS COURT ORDERS that the Applicants' motions for an Order that the Applicants' claims to the Schedule B Companies have priority over any unauthorized interests in the Schedule B Companies is dismissed, without prejudice to the Applicants' right to seek such relief in relation to any particular unauthorized interest.

25. THIS COURT ORDERS that the Applicants' motion for an Order that the Applicants be permitted to elect to treat funds advanced by the Applicants to the Schedule B Companies as shareholder loans for the purposes of enforcement of their remedies is dismissed, with the issue of the characterization of such funds to be left to the claims process administered by the Manager.

26. THIS COURT ORDERS that the Applicants may deliver costs submissions of no more than 10 pages (excluding Bill of Costs) by August 20, 2014 and the Respondents may deliver responding costs submissions of no more than 10 pages (excluding Bill of Costs) by August 29, 2014.

ENTERED AT THE COURT OF ONTARIO  
ON / LE / DAUGHTER TO THE COURT

SEP 08 2014



**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 Ltd.
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. Royal Gate Nominee Inc.
29. Royal Gate (Land) Nominee Inc.
30. Dewhurst Development Ltd.
31. Eddystone Place Inc.
32. Richmond Row Holdings Ltd.

- 33. El-Ad (1500 Don Mills) Limited
- 34. 165 Bathurst Inc.

### **SCHEDULE "C" PROPERTIES**

- 1. 3270 American Drive, Mississauga, Ontario
- 2. 0 Luttrell Ave., Toronto, Ontario
- 3. 2 Kelvin Avenue, Toronto, Ontario
- 4. 346 Jarvis Street, Suites A, B, C, E and F, Toronto, Ontario
- 5. 1 William Morgan Drive, Toronto, Ontario
- 6. 324 Prince Edward Drive, Toronto, Ontario
- 7. 24 Cecil Street, Toronto, Ontario
- 8. 30 and 30A Hazelton Avenue, Toronto, Ontario
- 9. 777 St. Clarens Avenue, Toronto, Ontario
- 10. 252 Carlton Street and 478 Parliament Street, Toronto, Ontario
- 11. 66 Gerrard Street East, Toronto, Ontario
- 12. 2454 Bayview Avenue, Toronto, Ontario
- 13. 319-321 Carlaw, Toronto, Ontario
- 14. 260 Emerson Ave., Toronto, Ontario
- 15. 44 Park Lane Circle, Toronto, Ontario
- 16. 19 Tennis Crescent, Toronto, Ontario
- 17. 646 Broadview Avenue, Toronto, Ontario

-16-

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

-and-

NORMA WALTON et al.  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**JUDGMENT AND ORDER**

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

Tel: (416) 865-2921

Fax: (416) 865-3558

Email: pgriffin@litigate.com

Shara N. Roy (49950H)

Tel: (416) 865-2942

Fax: (416) 865-3973

Email: sroy@litigate.com

Lawyers for the Applicants

C

I

In the matter of Application CV-13-10280-00CL     )  
 of the Ontario Superior Court of Justice and     )  
 the Order of the Honourable Justice Brown     )  
 and his reasons therefor, dated August 12, 2014     )

### AFFIDAVIT OF MICHAEL SCHWARZ

1. My name is Michael Schwarz, and I am the President and a Director of 1673883 Ontario Inc., (the "Corporation") which owns the property municipally known as 19 Tennis Crescent in Toronto, Ontario, and as such I have personal knowledge of the matters to which I hereinafter depose.
2. I first became aware that 19 Tennis Crescent (the "Property") was one of the subjects of these proceedings on August 6, 2014, when counsel for the Applicant mailed a copy of the Mr. Justice Brown's Interim Order, dated July 18, 2014, to the registered head office of the Corporation.
3. Prior to August 6, 2014, neither the Ontario Superior Court nor any of the parties to these proceedings notified me or the Corporation that the Property was the subject of any proceedings before the Court.
4. I own, and am a principal in companies that own, several investment properties in central Toronto. I have acted as a Landlord of various investment properties since 1997.
5. In late 2010, I started looking to acquire another investment property and found a listing for the Property. I have attached a copy of the real estate listing as Exhibit "A" to this Affidavit.

6. The Property was attractive to me because it was an 8-plex and was close to my home in Riverdale.
7. In February 2011, I contacted the listing agent, Kevin Gillen, for a viewing of the Property.
8. On or around February 24, 2011, an offer to purchase the Property was accepted by the Seller. I have attached as Exhibit "B", a copy of the final Agreement of Purchase and Sale (the "Agreement").
9. The final purchase price agreed on was \$1,337,500.00.
10. The Agreement of Purchase and Sale provided for an option to proceed with the sale as a share purchase of all of the shares of the Corporation, at the option of the Buyer.
11. On or around March 4, 2011, I exercised the option to complete the purchase and sale of the Property by way of share purchase.
12. The completion date of the Agreement was extended several times so that I could satisfy the conditions of the offer.
13. On or around April 1, I engaged PPCI Property Valuers Consulting Inc. to perform an appraisal of the Property.
14. The Property was appraised at \$1,375,000.00. A copy of the appraisal summary is attached as Exhibit "C".
15. I have attached as Exhibit "D" a copy of the Certificate of Incumbency of the Corporation effective May 30, 2011.
16. The share purchase was completed as of May 31, 2011.

17. Two holding companies purchased all of the outstanding shares of the Corporation from the existing shareholders. I have attached as Exhibit "E" a copy of the Directors' Resolution approving the share transfer.
18. I am the sole shareholder of 2021972 Ontario Inc., which purchased 50% of the outstanding shares of the Corporation.
19. Keir MacRae is the sole shareholder of EKM Holdings Ltd., which purchased the remaining 50% of the outstanding shares of the Corporation.
20. I have attached as Exhibit "F" copies of the cancelled share certificates belong to all of the shareholders of the Corporation prior to May 31 2011.
21. Ronauld and Norma Walton (the "Former Principals") resigned as Directors of the Corporation as of May 31 2011. I have attached a copy of their resignations as Exhibit "G".
22. Norma Walton resigned as an Officer of the Corporation as of May 31 2011. I have attached a copy of her resignation as Exhibit "H".
23. Ronauld Walton had earlier resigned as President of the Corporation as of November 10 2008. I have attached a copy of his resignation as Exhibit "I".
24. Through a clerical error with the corporate filings, Ronauld Walton and I were both listed as President of the Corporation on the corporate profile filed with the Ministry of Government Services until early June 2014, even though Ronauld Walton had resigned in 2008.
25. I am advised by Keir MacRae that the error was corrected on June 2, 2014. I have attached as Exhibit "J" a copy of the Corporate Profile Report as of August 8, 2014.

26. I have attached as Exhibit "K" copies of the Directors' Register, Officers Register and Shareholders' Register from the minute book of the Corporation.
27. At all times, the transaction was conducted at arm's length from the Vendors and through professional intermediaries, including a real estate broker, a mortgage broker, a trust company, and various solicitors for all the parties.
28. Neither I nor Keir MacRae have had at any time a business or personal relationship with the Corporation or with any of the Former Principals or shareholders of the Corporation, other than this one transaction.
29. Since May 31, 2011, none of the Former Principals or shareholders have had any interest or involvement in either the Corporation or the Property.
30. None of the Former Principals have any interest or role in either of the current corporate shareholders of the Corporation.

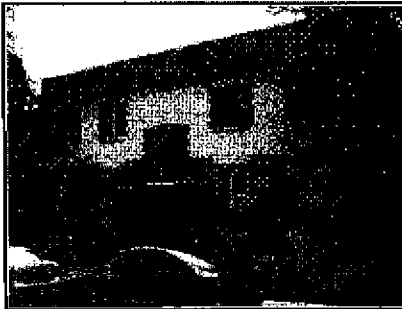
I make this Affidavit in response to the Order of Mr. Justice Brown, dated August 12, 2014, and for no other or improper purpose.

Sworn before me in the City       )  
 of Toronto, Province of       )  
 Ontario, this 4<sup>th</sup> day of September)  
 2014

  
 Michael Schwarz

  
 Keir MacRae  
 a commissioner etc.

A

	<b>19 Tennis Cres</b>		<b>List: \$1,595,000 For Sale</b>
	Toronto, Ontario		Map: 120-22-R Sale
	M4V1Z6 Dist: E01		
	Dir/Cross St: Broadview/Danforth		DOM: 0 Last Status: New
Plan 471E Lot 22 Pt Lot 23		Taxes: \$15,664.68/2010/Annual	
Investment		Lease Term:	
Apartment	Freestanding: Y	Holdover: 45	
	Occup: Tenant	SPIS: N	
Possession: 30 Days/Tba		Franchise:	
Commercial Condo Fees:			
MLS#: E1934151 Seller: 1673883 Ontario Inc. Contact After Exp: N			
PIN#:			
Total Area: 10,560 Sq Ft	Survey:		
Ofc/Apt Area:	Lot/Bldg/ 80X88 Feet Lot		
Indust Area:	Unit/Dim:		
Retail Area:	Lot Irreg:	Soil Test:	
Apx Age:	Crane:	Outside Storage:	
Volts:	Bay Size:	Rail:	
Amps:	%Bldg:	Basement:	
Zoning: Multi Res	Washrooms:	Elevator:	
Truck Level:	Water: Municipal	UFFI:	
Grade Level:	Water Supply:	Assessment:	
Drive-In:	Sewers:	Chattels:	
Double Man:	A/C: Part	LLBO:	
Clear Height:	Utilities: Y	Days Open:	
Sprinklers:	Garage Type: Outside/Surface	Hours Open:	
Heat: Gas Hot Water	Park Spaces: #Tri Spc:	Employees:	
		Seats:	
Bus/Bldg Name:		For Year:	Financial Statement:
Actual/Estimated:			
Taxes:	Heat:	Gross Inc/Sales:	Est Value Inv At Cost:
Insur:	Hydro:	- Vacancy Allow:	Com Area Upcharge:
Mgmt:	Water:	- Operating Exp:	Percentage Rent:
Maint:	Other:	= Net Income B4 Debt:	
<b>Remarks For Clients:</b> Elegant 8 Unit Apartment Building Features 6 Spacious 2Br With Den And 2 Br Units All With Walkout To Private Decks. Most Units Have Been Recently Updated. Electrical Service And Furnace Are Recent And Building Has Had Total Fire Retrofit. Rear Parking Lot Can Accomodate Up To 10 Cars. <b>Extras:</b> 2010 Net Income Is \$84,037.41 (5.27%)Contact La For List Of Chattles And Fixtures. <b>Remarks for Brokerages:</b> All Appiontment Through Listing Agent-Do Not Go Direct.			
<b>Mortgage Comments:</b>			
GILLEN, K.P., & CO. REALTY LIMITED, BROKERAGE 416-964-9460 Fax: 416-964-7728 40 Scollard St. Ste. 200, Toronto M5R3S1 KEVIN P. GILLEN, Broker of Record 416-879-9460			
Contract Date: 8/11/2010	Condition:	Appts: Lbc	
Expiry Date: 11/5/2010	Cond Expiry:	Ad: N	
Last Update: 8/11/2010	CB Comm: 2%	Escape:	
		Original \$: \$1,595,000	

Toronto Real Estate Board (TREB) assumes no responsibility for the accuracy of any information shown. Copyright TREB 2010

This is Exhibit A to the Affidavit of Michael Schwarz, sworn before me this 3<sup>rd</sup> day of September, 2014



**B**

FAX 489-9993

1888 822-9281

**Confirmation of Co-operation  
and Representation**Form 320  
For use in the Province of OntarioBUYER: Michael Schwarz in Trust for a Company to be IncorporatedSELLER: 1673683 Ontario Inc.For the transaction on the Property known as: 19 Tennis Crescent

For the purposes of this Confirmation of Co-operation and Representation, a "Seller" includes a vendor, a landlord, or a prospective, seller, vendor or landlord and a "Buyer" includes a purchaser, a tenant, or a prospective, buyer, purchaser or tenant and a "sale" includes a lease.

The following information is confirmed by the undersigned Broker(s). If a Co-operating Broker is involved in the transaction, the brokers agree to co-operate, in consideration of, and on the terms and conditions as set out below.

## 1. Listing Broker

- a) ☐ The Listing Broker represents the interests of the Seller in this transaction and is providing customer service to the Buyer. The Buyer may be buying the property directly from the Listing Broker or may be using the services of a Co-operating Broker. (If applicable, Section 3 will be completed by Co-operating Broker).
- b) ☒ **DUAL AGENCY:** The Listing Broker has entered into a Buyer Agency Agreement with the Buyer and represents the interests of the Seller and the Buyer, with their consent, as a Dual Agent for this transaction. The Listing Broker must be impartial and equally protect the interests of the Seller and the Buyer in this transaction. The Listing Broker has a duty of full disclosure to both the Seller and the Buyer, including a requirement to disclose all factual information about the property known to the Listing Broker.

However, the Listing Broker shall not disclose:

- That the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
- That the Buyer may or will pay more than the offered price, unless otherwise instructed in writing by the Buyer;
- The motivation of or personal information about the Seller or Buyer, unless otherwise instructed in writing by the party to which the information applies, or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- The price the Buyer should offer or the price the Seller should accept;
- And; the Listing Broker shall not disclose to the Buyer the terms of any other offer.

However, it is understood that factual market information about comparable properties and information known to the Listing Broker concerning potential uses for the property will be disclosed to both Seller and Buyer to assist them to come to their own conclusions.

## 2. PROPERTY SOLD BY BUYER BROKER - PROPERTY NOT LISTED

- ☐ The Broker is a Buyer Broker and the property is not listed with any real estate broker. The Broker is providing customer service to the Seller and will be paid
- ☐ by the Seller in accordance with a Commission Agreement for Property Not Listed
- or ☐ by the Buyer directly

Additional comments and/or disclosures by Listing/ Buyer Broker:

This is Exhibit B to the Affidavit of Michael Schwarz, sworn before me this 3<sup>rd</sup> day of September, 2014

INITIALS OF BUYER(S)/SELLER(S)/BROKER(S) REPRESENTATIVE(S) (WHERE APPLICABLE)

LISTING BROKER

CO-OPERATING/BUYER BROKER

SELLER

BUYER



**3. CO-OPERATING BROKER (If applicable, Co-operating Broker completes Section 3 and Listing Broker indicates 1, a) in Section 1.)**

- a) ☐ The Co-operating Broker is a Buyer Broker representing the interests of the Buyer in this transaction. The Co-operating Broker waives any offer of sub-agency with the Listing Broker and/or Seller, and is providing customer service to the Seller. It is further understood and agreed that the Listing Broker will pay the Co-operating Broker



the commission as indicated in the MLS® information for the property

or, if not an MLS® Listing, ☐

a commission of \_\_\_\_\_

plus applicable Goods and Services Tax, from the amount paid by the Seller to the Listing Broker, on any trade wherein the Co-operating Broker has obtained an accepted Agreement of Purchase and Sale, option to Purchase or Agreement to Exchange and/or Lease. Said payment of commission will not make the Co-operating Broker either the agent or the sub-agent of the Seller or the Listing Broker.

- b) ☐ The Co-operating Broker is a Buyer Broker representing the interests of the Buyer in this transaction. The Co-operating Broker waives any offer of sub-agency with the Listing Broker and/or Seller, and is providing customer service to the Seller. It is further understood and agreed that the Co-operating Broker will not be receiving any payment from the Listing Broker and/or Seller and will be receiving payment directly from the Buyer in this transaction.

- c) ☐ The Co-operating Broker accepts the offer of sub-agency from the Seller and/or Listing broker and represents the interests of the Seller in this transaction while offering the Buyer customer service. It is further understood and agreed that the Listing Broker will pay the Co-operating Broker



the commission as indicated in the MLS® information for the property

or, if not an MLS® Listing, ☐

a commission of \_\_\_\_\_

plus applicable Goods and Services Tax, from the amount paid by the Seller to the Listing Broker, on any trade wherein the Co-operating Broker has obtained an accepted Agreement of Purchase and Sale, option to Purchase or Agreement to Exchange and/or Lease. Said payment of commission will not make the Co-operating Broker either the agent or sub-agent of the Seller or the Listing Broker.

- d) ☐ The Co-operating Broker is providing customer service to both the Buyer and the Seller. It is further understood and agreed that the Listing Broker will pay the Co-operating Broker



the commission as indicated in the MLS® information for the property

or, if not an MLS® Listing, ☐

a commission of \_\_\_\_\_

plus applicable Goods and Services Tax, from the amount paid by the Seller to the Listing Broker, on any trade wherein the Co-operating Broker has obtained an accepted Agreement of Purchase and Sale, option to Purchase or Agreement to Exchange and/or Lease. Said payment of commission will not make the Co-operating Broker either the agent or sub-agent of the Seller or the Listing Broker.

Additional comments and/or disclosures by Co-operating Broker:

**COMMISSION TRUST AGREEMENT:** If the above Co-operating Broker is receiving payment of commission from the Listing Broker, then the agreement between Listing Broker and Co-operating Broker further includes a Commission Trust Agreement, the consideration for which is the Co-operating Broker procuring an offer for a trade of the property, acceptable to the Seller. This Commission Trust Agreement shall be subject to and governed by the MLS® rules and regulations pertaining to commission trusts of the Listing Broker's local real estate board, if the local board's MLS® rules and regulations so provide. Otherwise, the provisions of the OREA recommended MLS® rules and regulations shall apply to this Commission Trust Agreement. For the purpose of this Commission Trust Agreement, the Commission Trust Amount shall be the amount noted in Section 3 above. The Listing Broker hereby declares that all monies received in connection with the trade shall constitute a Commission Trust and shall be held, in trust, for the Co-operating Broker under the terms of the applicable MLS® rules and regulations.

**SIGNED BY BROKER (S) REPRESENTATIVE(S) (WHERE APPLICABLE)**R. P. CURTIS CO. REALTY LTD

(Name of Listing Broker)

(Name of Co-operating/Buyer Broker)

440 SCARLETT PT. SUITE 200

(Address of Listing Broker)

(Address of Co-operating/Buyer Broker)

Tel: 416-964-9460 Fax: 416-964-7728

Tel: \_\_\_\_\_ Fax: \_\_\_\_\_

[Signature]Date: 19/2/11

(Signed on Behalf of Co-operating/Buyer Broker)

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

**ACKNOWLEDGEMENT**

I have received, read, and understand the above information.

(Signature of Seller)

Date: 22 Feb 11

(Signature of Buyer)

Date: 2/19/2011

(Signature of Seller)

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

(Signature of Buyer)

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



© 2005 OREA Standard Form Do not alter when printing or reproducing the standard pre-set portion.

QuickOffer® [www.nerecoff.com](http://www.nerecoff.com)

Form 320 01/2005 Page 1 of 2



# Agreement of Purchase and Sale Commercial

Commercial Division  
Toronto Real Estate Board

This Agreement of Purchase and Sale dated this 24th day of February 2011

**BUYER**, Michael Schwarz in Trust for a Company to be Incorporated, agrees to purchase from  
(Full legal names of all Buyers)

**SELLER**, 1673883 Ontario Inc. the following  
(Full legal names of all Sellers)

## REAL PROPERTY:

Address 19 Tennis Crescent fronting on the south side  
of Tennis Crescent in the City Toronto

and having a frontage of 80.00 ft more or less by a depth of 88.00 ft more or less

and legally described as Eight (8) Suite residential apartment building with parking for 8 cars

PIN 210650069 Plan 471E Lot 22 Pt Lot 23

(Legal description of land including easements not described elsewhere)

1,337,500 (the "property").

## PURCHASE PRICE:

Dollars (CDN\$) 1,300,000.00

One Million Three Hundred ~~Thousand~~ Twenty Five Thousand Dollars

**DEPOSIT:** Buyer submits Thirty Seven thousand Five hundred Dollars upon acceptance  
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

Sixty Thousand Dollars (CDN\$) 60,000.00

by negotiable cheque payable to K.P. Gillen & Co. Realty Ltd. in Trust "Deposit Holder"  
to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion.  
For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the  
Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that,  
unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's  
non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

**SCHEDULE(S) A** &B&C attached hereto form(s) part of this Agreement.

1. **IRREVOCABILITY:** This Offer shall be Irrevocable by Buyer Seller until 5:00 p.m. on  
the 22nd day of February 2011, after which time, if not accepted, this  
Offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 31st day  
of March 2011. Upon completion, vacant possession of the property shall be given to the  
Buyer unless otherwise provided for in this Agreement.

3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant  
to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby  
appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a  
Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled  
or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any  
notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto,  
this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule  
hereto shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the  
Acknowledgement below, or where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

FAX No. 416-489-9973 (For delivery of notices to Seller) FAX No. 416-964-7728 (For delivery of notices to Buyer)

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

**4. CHATTELS INCLUDED:**

as per Schedule A

**5. FIXTURES EXCLUDED:**

- 6. RENTAL ITEMS:** The following equipment is rented and ~~not~~ included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

HWTs \* (both parties to the transaction will be GST/HST registrants by the time of closing and that both parties agree that they will make the necessary filings, if applicable, to prevent the HST having to be collected or remitted) ←

- 7. GST/HST:** If the sale of the property (Real Property as described above) is subject to Goods and Services Tax (GST) or Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect GST or HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the GST or HST payable and file the prescribed form and shall indemnify the Seller in respect of any GST or HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to GST or HST, Seller agrees to certify on or before closing, that the transaction is not subject to GST or HST. Any HST on chattels, if applicable, is not included in the purchase price. \*

- 8. TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 17th day of March, 2011, (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use (Eight (8) Suite residential apartment building) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

- 9. FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

- 10. TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagees, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

- 11. CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the Property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

- 12. DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller.
14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
17. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.
18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
20. **PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
21. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
22. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless Seller's spouse has executed the consent hereinafter provided.
23. **UFF:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
24. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
25. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
26. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard preset portion hereof, the added provision shall supersede the standard preset provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
27. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

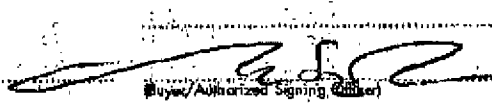


**2B. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

  
(Witness)

  
(Buyer/Authorized Signing Officer)

DATE Feb 19, 2011  
(Seal)

(Witness)

(Buyer/Authorized Signing Officer)

(Seal)

DATE

I, the Undersigned Seller, agree to the above Offer. I hereby irrevocably instruct my lawyer to pay directly to the Listing Brokerage the unpaid balance of the commission together with applicable Goods and Services Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the Listing Brokerage to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

  
(Witness)

  
(Seller/Authorized Signing Officer)

DATE 22 Feb 11  
(Seal)

(Witness)

(Seller/Authorized Signing Officer)

(Seal)

DATE

**SPOUSAL CONSENT:** The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

(Seal)

DATE

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at ..... a.m./p.m. this ..... day of ..... 20.....

(Signature of Seller or Buyer)

#### INFORMATION ON BROKERAGE(S)

Listing Brokerage	Tel. No.
Co-op/Buyer Brokerage <b>GILLEN, K.P., &amp; CO. REALTY LIMITED, BROKERAGE</b>	Tel. No. <b>(416) 964-9441</b>
<b>40 SCOLLARD ST., STE. 200</b>	<b>TORONTO</b>

#### ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

(Seller)

DATE

(Buyer)

DATE

(Seller)

DATE

(Buyer)

DATE

Address for Service

Tel. No.

Address for Service

Tel. No.

Seller's Lawyer

Buyer's Lawyer

Address

Address

Tel. No.

FAX No.

Tel. No.

FAX No.

#### FOR OFFICE USE ONLY

#### COMMISSION TRUST AGREEMENT

In consideration for the Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale, I, **GILLEN, K.P., & CO. REALTY LIMITED, BROKERAGE**, hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLSP Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLSP Rules and shall be subject to and governed by the MLSP Rules pertaining to Commission Trust.

DATED as of the date and time of this acceptance of the foregoing Agreement of Purchase and Sale.

Acknowledged by:

(Authorized to bind the Listing Brokerage)

(Authorized to bind the Co-operating Brokerage)





## Schedule A Agreement of Purchase and Sale - Commercial

Commercial Division  
Ontario Real Estate Board

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** Michael Schwarz in Trust for a Company to be Incorporated, and

**SELLER,** 1673883 Ontario Inc.

for the purchase and sale of 19 Tennis Crescent Toronto

dated the 15th day of February, 2011

Buyer agrees to pay the balance as follows:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, by bank draft or certified cheque, to the Seller on the completion of this transaction.

The Buyer and the Seller hereby direct the deposit holder to place all deposit monies in an interest bearing account or term deposit, with any accrued interest on the deposit to be paid to the Buyer as soon as possible after completion or other termination of this Agreement. In the event that the closing date is advanced or the transaction is terminated, the Buyer agrees to accept the short-term rate for deposits withdrawn before maturity.

The seller agrees to discharge any existing mortgage (s) and or lien (s) or any encumbrances now registered against the subject property, on or before the completion of this transaction, at his own expense, either from the proceeds of the sale or by solicitors undertaking.

### Chattels Included:

8 fridges, 8 stoves, gas fired furnace & equipment, domestic hot water boiler, all electric light fixtures and window coverings deemed owned by the Seller, and all related equipment and chattels currently on the property required to operate the building on a normal day to day basis.

Buyer agrees to assume the existing tenancies, as set out in the attached Schedule "B", which the Seller warrants are the only tenancies affecting the property.

1. This Agreement is conditional upon the following:

- a. The Buyer at its own expense inspecting the real property and improvements thereto and approving them. The Seller will cooperate in providing access to the Buyer and its agents to meet this condition;
- b. The Buyer at its own expense obtaining a Phase I and/or a Phase II Environmental Assessment Report. The Seller will cooperate in providing access to the Buyer and its agents and allowing soil test if required to meet this condition; and
- c. The Buyer inspecting and approving:
  - a) all leases and or offers to lease if no leases are available,
  - b) all financial statements confirming current income and expense statements relating to the property for 2009, 2010 and 2011.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):





# Schedule A

## Agreement of Purchase and Sale - Commercial

Commercial Division  
Toronto Real Estate Board

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER**, Michael Schwarz in Trust for a Company to be Incorporated

**SELLER**, 1673883 Ontario Inc.

for the purchase and sale of 19 Tennis Crescent

Toronto

dated the 24<sup>th</sup> day of February, 2011

d. The Buyer arranging satisfactory financing, in its sole and unfettered discretion, for the purchase as contemplated herein.

The Buyer will have until March 14<sup>th</sup>, 2011 to satisfy these four (4) conditions. Unless the Buyer gives notice in writing delivered to the Seller not later than 5:00 p.m. on March 14<sup>th</sup>, 2011 that these conditions have been fulfilled, this Offer shall become null and void and the deposit shall be returned to the Buyer in full without deduction. These four (4) conditions are for the sole benefit of the Buyer and may be waived by the Buyer at any time.

2. Within 3 business days of acceptance of the Offer to Purchase, the Seller agrees to supply to the Buyer the following if they are in the Buyer's possession or control:

a. All environmental reports and audits, pre-purchase reports, and any other reports relating to the environmental condition of the building or the land;

b. An existing survey completed by an Ontario Land Surveyor showing the current location of all buildings, structures, additions, fences, improvements, easements, rights-of-way and encroachments affecting the property;

c. All architectural building plans, mechanical drawings, electrical drawings, structural engineering plans, renovation plans, contracts, estimates, "as built" building plans, and any other plans relating to the building;

d. All warranties and service manuals applicable to any equipment or chattels included in the purchase price;

e. Copies of building expense invoices for 2009, and 2010 including property tax assessments and utility bills showing the yearly expense for gas, water, hydro and other building expenses along with copies of all building maintenance that has been performed in the past five years and the building maintenance plan going forward, if one exists;

f. Provide a written authorization drafted by the Buyer to all governmental and other authorities having jurisdiction over the real property to release to the Buyer all information such authorities have on file respecting the property.

g. Copies of all leases and or offers to lease if no leases are available, all financial statements confirming current income and expense statements relating to the property.

(h) Copy of the rent roll for the property.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



© 2010, Ontario Real Estate Association ("OREA"). All rights reserved. This form was developed by OREA for the use and reproduction of its members and licensees.

Any other use or reproduction is prohibited except with prior written consent of OREA. Do not alter when printing or reproducing the standard pre-set portion.

Form 500

Rev. 03/2010

Page 6 of 7



# Schedule A Agreement of Purchase and Sale - Commercial

Commercial Division  
Toronto Real Estate Board

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER**, Michael Schwarz in Trust for a Company to be Incorporated, and

**SELLER**, 1673883 Ontario Inc.

for the purchase and sale of 19 Tennis Crescent Toronto

dated the 15th day of February, 2011

## SELLER COVENANTS AND AGREES TO DELIVER TO THE BUYER ON OR BEFORE CLOSING THE FOLLOWING:

- a) A declaration that all accounts for labour and material concerning the real property are fully paid for and that no one has the right to file a lien under Mechanic's Lien Act or the Construction Lien Act against the real property. *if same can be obtained*
- b) Acknowledgements by all tenants and Seller's declaration confirming the terms of rental including deposits, also directions to the tenants, directing payments of all future rent to the Buyer or as he may direct.
- c) All deposits and prepaid amounts held by the Seller, together with applicable interest accrued thereon to be credited in favour of the buyer at the time of closing
- d) A Bill of Sale for all chattels and equipment forming part of the purchase price herein.
- e) All keys to the suites and building.
- f) All existing guarantees and warranties, plans relating to the building, chattels, fixtures and equipment, as in Seller's possession
- g) All leases (if any) tenancy agreements, or tenancy applications held by the Seller.
- (h) A warranty by Seller that i) all tenant rents are legal; ii) no illegal rent increases have occurred during the Seller's ownership of the property.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



© 2010, Ontario Real Estate Association ("OREA"). All rights reserved. This form was developed by OREA for the use and reproduction of its members and licensees.

Reproduction or other use or reproduction is prohibited except with prior written consent of OREA. Do not alter when printing or reproducing the standard printed portion.

Form 590 Rev. 03/2010 Page 7 of 7



# **Schedule B** **Agreement of Purchase and Sale - Commercial**

Commercial Division  
 Toronto Real Estate Board

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER**, Michael Schwarz in Trust for a Company to be incorporated ..... and

**SELLER**, 1673883 Ontario Inc. ....

for the purchase and sale of 19 Tennis Crescent

dated the 19th day of February 2011

## **SCHEDULE B TO THE AGREEMENT OF PURCHASE AND SALE** **BETWEEN MICHAEL SCHWARZ IN TRUST FOR A COMPANY TO BE FORMED** **AND** **1673883 ONTARIO INC.**

The Buyer shall have the option, by giving notice to the Seller of his intention to do so by 5pm March 14, 2011, of completing the purchase of this property by purchasing the shares of the Seller corporation ("the Corporation"), in which case this Agreement of Purchase and Sale shall be void and the parties shall execute a Share Purchase Agreement to be drafted by the Buyer's solicitor. The Share Purchase Agreement shall incorporate the provisions and conditions of the Agreement of Purchase and Sale and shall further provide for:

- a. The payment of the Seller's agent commission in the same amount as if the Agreement of Purchase and Sale had been completed;
- b. The delivery by the Seller to the Buyer of all financial statements, income tax returns and assessments, sales tax returns and assessments and all other financial and corporate documents and records of the corporation;
- c. The delivery by the Seller to the Buyer the resignations of all current officers and directors of the Corporation as of the Completion Date;
- d. A warranty by the Corporation that there are or have been no claims, actions or other judicial or adversary proceedings concerning any of the Assets nor is any such claim, action
- e. A warranty by the Corporation that the Corporation has no liabilities except as disclosed and that all liabilities will be discharged prior to the Completion Date;
- f. The indemnification of the Buyer by the shareholders of the Seller for any loss suffered by the Buyer arising from any claim contemplated in paragraphs (d) or (e), supra, or from any unpaid taxes, fines, penalties, fees, expenses or other costs arising from any matter before the Completion Date;
- g. The covenant and agreement of each party to execute and deliver such further and other agreements, assurances, undertakings, acknowledgments or documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence and do and perform and cause to be done and performed any further and other acts and things as may be necessary or desirable in order to give full effect to the Share Purchase Agreement and every part thereof, whether before or after the Completion Date.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



© 2011, Ontario Real Estate Association (OREA). All rights reserved. This form was developed by OREA for the use and reproduction of its members and licensees only. Any other use or reproduction is prohibited except with prior written consent of OREA. Do not use when printing or reproducing the standard printed portion.

Form 505 Revised 2009 Page 1 of 3

15

## SCHEDULE 'C'

## 19 Tennis Crescent

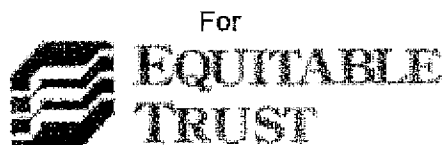
1	John Barnes	\$ 1,000.00	\$ -	\$ 1,000.00	\$ 1,000.00	\$ -	Lease Ends Oct. 31, 2010
2	Rolf Stum	\$ 904.72	\$ -	\$ 904.72	\$ 904.75	\$ (0.03)	
3	MS Claire Voden	\$ 1,066.35	\$ -	\$ 1,066.35	\$ 1,066.35	\$ -	
4	Lawrence & Nina Castle	\$ 1,830.00	\$ -	\$ 1,830.00	\$ 1,830.00	\$ -	
5	Sherry Chafe	\$ 1,830.00	\$ -	\$ 1,830.00	\$ 1,830.00	\$ -	Sept. 30, 2010
6	MS Shelley Town	\$ 1,325.18	\$ -	\$ 1,325.18	\$ 1,325.18	\$ -	
7	Matthew Schmidt	\$ 880.00	\$ -	\$ 880.00	\$ 736.00	\$ (75.00) 75 parking	Dec. 31, 2010
	Amanda C Betts	\$ 659.00	\$ -	\$ 659.00	\$ 659.00	\$ -	
8	Elena Palozzi	\$ 1,066.24	\$ -	\$ 1,066.24	\$ 1,066.24	\$ -	

C

**APPRAISAL REPORT**

Of a  
Multi-Residential Property  
Located at

19 Tennis Crescent  
City of Toronto  
Province of Ontario



This is Exhibit C to the Affidavit of Michael  
Schwarz, sworn before me this 3<sup>rd</sup> day of  
September, 2014

April 18, 2011  
Our File: # 2111147

Equitable Trust  
30 St. Clair Avenue West, Suite 7  
Toronto, ON M4V 3A1

COPY

Attention: Peter Park

Dear Mr. Park:

Re: Multi-Residential Property, 19 Tennis Crescent, Toronto, Ontario

In accordance with your request, we have completed an appraisal of the above property for the purpose of estimating its current market value, as defined.

Market value is defined as the most probable selling price of a property if exposed for sale in the open market by a willing seller, allowing a reasonable time to find a willing buyer, neither buyer nor seller acting under compulsion, both having a full knowledge of all the uses and purposes to which the property is adapted and for which it is capable of being used and both exercising intelligent judgement.

It should be noted that this appraisal is based on the assumption that there will be a continuing demand for the subject in its Highest and Best Use.

Having inspected the subject property, and having carefully considered all physical, governmental and socio-economic factors affecting value, including prudent management, we estimate the current market value, as at April 11, 2011 (our date of inspection), to be:

**ONE MILLION THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS  
(\$1,375,000)**

The market value estimate determined in this report is for the sole use of the client to whom it is directed and for the defined purpose stated in this report. Any use which a third party makes of this report, or any reliance on, or decisions to be made based on it, are the responsibility of such third parties. Property Valuers/Consulting Inc. accepts no responsibility for damages, if any, suffered by any third party as a result of decisions made, or actions taken, based on this report.

The appraiser is not qualified to comment on environmental issues that may affect the market value of the property appraised, including but not limited to pollution or contamination of land, buildings, water, groundwater or air. Unless expressly stated, the property is assumed to be free and clear of pollutants and contaminants, including but not limited to moulds or mildews or the conditions that might give rise to either, and in compliance with all regulatory environmental requirements, government or otherwise, and free of any environmental condition, past, present or future, that might affect the market value of the property appraised. If the party relying on this report requires information about environmental issues then that party is cautioned to retain an expert qualified in such issues. We expressly deny any legal liability relating to the effect of environmental issues on the market value of the property appraised.

Equitable Trust  
Mr. Peter Park

April 18, 2011

Re: Multi-Residential Property, 19 Tennis Crescent, Toronto, Ontario

The value estimate given in this report applies only at the effective date and is based on the interpretation of the zoning by-law and market conditions existing at that time.

This report contains 39 consecutively numbered pages of analysis and exhibits gathered during our investigations and supporting our conclusions.

Respectfully submitted,

Property Valuers/Consulting Inc.

Derek Williams

Murray Visser, AACI, P.App.  
President

19

D

## CERTIFICATE OF INCUMBENCY

The undersigned President of 1673883 Ontario Inc. (the "Corporation") hereby certifies that the following are all of the duly elected and appointed directors, officers and shareholders of the Corporation:

## Officers

President: Norma Walton

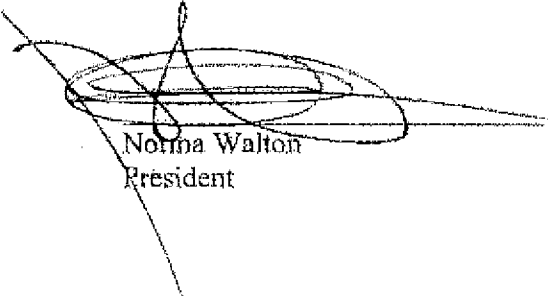
## Directors

Norma Walton  
Ronald Walton

## Shareholders

Norma Walton  
Ronald Walton  
Colette Carreiro  
Carlos Carreiro

Dated as of the 30<sup>th</sup> day of May 2011



Norma Walton  
President

This is Exhibit D to the Affidavit of Michael  
Schwarz, sworn before me this 3<sup>rd</sup> day of  
September, 2014



E

RESOLUTIONS OF THE DIRECTORS  
OF

1673883 Ontario Inc.

(the "Corporation")

**WHEREAS** Norma Walton, Ronauld Walton, Colette Carreiro and Carlos Carreiro own all of the issued and outstanding shares of the Corporation;

**AND WHEREAS** the Vendors have agreed by Share Purchase Agreement dated May 31, 2011 (the "Agreement"), to sell all of their shares to 2021972 Ontario Inc. and EKM Holdings Ltd. (the "Purchasers");

**AND WHEREAS** pursuant to the Articles, no share in the corporation may be transferred without the approval of the Board of Directors or all of the shareholders acting unanimously;

**NOW THEREFOR IT IS RESOLVED THAT** the transfer of shares from the Vendors to the Purchaser as set out in the Agreement is hereby approved.

The foregoing resolutions are passed by way of signature of the Directors of the Corporation, dated as of May 31, 2011

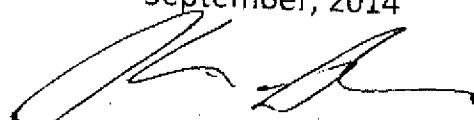


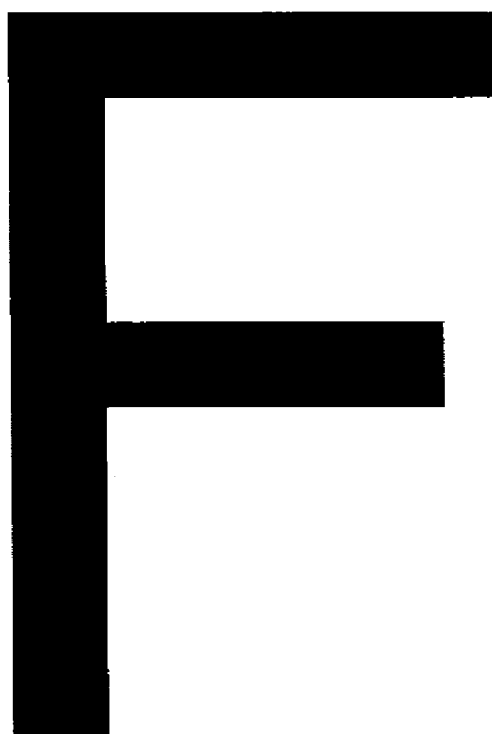
Name: Norma Walton



Name: Ronauld Walton

This is Exhibit E to the Affidavit of Michael Schwarz, sworn before me this 3<sup>rd</sup> day of September, 2014







[illegible]

COMMON

THIS IS IN FULL PAYMENT OF THE DEBT OF THE COMPANY TO THE BONDHOLDERS OF THE COMPANY.

NO. 103

SHARES

COMMON

THIS IS IN FULL PAYMENT OF THE DEBT OF THE COMPANY TO THE BONDHOLDERS OF THE COMPANY.

NO. 103

SHARES

COMMON

SHARE

THIS IS IN FULL PAYMENT OF THE DEBT OF THE COMPANY TO THE BONDHOLDERS OF THE COMPANY.

NO. 103

SHARES

COMMON

SHARE

THIS IS IN FULL PAYMENT OF THE DEBT OF THE COMPANY TO THE BONDHOLDERS OF THE COMPANY.

NO. 103

SHARES

Certificate No. 100  
 No. 100  
 Amount \$100.00  
 Date of Issue February 10, 1911  
 No. of Shares 100

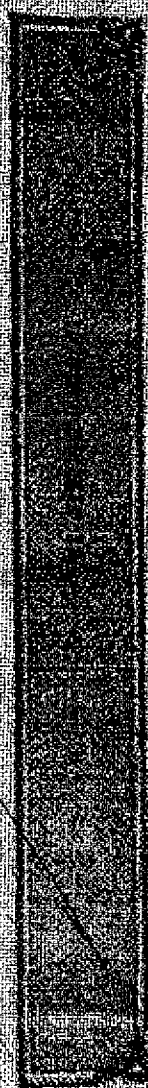
To: Edward C. Smith  
 To: Edward C. Smith  
 To: Edward C. Smith

No. of Shares 100  
 No. of Shares 100  
 No. of Shares 100

No. 100

INCORPORATED UNDER THE LAWS OF THE REPUBLIC OF CHINA

SHANGHAI



Style is to certify the shares directed

in the registered book of the company

IS/CHANG SHANGHAI, CHINA

Company of China

The shares of the company represented by this certificate have been received by the company and the company  
 will furnish to the holder, on demand and without charge, a list of the names of the holders of the shares of the company  
 (1) The rights, privileges, and conditions attached to the shares hereby authorized to be issued and the value of the  
 shares as the same have been fixed by the directors and  
 (2) The amount of the dividend paid to the holder, together with the amount of the dividend payable to the holder

**COMMISSION**

NO. 100

100

February 10, 1911

100

NO. 100

# G


**Resignation**

To: 1673883 Ontario Inc. (the "Corporation")

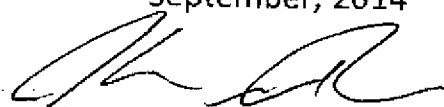
And to: The Shareholders Thereof

I, the undersigned, hereby resign as a Director of the Corporation, effective May 31, 2011

Dated: May 31, 2011

  
\_\_\_\_\_  
Norma Walton

This is Exhibit G to the Affidavit of Michael  
Schwarz, sworn before me this 3<sup>rd</sup> day of  
September, 2014



**Resignation**

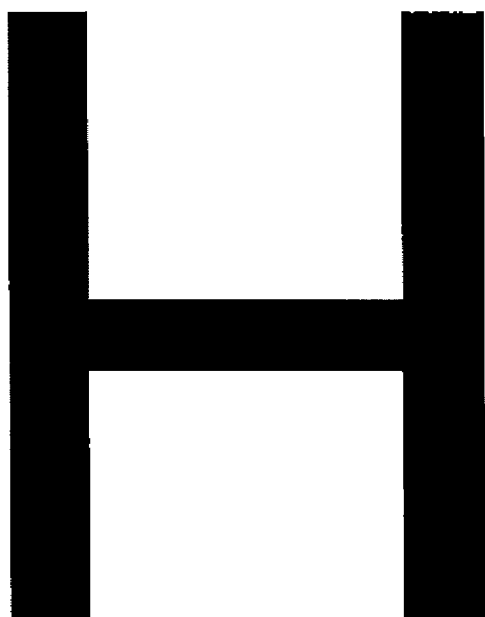
To: 1673883 Ontario Inc. (the "Corporation")

And to: The Shareholders Thereof

I, the undersigned, hereby resign as a Director of the Corporation, effective May 31, 2011

Dated: May 31, 2011

  
Ronauld Walton



**Resignation**

To: 1673883 Ontario Inc. (the "Corporation")

And to: The Directors thereof

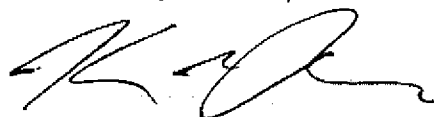
I, the undersigned, hereby resign as a President, Secretary and Treasurer of the Corporation, effective May 31, 2011.

Dated: May 31, 2011



Norma Walton

This is Exhibit H to the Affidavit of Michael  
Schwarz, sworn before me this 3<sup>rd</sup> day of  
September, 2014





**RESIGNATION**

**TO: 1673883 ONTARIO INC.**  
**AND TO: ITS BOARD OF DIRECTORS**

I RONAULD WALTON, hereby, tender my resignation as President and an officer of 1673883 Ontario Inc. effective immediately.

DATED the 10<sup>th</sup> day of November 2008.



---

Ronauld Walton

This is Exhibit I to the Affidavit of Michael  
Schwarz, sworn before me this 3<sup>rd</sup> day of  
September, 2014



**RESOLUTION OF THE BOARD OF DIRECTORS****OF****1673883 ONTARIO INC.****RESIGNATION AND APPOINTMENT OF OFFICERS**

RESOLVED that the resignation of Ronauld Walton as President and an officer of the Corporation (which resignation is attached) be accepted and that the following persons be appointed officers of the Corporation:

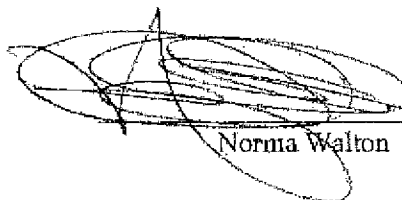
President	-	Norma Walton
Secretary	-	Norma Walton
Treasurer	-	Norma Walton

Pursuant to the provisions of the *Ontario Business Corporations Act*, the foregoing resolutions are hereby executed by the directors of the Corporation.

**DATED** this 10<sup>th</sup> day of November, 2008.



Ronauld Walton



Norma Walton

J

Request ID: 016725689  
 Transaction ID: 55042240  
 Category ID: UN/E

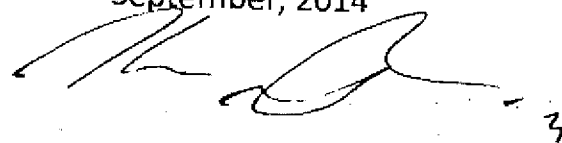
Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2014/08/08  
 Time Report Produced: 11:14:44  
 Page: 1

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
1673883	1673883 ONTARIO INC.	2005/09/26
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>		<b>Date Amalgamated</b>
KEIR MACRAE 18 GOULDING LANE		Amalgamation Ind.
		NOT APPLICABLE
		<b>New Amal. Number</b>
		Notice Date
		NOT APPLICABLE
		<b>Letter Date</b>
		NOT APPLICABLE
<b>Mailing Address</b>		<b>Revival Date</b>
KEIR MACRAE 18 GOULDING LANE		Continuation Date
		NOT APPLICABLE
		<b>Transferred Out Date</b>
		Cancel/Inactive Date
		NOT APPLICABLE
		<b>EP Licence Eff.Date</b>
		EP Licence Term.Date
		NOT APPLICABLE
		<b>Date Commenced in Ontario</b>
		Date Ceased in Ontario
		NOT APPLICABLE
		<b>Number of Directors</b>
		Minimum Maximum
		00001 00015
<b>Activity Classification</b>		<b>Date Commenced in Ontario</b>
NOT AVAILABLE		Date Ceased in Ontario
		NOT APPLICABLE

This is Exhibit J to the Affidavit of Michael Schwarz, sworn before me this 3<sup>rd</sup> day of September, 2014



Request ID: 016725689  
Transaction ID: 55042240  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2014/08/08  
Time Report Produced: 11:14:44  
Page: 2

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

1673883

**Corporation Name**

1673883 ONTARIO INC.

**Corporate Name History**

1673883 ONTARIO INC.

**Effective Date**

2005/09/26

**Current Business Name(s) Exist:**

YES

**Expired Business Name(s) Exist:**

NO

**Administrator:****Name (Individual / Corporation)**

EMERSON  
KEIR  
MACRAE

**Address**

18 GOULDING LANE

MONO  
ONTARIO  
CANADA L9W 6H2

**Date Began**

2011/05/31

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type****Resident Canadian**

Y

Request ID: 016725689  
Transaction ID: 55042240  
Category ID: UN/E4

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2014/08/08  
Time Report Produced: 11:14:44  
Page: 3

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1673883

1673883 ONTARIO INC.

**Administrator:**

Name (Individual / Corporation)

Address

EMERSON  
KEIR  
MACRAE

18 GOULDING LANE

MONO  
ONTARIO  
CANADA L9W 6H2

Date Began

First Director

2011/05/31

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

SECRETARY

**Administrator:**

Name (Individual / Corporation)

Address

EMERSON  
KEIR  
MACRAE

18 GOULDING LANE

MONO  
ONTARIO  
CANADA L9W 6H2

Date Began

First Director

2011/05/31

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

TREASURER

Request ID: 016725689  
Transaction ID: 55042240  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2014/08/08  
Time Report Produced: 11:14:44  
Page: 4

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

1673883

**Corporation Name**

1673883 ONTARIO INC.

**Administrator:****Name (Individual / Corporation)**

MICHAEL  
MANFRED  
SCHWARZ

**Address**

21 LANGLEY AVE

TORONTO  
ONTARIO  
CANADA M4K 1B4

**Date Began**

2011/05/31

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type****Resident Canadian**

Y

**Administrator:****Name (Individual / Corporation)**

MICHAEL  
MANFRED  
SCHWARZ

**Address**

21 LANGLEY AVE

TORONTO  
ONTARIO  
CANADA M4K 1B4

**Date Began**

2011/05/31

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

PRESIDENT

**Resident Canadian**

Request ID: 016725689  
Transaction ID: 55042240  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2014/08/08  
Time Report Produced: 11:14:44  
Page: 5

## CORPORATION PROFILE REPORT

Ontario Corp Number

1673883

Corporation Name

1673883 ONTARIO INC.

### Last Document Recorded

Act/Code	Description	Form	Date
CIA	ANNUAL RETURN 2014	1S	2014/06/02 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

Order Summaries for transactions submitted through Security Searches can be viewed in Security Searches by accessing the Bundled Search List, selecting a Package ID and clicking on the Order Summary button.

**K**

**REGISTER OF DIRECTORS  
OF  
1673883 ONTARIO INC.**

FULL NAME	ADDRESS	RES. CDN (Yes/No)	DATE BECAME DIRECTOR	DATE CEASED AS DIRECTOR
Ronald Walton	64 Doonaree Drive, Toronto, Ontario M3A 1M6	Yes	September 26, 2005	May 31, 2011
Norma Walton	64 Doonaree Drive, Toronto, Ontario M3A 1M6	Yes	September 26, 2005	May 31, 2011
Michael Schwarz	21 Langley Avenue, Toronto, Ontario M4K 1B4	Yes	May 31, 2011	
Keir MacRae	18 Goulding Lane, Mono, Ontario L9W 2Z2	Yes	May 31, 2011	

*This is Exhibit 1A to the Affidavit  
of Michael Schwarz, sworn  
before me this 3rd day of  
September, 2014*

*[Signature]*

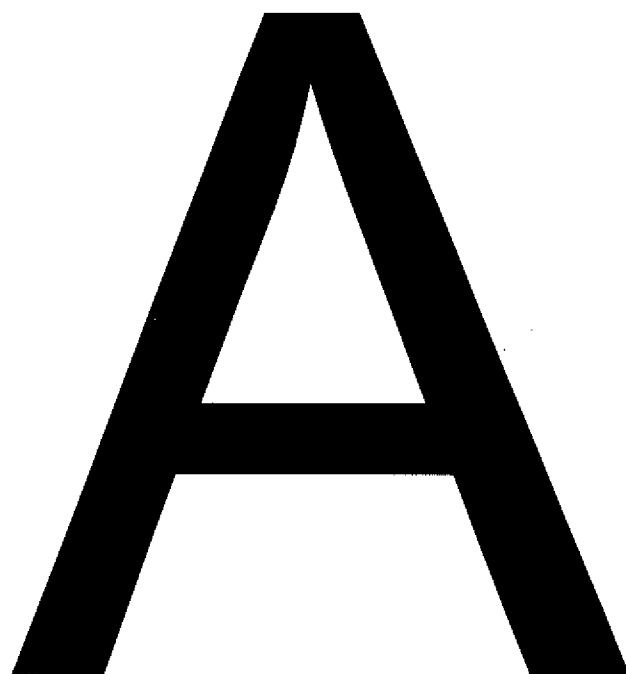
**REGISTER OF OFFICERS  
OF  
1673883 ONTARIO INC.**

FULL NAME	ADDRESS	OFFICE HELD	DATE APPOINTED	DATE CEASED
Ronauld Walton	64 Doonaree Drive, Toronto, Ontario M3A 1M6	President	September 26, 2005	November 10, 2008
Norma Walton	64 Doonaree Drive, Toronto, Ontario M3A 1M6	President	November 10, 2008	May 31, 2011
Norma Walton	64 Doonaree Drive, Toronto, Ontario M3A 1M6	Secretary	September 26, 2005	May 31, 2011
Norma Walton	64 Doonaree Drive, Toronto, Ontario M3A 1M6	Treasurer	November 10, 2008	May 31, 2011
Michael Schwarz	21 Langley Avenue, Toronto, Ontario M4K 1B4	President	May 31, 2011	
Keir MacRae	18 Goulding Lane, Mono, Ontario L9W 2Z2	Secretary/Treasurer	May 31, 2011	

**SHAREHOLDERS REGISTER  
OF  
1673883 ONTARIO INC.**

DATE	NAME	SHARE CLASS NAME	BALANCE HELD
September 26, 2005	Ronauld Walton	Common Shares	50
September 26, 2005	Norma Walton	Common Shares	50
February 14, 2011	Carlos Carreira	Common Shares	50
February 14, 2011	Golette Carreira	Common Shares	50
May 31, 2011	EKM Holdings Ltd.	Common Shares	100
May 31, 2011	2021972 Ontario Inc.	Common Shares	100

II





April 18, 2011  
Our File # 21114147

Equitable Trust  
30 St. Clair Avenue West, Suite 7  
Toronto, ON M4V 3A1

Attention: Peter Park

Dear Mr. Park:

Re: Multi-Residential Property, 19 Tennis Crescent, Toronto, Ontario

In accordance with your request, we have completed an appraisal of the above property for the purpose of estimating its current market value, as defined:

Market value is defined as the most probable selling price of a property if exposed for sale in the open market by a willing seller, allowing a reasonable time to find a willing buyer, neither buyer nor seller acting under compulsion, both having a full knowledge of all the uses and purposes to which the property is adapted and for which it is capable of being used and both exercising intelligent judgement.

It should be noted that this appraisal is based on the assumption that there will be a continuing demand for the subject in its Highest and Best Use.

Having inspected the subject property, and having carefully considered all physical, governmental and socio-economic factors affecting value, including prudent management, we estimate the current market value, as at April 11, 2011 (our date of inspection), to be:

**ONE MILLION THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS  
(\$1,375,000)**

The market value estimate determined in this report is for the sole use of the client to whom it is directed and for the defined purpose stated in this report. Any use which a third party makes of this report, or any reliance on, or decisions to be made based on it, are the responsibility of such third parties. Property Valuers/Consulting Inc. accepts no responsibility for damages, if any, suffered by any third party as a result of decisions made, or actions taken, based on this report.

The appraiser is not qualified to comment on environmental issues that may affect the market value of the property appraised, including but not limited to pollution or contamination of land, buildings, water, groundwater or air. Unless expressly stated, the property is assumed to be free and clear of pollutants and contaminants, including but not limited to moulds or mildews or the conditions that might give rise to either, and in compliance with all regulatory environmental requirements, government or otherwise, and free of any environmental condition, past, present or future, that might affect the market value of the property appraised. If the party relying on this report requires information about environmental issues then that party is cautioned to retain an expert qualified in such issues. We expressly deny any legal liability relating to the effect of environmental issues on the market value of the property appraised.

**B**

Equitable Trust  
Mc Peter Park

April 18, 2011

Re: Multi-Residential Property, 10 Tennis Crescent, Toronto, Ontario

The value estimate given in this report applies only at the effective date and is based on the interpretation of the zoning by-law and market conditions existing at that time.

This report contains 30 consecutively numbered pages of analysis and exhibits gathered during our investigations and supporting our conclusions.

Respectfully submitted,

Property Valuers/Consulting Inc.

  
Derek Williams

  
Murray Vasser, A.C.I., F.A.S.I.  
President

C

**Sale of Shares of 1673883 Ontario Inc. from Norma Walton et al.  
to 2021972 Ontario Inc. & EKM Holdings Ltd.**

**STATEMENT OF ADJUSTMENTS**

Adjusted as at May 30, 2011

Sale Price		\$1,337,500.00
Deposit	\$60,000.00	
Prepayments by Vendor	(n/a)	
Residential Rent Deposits	\$9,941.49	
Utilities, Taxes and Rent (to May 15):		
- Property Tax(2010: \$15,664.68 = 42.92/day)		\$1,330.52
- Property Tax Arrears & Interest	\$211.83	
- Toronto Hydro (n/a)		
- Enbridge Gas (n/a)		
- Toronto Water(\$6.81/day from March 9)	\$558.42	

Balance Due to Walton Advocates in Trust, payable in accordance with \$1,268,118.78  
Direction re: Funds

Acknowledged and agreed this 30<sup>th</sup> day of May, 2011.

**EKM Holdings Ltd.**

**2021972 Ontario Inc.**

Per: \_\_\_\_\_  
Authorized Signing Officer

Per: \_\_\_\_\_  
Authorized Signing Officer

\_\_\_\_\_  
Norma Walton

\_\_\_\_\_  
Ronald Walton

\_\_\_\_\_  
Colette Carreiro

\_\_\_\_\_  
Carlos Carreiro

**D**

**SALE OF SHARES IN 1673882 ONTARIO INC.  
TO 2021972 ONTARIO INC. and to EKM HOLDINGS LTD.**

**DIRECTION RE: FUNDS**

TO: 2021972 Ontario Inc. and to EKM Holdings Ltd.


RE: Share Purchase Agreement dated May 31, 2011

The undersigned, being the Vendors of all of the outstanding and issued shares of 1673883 Ontario Inc., hereby authorize and direct you to make the balance due in connection with the Agreement, as set out in the Statement of Adjustments signed by the parties concurrently with this Direction, payable as follows:

1. Walton Advocates in trust

and for so doing, this shall be your good, irrevocable and sufficient authority.

DATED this 31<sup>st</sup> day of May, 2011

  
Norma Walton  
Ronauld Walton  
Carlos Carreiro  
Colette Carreiro

**E**

## UNDERTAKING

TO: 2021972 ONTARIO INC. AND EKM HOLDINGS LTD.

AND TO: KEIR MACRAE  
Their solicitor herein

RE: Sale of shares in 1673883 Ontario Inc. by Norma Walton, Ronauld Walton, etc to  
2021972 Ontario Inc. pursuant to a Share Purchase Agreement dated the 1<sup>st</sup> day of  
~~April~~ 2011 (the "Agreement")

May

31<sup>st</sup>

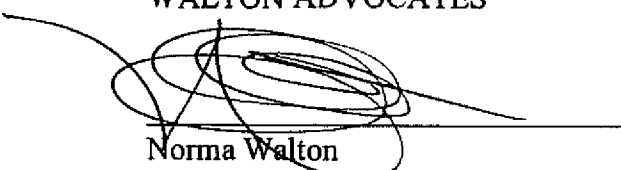
In consideration of the closing of the above-mentioned transaction, I hereby undertake to payout and register a discharge of the following Charge/Mortgage immediately upon receipt of the funds:

1. Charge/Mortgage of Land in favour of Home Trust Company registered on February 8, 2011 by Instrument No. AT 2616711

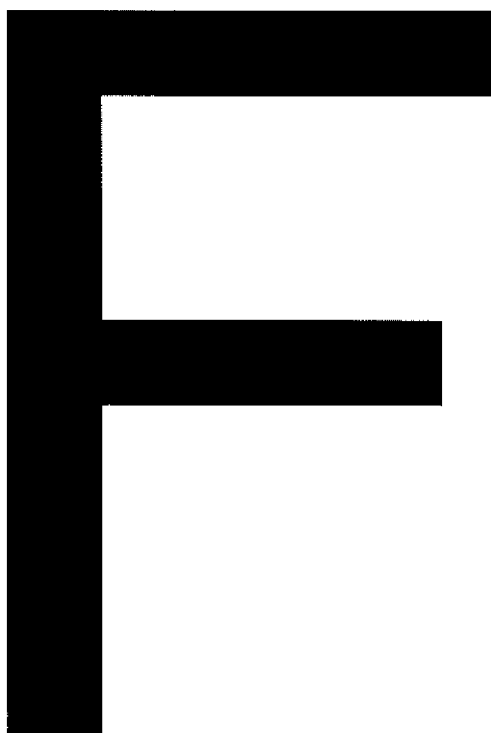
Once the above mortgage has been discharged I will advise you of its discharge particulars.

DATED this 31<sup>ST</sup> day of May, 2011

WALTON ADVOCATES



Norma Walton



**LOWNDES & HARRISON**  
BARRISTERS & SOLICITORS

Robert J. Harrison, LL. B.  
Brandon D. Jones, J.D.

John M. Lowndes, Q.C.  
(Retired)

1 DUNDAS STREET WEST  
SUITE 2702, BOX 81  
TORONTO, ONTARIO M5G 1Z3  
CANADA

TELEPHONE: (416) 977-8720  
FAX: (416) 974-9099  
EMAIL: info@lowndesharrison.com

July 5, 2011

**1673883 Ontario Inc.**  
**c/o Allan Strader**  
***Barrister and Solicitor***  
49 St. Nicholas Street  
Toronto, ON  
M4Y 1W6

Dear Mr. Strader:

JUL 08 2011

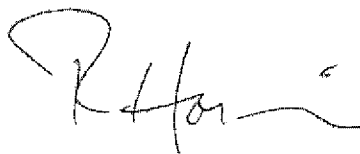
**Re: 1673883 Ontario Inc. Mortgage with Equitable Trust Company**  
**19 Tennis Crescent, Toronto**

---

I enclose herewith Statement of Account, copy of tax payment receipt and PPSA Financing Statement for your clients' record. There is a credit balance to your clients for which I have enclosed my firm's trust cheque.

Yours very truly,

LOWNDES & HARRISON  
Per:



RJH/sn  
Encls.

Robert J. Harrison

## IN ACCOUNT WITH

## LOWNDES &amp; HARRISON

Suite 2702-Box 81  
1 Dundas Street West  
Toronto, Ontario M5G 1Z3

2011 To Professional Services:

May 16

To Date

Acting for the Equitable Trust Company in the placement of a new first mortgage on the premises described as Lot 22, Plan 471E, City of Toronto, municipally known as 19 Tennis Crescent. Preparing Charge, Assignment of Rents, General Security Agreement, Guarantee and related documentation. Arranging for closing of transaction. Reporting to Lender.

## OUR FEE

\$ 3,250.00

DISBURSEMENTS

To Teranet Land Information Services online

Re: Execution Searches.....	\$ 11.00	
Re: Search Disbursements (Non-Taxable).....	9.00	
Re: Search Disbursements (Taxable).....	14.00*	
Paid for Telecommunication/E-reg Fees.....	142.60*	
Paid for telephone, FAX, photocopies, postage		
And incidental expenses.....	45.00*	\$ 221.60

## TOTAL FEES AND DISBURSEMENTS

\$ 3,471.60

HST @ 13% on fees and applicable\* disbursements

\$ 430.17

## TOTAL FEES, DISBURSEMENTS &amp; HST

\$ 3,901.77

E. & O. E.

Dated: June 17, 2011

LOWNDES & HARRISON

Per:

*[Signature]*

Robert J. Harrison

/lac

RECEIVED PAYMENT  
WITH THANKS  
June 17/11  
*[Signature]*

IN ACCOUNT WITH

**LOWNDES & HARRISON**

Suite 2702-Box 81  
1 Dundas Street West  
Toronto, Ontario M5G 1Z3

**STATEMENT OF TRUST FUNDS**

2011		DR.	CR.
June 2	By The Equitable Trust Company Re: Mortgage Funds.....		\$ 997,403.89
	To Stewart Title Guaranty Company Re: Title Insurance.....	\$ 920.37	
	To Home Trust Company Re: Mortgage Funds.....	983,705.40	
	To Carisc Insurance Consulting Services Re: 19 Tennis Crescent.....	395.50	
	To Legal Link Re: Status Certificate.....	81.53	
June 17	To Be Paid To Superior Delivery Re: Courier.....	59.36	
	To Be Paid To Treasurer, City of Toronto Re: Final 2011 Taxes.....	7,396.24	
	To Lowndes & Harrison as per attached Statement.....	3,901.77	
	<b>CREDIT BALANCE Payable To</b> <b>1673883 Ontario Inc.....</b>	<b>943.72</b>	
		<u>\$ 997,403.89</u>	<u>\$ 997,403.89</u>

E. &amp; O. E.

Dated: June 17, 2011

**RECEIVED PAYMENT**  
WITH THANKS  
June 17/11

# RECEIPT OF PAYMENT

224



CITY OF TORONTO

5100 YONGE STREET

NORTH YORK, ONTARIO M2N 5V7

Date of Payment: JUN 20, 2011

Assessment Roll No.

1904-07-5-200-00400 0000

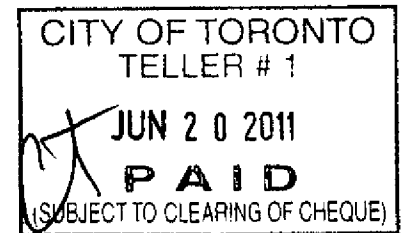
## PAYMENT DETAILS

Payment Date	Amount
Jun 20, 2011	\$7,396.24
<b>Total Payment:</b>	<b>\$7,396.24</b>

THIS RECEIPT IS ISSUED SUBJECT TO CHEQUE(S) TENDERED BEING HONoured BY THE BANK

Site Address: 19 TENNIS CRES

Legal Description: PLAN 471E LOT 22 PT LOT 23



Registered Under (office use only)/  
Enregistré aux termes de (usage interne)

PPSA

31	Reference File Number/ N° de dossier de référence	670688514	Renewal (B) OR Discharge (C)/ Renouvellement (B) OU Mainlevée (C)		Enter Number of Additional Years if Renewal (see reverse)/ Indiquer le nombre d'années supplémentaires s'il s'agit d'un renouvellement (voir au verso)	
32	Individual Debtor (as recorded)/ Débiteur particulier (tel qu'inscrit)	First Given Name/ Premier prénom				
		Initial/ Initiale				
		Surname/ Nom de famille				
33	Business Debtor (as recorded)/ Débiteur commercial (tel qu'inscrit)	1673883 ONTARIO INC.				
		Ontario Corporation No. / N° matricule de la personne morale en Ontario				
08/ 16	Secured Party/Lien Claimant/ Registering Agent /Créancier garanti/ Créancier privilégié/ Agent d'enregistrement					
09/ 17	Address/ Adresse	City, etc /Ville, etc.		Prov. /Prov. Postal Code /Code postal		

LOWNDES & HARRISON  
2702-1 DUNDAS ST. W.  
TORONTO ONT M5G 1Z3

Authorized Signature/Signature autorisée

Name and Signature of Secured Party/Lien Claimant OR Name of Secured Party/Lien Claimant AND Name and Signature of Agent of Secured Party/Lien Claimant. / Nom et signature du créancier garanti/créancier privilégié OU Nom du créancier garanti/créancier privilégié ET nom et signature de l'agent du créancier garanti/créancier privilégié.

This form must not be reproduced for registration purposes. / Cette formule ne doit pas être reproduite aux fins d'enregistrement.

(Cut along dotted line / Détachez à la ligne pointillée)

This is not a Certificate issued under the PPSA. It is provided as a courtesy to assist you/ Le présent n'est pas un certificat délivré en vertu de PPSA. Il est délivré à titre gracieux pour vous aider.

Verification Statement/État de vérification

Form Type/Type de formule	Page/ Page	Line/ Ligne	*The expiry date calculated by the system may exceed the date on which the registration ceases to be effective. * La date d'expiration établie en vertu du système peut être postérieure à la date à laquelle l'enregistrement cesse d'être en vigueur.	Page/ Page	OF DE	Total Pages/ Nombre de pages	*Expiry Date/ *Date d'expiration YYYY/AAAA MM/MM DD/JJ
				1		1	2016/06/15

1C	1	00	670688514
1C	1	01	CAUTION FILING/AVERTIS: PAGE: 1 OF/DE: 1 MV SCHEDULE
1C	1	01	ATTACHED/LISTE VA: REG NUM/NO ENREGIST: 20110615 1041 1862 1696
1C	1	01	REG UNDER/T. ENREG: P REG PERIOD/PERIODE: 5
1C	1	03	1673883 ONTARIO INC.
1C	1	04	18 GOULDING LANE
1C	1	04	MONO ONT L9W 2S2
1C	1	08	THE EQUITABLE TRUST COMPANY
1C	1	09	700-30 ST. CLAIR AVE. W.
1C	1	09	TORONTO ONT M4V 3A1
1C	1	10	CONS GOODS/BIENS CONS: X INVTRY/STOCK: X EQUIP/MATER: X
1C	1	10	ACCTS/COMPT: X OTHER/AUTRE: X MV INCL/VA INCLUS:
1C	1	10	AMOUNT/MONTANT: 11003125 DATE OF MATURITY/DATE ECHEANCE:
1C	1	10	31MAY2016 NO FIXED MAT DATE/D ECHE PAS DET:
1C	1	13	ASSIGNMENT OF RENTS
1C	1	16	LOWNDES & HARRISON
1C	1	17	2702-1 DUNDAS ST. W.
1C	1	17	TORONTO ONT M5G 1Z3

\*\*\* VERIFY IMMEDIATELY UPON RECEIPT / VERIFIEZ IMMEDIATEMENT VOTRE AVIS \*\*\*

# G

**LOWNDES & HARRISON**  
**BARRISTERS & SOLICITORS**

Robert J. Harrison, LL. B.  
Brandon D. Jones, J.D.

John M. Lowndes, Q.C.  
(Retired)

1 DUNDAS STREET WEST  
SUITE 2702, BOX 81  
TORONTO, ONTARIO M5G 1Z3  
CANADA

TELEPHONE: (416) 977-8720  
FAX: (416) 974-9099  
EMAIL: info@lowndesharrison.com

July 5, 2011

**425 Church Street Holdings Inc.**  
**c/o Allan Strader**  
***Barrister and Solicitor***  
49 St. Nicholas Street  
Toronto, ON  
M4Y 1W6

Dear Mr. Strader:

JUL 08 2011

**Re: 425 Church Street Holdings Inc. Mortgage with Equitable Trust Company**  
**425 Church Street, Toronto**

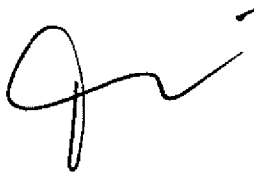
---

I enclose herewith Statement of Account, copy of tax payment receipt and PPSA Financing Statement for your clients' record. There is a credit balance to your clients for which I have enclosed my firm's trust cheque.

Yours very truly,

LOWNDES & HARRISON

Per:



RJH/sn  
Encls.

Robert J. Harrison

# RECEIPT OF PAYMENT

228



CITY OF TORONTO

5100 YONGE STREET

NORTH YORK, ONTARIO M2N 5V7

Date of Payment: JUN 20, 2011

Assessment Roll No.

1904-06-8-160-00100 0000

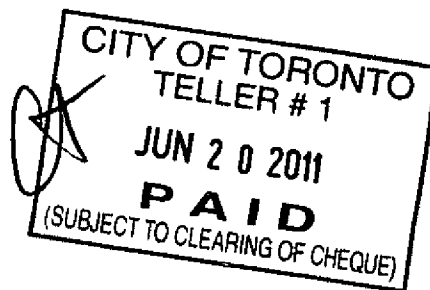
## PAYMENT DETAILS

Payment Date	Amount
Jun 20, 2011	\$11,047.77
<b>Total Payment:</b>	<b>\$11,047.77</b>

THIS RECEIPT IS ISSUED SUBJECT TO CHEQUE(S) TENDERED BEING HONoured BY THE BANK

Site Address: 425 CHURCH ST

Legal Description: PLAN 34 PT LOT 183



## IN ACCOUNT WITH

## LOWNDES &amp; HARRISON

Suite 2702-Box 81  
1 Dundas Street West  
Toronto, Ontario M5G 1Z3

---

2011 To Professional Services:

May 18

To Date

Acting for the Equitable Trust Company in the placement of a new first mortgage on the premises described as Part Lot 183, Plan 34, City of Toronto, municipally known as 425 Church Street Holdings, Inc. Preparing Charge, Assignment of Rents, General Security Agreement, Guarantee and related documentation. Arranging for closing of transaction. Reporting to Lender.

**OUR FEE**

\$ 2,500.00

**DISBURSEMENTS**

To Teranet Land Information Services online

Re: Execution Searches.....	\$ 11.00	
Re: Search Disbursements (Non-Taxable).....	9.00	
Re: Search Disbursements (Taxable).....	26.00*	
Paid for Telecommunication/E-reg Fees.....	142.60*	
Paid for telephone, FAX, photocopies, postage		
And incidental expenses.....	45.00*	\$ 233.60

---

**TOTAL FEES AND DISBURSEMENTS**

\$ 2,733.60

**HST @ 13% on fees and applicable\* disbursements**

\$ 334.23

**TOTAL FEES, DISBURSEMENTS & HST**

\$ 3,067.83

E. & O. E.

Dated: June 17, 2011

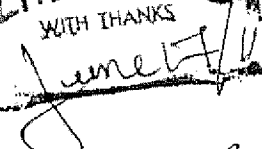

LOWNDES & HARRISON

Per:



Robert J. Harrison

/lac

RECEIVED PAYMENT  
WITH THANKS  
June 17/11  
  


IN ACCOUNT WITH

## LOWNDES &amp; HARRISON

Suite 2702-Box 81  
1 Dundas Street West  
Toronto, Ontario M5G 1Z3

STATEMENT OF TRUST FUNDS

<u>2011</u>		<u>DR.</u>	<u>CR.</u>
June 2	By The Equitable Trust Company Re: Mortgage Funds.....		\$ 596,498.35
	To Stewart Title Guaranty Company Re: Title Insurance.....	\$ 615.60	
	To The Bank of Montreal Re: Mortgage Funds.....	183,041.42	
	To Allan Strader, In Trust Re: 19 Tennis and 425 Church Street...	397,858.00	
	To Legal Link Re: Status Certificate.....	220.52	
June 8	To Teranet Re: Register Transfer and Charges.....	71.30	
June 17	To Be Paid To Superior Delivery Re: Courier.....	68.99	
	To Be Paid To Treasurer, City of Toronto Re: Final 2011 Taxes.....	11,047.77	
	To Lowndes & Harrison as per attached Statement.....	3,067.83	
	<b>CREDIT BALANCE payable to 425 Church Street Holdings, Inc.....</b>	<b>506.92</b>	
		<u>\$ 596,498.35</u>	<u>\$ 596,498.35</u>

E. &amp; O. E.

Date: June 17, 2011

RECEIVED PAYMENT  
WITH THANKS  
June 17/11

Registered Under (office use only)  
Enregistré aux termes de (usage interne)

PPSA

31	Reference File Number N° de dossier de référence	670688523	Renewal (B) OR Discharge (C) Renouvellement (B) OU Mainlevée (C)		Enter Number of Additional Years if Renewal (see reverse) Indiquer le nombre d'années supplémentaires s'il s'agit d'un renouvellement (voir au verso)		
32	Individual Debtor (as recorded) Débiteur particulier (tel qu'inscrit)	First Given Name/ Premier prénom				Initial/ Initiale	Surname/ Nom de famille
33	Business Debtor (as recorded) Débiteur commercial (tel qu'inscrit)	425 CHURCH STREET HOLDINGS INC.					
						Ontario Corporation No. / N° matricule de la personne morale en Ontario	
08/18	Secured Party/Lien Claimant/ Registering Agent /Créancier garanti/ Créancier privilégié/ Agent d'enregistrement						
09/17	Address/ Adresse		City, etc./ Ville, etc.		Prov./ Prov.		Postal Code/ Code postal

LOWNDES & HARRISON  
2702-1 DUNDAS ST. W.  
TORONTO ONT M5G 1Z3

## Authorized Signature/ Signature autorisée

Name and Signature of Secured Party/Lien Claimant OR Name of Secured Party/Lien Claimant AND Name and Signature of Agent of Secured Party/Lien Claimant / Nom et signature du créancier garanti/créancier privilégié OU Nom du créancier garanti/créancier privilégié ET nom et signature de l'agent du créancier garanti/créancier privilégié

This form must not be reproduced for registration purposes. / Cette formule ne doit pas être reproduite aux fins d'enregistrement.

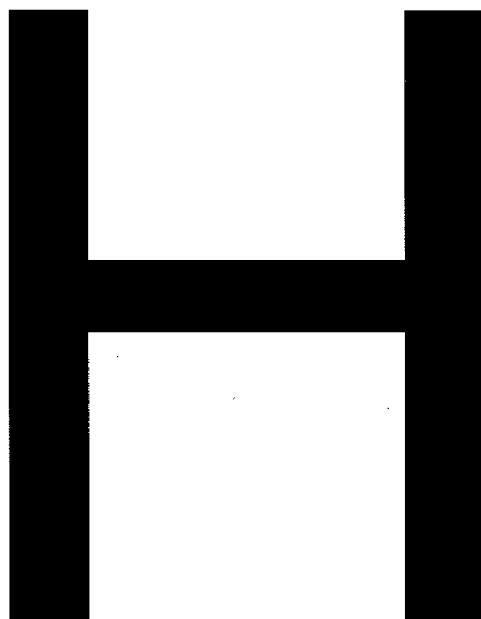
(Cut along dotted line / Détachez à la ligne pointillée)

This is not a Certificate issued under the PPSA. It is provided as a courtesy to assist you/ Le présent n'est pas un certificat délivré en vertu de PPSA. Il est délivré à titre gracieux pour vous aider.

## Verification Statement/État de vérification

Form Type/Type de formule	Page/ Page	Line/ Ligne	The expiry date calculated by the system may exceed the date on which the registration ceases to be effective La date d'expiration établie en vertu du système peut être postérieure à la date à laquelle l'enregistrement cesse d'être en vigueur	Page/ Page	OF/ DE	Total Pages/ Nombre de pages	Expiry Date/ Date d'expiration YYYY/AAAA-MM/DD/JJ
				1		1	2016/06/15
1C	1	00	670688523				
1C	1	01	CAUTION FILING/AVERTIS:	PAGE:	1 OF/DE:	1	MV SCHEDULE
1C	1	01	ATTACHED/LISTE VA:	REG NUM/NO ENREGIST:	20110615	1041	1862 1697
1C	1	01	REG UNDER/T. ENREG:	P	REG PERIOD/PERIODE:	5	
1C	1	03	425 CHURCH STREET HOLDINGS INC.				
1C	1	04	8 GLOUCESTER ST.				
1C	1	04	TORONTO	ONT	M4Y 1L5		
1C	1	08	THE EQUITABLE TRUST COMPANY				
1C	1	09	700-30 ST. CLAIR AVE. W.				
1C	1	09	TORONTO	ONT	M4V 3A1		
1C	1	10	CONS GOODS/BIENS CONS:	X	INVTRY/STOCK:	X	EQUIP/MATER: X
1C	1	10	ACCTS/COMPT:	X	OTHER/AUTRE:	X	MV INCL/VA INCLUS:
1C	1	10	AMOUNT/MONTANT:	600000	DATE OF MATURITY/DATE ECHEANCE:		
1C	1	10	31MAY2016	NO FIXED MAT DATE/D ECHE	PAS DET:		
1C	1	13	ASSIGNMENT OF RENTS				
1C	1	16	LOWNDES & HARRISON				
1C	1	17	2702-1 DUNDAS ST. W.				
1C	1	17	TORONTO	ONT	M5G 1Z3		

\*\*\* VERIFY IMMEDIATELY UPON RECEIPT / VERIFIEZ IMMEDIATEMENT VOTRE AVIS \*\*\*



**ALLAN STRADER**  
BARRISTER & SOLICITOR

49 ST. NICHOLAS STREET  
TORONTO, ONTARIO M4Y 1W6  
TELEPHONE (416) 924-4488  
FACSIMILE (416) 924-5443  
EMAIL [allan@allanstrader.com](mailto:allan@allanstrader.com)

June 1, 2011

File No. 6435  
Business No. 12464 1135 RP  
Invoice No. 5430

## A C C O U N T

TO: Keir MacRae  
18 Goulding Lane  
Orangeville, ON  
- and -  
Michael Schwarz  
21 Langles Avenue  
Toronto, ON

Re: 1673883 Ontario Inc. mortgage in favour of The Equitable Trust Company  
19 Tennis Cres / 425 Church Street Holdings Inc.  
And  
425 Church Street Holdings Inc. mortgage with The Equitable Trust Company  
425 Church Street, Toronto, ON

---

**MY FEE** for professional services rendered in connection with this matter, including acting for you with respect to a new first mortgage in favour of The Equitable Trust Company securing the principal sum of \$1,003,125.00; correspondence with the mortgagee and it's solicitor; preparation of required documentation; reviewing the documentation prepared on behalf of the lender and to all correspondence with the solicitor for the mortgagee; reviewing corporate documents and advising mortgagee's lawyer as to the status of same; meeting with you to sign all necessary documents; attending to the disbursement of funds from the mortgage advance; reporting to you following closing;

**MY FEE**  
HST (13%)

**\$1,500.00**  
195.00

- 2 -

**DISBURSEMENTS SUBJECT TO HST:**

Title search costs	\$ 64.00	
Executions Certificate	33.00	
Photocopies and office expense	75.00	
Couriers	50.00	
Software Transaction Charge	<u>15.00</u>	237.00
HST (13%)		30.81

**TOTAL FEES AND DISBURSEMENTS****\$1,962.81**

Applied from funds held in Trust

1,962.81**BALANCE OWING**NIL

This is my Account herein



ALLAN STRADER

AS:dh

E. &amp; O. E.

**TRUST LEDGER**

Received net advance from The Equitable Trust Company		\$397,858.00
Paid to Walton Advocates (in trust)	\$285,204.99	
Paid to EKM Holdings Ltd.	110,500.00	
Paid legal fees and disbursements	1,962.81	
Balance owed to you (cheque enclosed)	<u>190.20</u>	<u>                    </u>
	<b><u>\$397,858.00</u></b>	<b><u>\$397,858.00</u></b>

D

I

II

# Transmission Log

Korman &amp; Company

Tuesday, 2014-09-02 15:49

4164656912

Date	Time	Type	Job #	Length	Speed	Fax Name/Number	Pgs	Status
2014-09-02	15:48	SCAN	08940	0:53	26400	4168659010	4	OK -- V.34 BB31

## KORMAN & COMPANY

Barristers &amp; Solicitors

721 Queen Street East

Toronto, Ontario

M4M 1H1

(416) 465-4232 tel

(416) 465-6912 fax

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

September 2, 2014

via fax 416-865-9010

via fax 416-849-6895

Lenczner Slaght

130 Adelaide Street West, Suite 2600

Toronto, ON M5H 3P5

Attention: Paul-Erik Yeef

Goodmans

333 Bay Street, Suite 3400

Toronto, ON M5H 2S7

Attention: Mark S. Quinn

Dear Sirs:

Re: DBDC Spadina Ltd. et al. v. Norma Walton et al.  
Interim Order for 646 Broadview Avenue, Toronto, ON M4K 2P1 (the "Property")  
Our File No.: 270-14

We represented 646 Broadview Inc. on its purchase of the above-noted property. The transaction closed on April 9, 2014.


We confirm receipt of a letter dated July 22, 2014 from Lenczner Slaght notifying our client of the Interim Order dated July 18, 2014, made by the Honourable Justice Brown.

We also confirm receipt of a letter dated August 27, 2014 from Goodmans notifying our client of its responsibility to provide Schonfeld Inc. Receivers + Trustees (the "Managers") with evidence that our clients acquired the Property for fair market value and that the Waltons had no interest in the Property.

Please find enclosed a copy of the Registered Transfer, which shows that the Property was acquired from 1636483 Ontario Inc. for fair market value. Our corporate search completed prior to the closing of the purchase indicated that John and Myrne Rawlings were the directors of this company. To the best of our client's knowledge, the Waltons have no interest in the Property.

Yours very truly,

Korman &amp; Company



Katherine A. Gross  
KSGear

# Transmission Log

Korman &amp; Company

Tuesday, 2014-09-02 15:59

4164656912

Date	Time	Type	Job #	Length	Speed	Fax Name/Number	Pgs	Status
2014-09-02	15:55	SCAN	08945	3:07	14400	4169791234	4	OK -- V.17 BH31

## KORMAN & COMPANY

Barristers & Solicitors  
721 Queen Street East  
Toronto, Ontario  
M4M 1H1  
(416) 465-4232 tel  
(416) 465-6912 fax  
[www.kormancompany.com](http://www.kormancompany.com)

September 2, 2014

via fax 416-865-9010

via fax 416-839-6895

416 979 1234

Lenczner Slaght  
130 Adelaide Street West, Suite 2600  
Toronto, ON M5H 3P5  
Attention: Paul-Erik Vogl

Goodmans  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7  
Attention: Mark S. Dunn

Dear Sirs:

Re: DBDC Spadina Ltd. et al. v. Norma Walton et al.  
Interim Order for 646 Broadview Avenue, Toronto, ON M4K 2P1 (the "Property")  
Our File No.: 270-14

We represented 646 Broadview Inc. on its purchase of the above-noted property. The transaction closed on April 9, 2014.

We confirm receipt of a letter dated July 23, 2014 from Lenczner Slaght notifying our client of the Interim Order dated July 18, 2014, made by the Honourable Justice Brown.

We also confirm receipt of a letter dated August 27, 2014 from Goodmans notifying our client of its responsibility to provide Schenfeld Inc. Receivers + Trustees (the "Managers") with evidence that our clients acquired the Property for fair market value and that the Waltons had no interest in the Property.

Please find enclosed a copy of the Registered Transfer, which shows that the Property was acquired from 1636483 Ontario Inc. for fair market value. Our corporate search completed prior to the closing of the purchase indicated that John and Myrae Rawlings were the directors of this company. To the best of our client's knowledge, the Waltons have no interest in the Property.

Yours very truly,

Korman &amp; Company



Katherine A. Gross  
KSG:ar

# KORMAN & COMPANY

Barristers & Solicitors

721 Queen Street East

Toronto, Ontario

M4M 1H1

(416) 465-4232 tel

(416) 465-6912 fax

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

September 2, 2014

via fax 416-865-9010

via fax 416-849-6895

416 979 1234

Lenczner Slaght

130 Adelaide Street West, Suite 2600

Toronto, ON M5H 3P5

Attention: Paul-Erik Veel

Goodmans

333 Bay Street, Suite 3400

Toronto, ON M5H 2S7

Attention: Mark S. Dunn

Dear Sirs:

Re: DBDC Spadina Ltd. et al. v. Norma Walton et al.  
Interim Order for 646 Broadview Avenue, Toronto, ON M4K 2P1 (the "Property")  
Our File No.: 270-14

We represented 646 Broadview Inc. on its purchase of the above-noted property. The transaction closed on April 9, 2014.

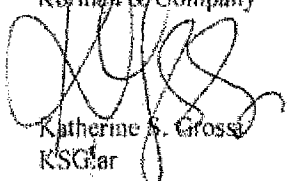
We confirm receipt of a letter dated July 22, 2014 from Lenczner Slaght notifying our client of the Interim Order dated July 18, 2014, made by the Honourable Justice Brown.

We also confirm receipt of a letter dated August 27, 2014 from Goodmans notifying our client of its responsibility to provide Schonfeld Inc. Receivers + Trustees (the "Managers") with evidence that our clients acquired the Property for fair market value and that the Waltons had no interest in the Property.

Please find enclosed a copy of the Registered Transfer, which shows that the Property was acquired from 1636483 Ontario Inc. for fair market value. Our corporate search completed prior to the closing of the purchase indicated that John and Myrne Rawlings were the directors of this company. To the best of our client's knowledge, the Waltons have no interest in the Property.

Yours very truly,

Korman & Company

  
Katherine S. Grosse  
KSGear

LRO # 80 Transfer

Received as AT3568290 on 2014 04 29 at 15:21

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

yyyy mm dd Page 1 of 2

**Properties**

PIN 21068 - 0082 LT Interest/Estate Fee Simple  
 Description PT BLK A, PL 274E TORONTO, PTS 3 & 4, PL 68R-21872 ; S/T ER90785 ; CITY OF TORONTO  
 Address 646 BROADVIEW AVENUE  
 TORONTO

**Consideration**

Consideration \$ 2,485,000.00

**Transferor(s)**

The transferor(s) hereby transfers the land to the transferee(s).

Name 1636483 ONTARIO INC.  
 Address for Service 16 MONTCREST BOULEVARD  
 TORONTO, ONTARIO  
 M4K 1J7

I, JOHN RAWLINGS, PRESIDENT, have the authority to bind the corporation.

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

**Transferee(s)**

Capacity

Share

Name 646 BROADVIEW INC.  
 Address for Service 6683 BLACKHEATH RIDGE  
 MISSISSAUGA, ONTARIO  
 L5W 1Z8

STATEMENT OF THE TRANSFEROR (S): The transferor(s) verifies that to the best of the transferor's knowledge and belief, this transfer does not contravene the Planning Act.

STATEMENT OF THE SOLICITOR FOR THE TRANSFEROR (S): I have explained the effect of the Planning Act to the transferor(s) and I have made inquiries of the transferor(s) to determine that this transfer does not contravene that Act and based on the information supplied by the transferor(s), to the best of my knowledge and belief, this transfer does not contravene that Act. I am an Ontario solicitor in good standing.

STATEMENT OF THE SOLICITOR FOR THE TRANSFEE (S): I have investigated the title to this land and to abutting land where relevant and I am satisfied that the title records reveal no contravention as set out in the Planning Act, and to the best of my knowledge and belief this transfer does not contravene the Planning Act. I act independently of the solicitor for the transferor(s) and I am an Ontario solicitor in good standing.

**Signed By**

John Judson Bucknam	202-50 Commercial Ave. Ajax L1S 2H5	acting for Transferor(s)	Signed	2014 04 29
Tel 905-683-7037				
Fax 905-683-7627				

I am the solicitor for the transferor(s) and I am not one and the same as the solicitor for the transferee(s).

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

Katherine Sarah Grossi	721 Queen Street East Toronto M4M 1H1	acting for Transferee(s)	Signed	2014 04 29
Tel 416-465-4232				
Fax 416-465-5912				

I am the solicitor for the transferee(s) and I am not one and the same as the solicitor for the transferor(s).

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

LRO # 50 Transfer

Received as AT3558290 on 2014 04 29 at 15:21

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

yyyy mm dd Page 2 of 2

**Submitted By**

KORMAN &amp; COMPANY

721 Queen Street East  
Toronto  
M4M 1H1

2014 04 29

Tel 416-465-4232

Fax 416-465-6912

**Fees/Taxes/Payment**

Statutory Registration Fee	\$80.00
Provincial Land Transfer Tax	\$35,450.00
Municipal Land Transfer Tax	\$34,700.00
Total Paid	\$70,210.00

# **PROVINCIAL AND MUNICIPAL LAND TRANSFER TAX STATEMENTS**

In the matter of the conveyance of: 21068 - 0082 PT BLK A, PL 274E TORONTO, PTS 3 & 4, PL 68R-21872; S/T ER90785; CITY OF TORONTO

BY: 1638483 ONTARIO INC.

TO: 546 BROADVIEW INC.

%(all PINs)

## **1. MARCIN WROBLEWSKI,**

I am

- ☐ (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- ☐ (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- ☐ (c) A transferee named in the above-described conveyance;
- ☐ (d) The authorized agent or solicitor acting in this transaction for \_\_\_\_\_ described in paragraph(s) \_\_\_\_\_ above.
- ☒ (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for 646 BROADVIEW INC. described in paragraph(s) (C) above.
- ☐ (f) A transferee described in paragraph \_\_\_\_\_ and am making these statements on my own behalf and on behalf of \_\_\_\_\_ who is my spouse described in paragraph \_\_\_\_\_ and as such, I have personal knowledge of the facts herein deposed to.

## **2. I have read and considered the definition of "single family residence" set out in subsection 1(1) of the Act. The land being conveyed herein:**

does not contain a single family residence or contains more than two single family residences.

## **3. The total consideration for this transaction is allocated as follows:**

(a) Monies paid or to be paid in cash	2,465,000.00
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	0.00
(ii) Given Back to Vendor	0.00
(c) Property transferred in exchange (detail below)	0.00
(d) Fair market value of the land(s)	0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	2,465,000.00
(h) VALUE OF ALL CHATTELS - items of tangible personal property	0.00
(i) Other considerations for transaction not included in (g) or (h) above	0.00
(j) Total consideration	2,465,000.00

## **PROPERTY Information Record**

A. Nature of Instrument: Transfer  
LRO: 80 Registration No. AT3558290 Date: 2014/04/28

B. Property(s): PIN 21068 - 0082 Address 646 BROADVIEW AVENUE Assessment 1904075 - 31002800 Roll No TORONTO

C. Address for Service: 6883 BLACKHEATH RIDGE MISSISSAUGA, ONTARIO L5W 1Z8

D. (i) Last Conveyance(s): PIN 21068 - 0082 Registration No. AT946189  
(ii) Legal Description for Property Conveyed: Same as in last conveyance? Yes ☒ No ☐ Not known ☐

E. Tax Statements Prepared By: Katherine Sarah Grossi  
721 Queen Street East  
Toronto M4M 1H1

III

September 29, 2014

via fax 416-865-9010  
via fax 416-979-1234  
via fax 416-862-2136

Schonfeld Inc. Receivers & Trustees  
77 King Street West, Suite 3000  
Toronto, Ontario M5K 1G8  
Attention: S Harlan Schonfeld CPA, CIRP, and James Merryweather CPA, GGA

Goodmans  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7  
Attention: Brian Empey

Lenczner Slaght  
130 Adelaide Street West, Suite 2600  
Toronto, ON M5H 3P5  
Attention: Paul-Erik Veel

Dear Sirs:

Re: DBDC Spadina Ltd. et al. v. Norma Walton et al.  
Interim Order for 646 Broadview Avenue, Toronto, ON M4K 2P1 (the "Property")  
Our File No.: 270-14

---

We represented 646 Broadview Inc. on its purchase of the above-noted property. The transaction closed on April 9, 2014.

On September 2, 2014, we provided to Goodmans and Lenczner Slaght a copy of the Registered Transfer, which shows that the Property was acquired from 1636483 Ontario Inc. for fair market value. We have not received a response from either firm. We have enclosed a copy of the transmission logs and communication for your reference.

We look forward to hearing from you.

Yours very truly,

Korman & Company



Adam Richardson  
KSG:ar

2014-04-29 13:49

Scotiabank#24596

4164879738 &gt;&gt;

4164656912 P 2/2

CUSTOMER RECEIPT PAGE 01/01

APR 29 2014

ID BNDXW

BAYVIEW & MILLWOOD  
TORONTO, ONTARIO

TR24596

OFFICER ID: 663

PIN #M#

Clearing Items:  
(Special Clearing)  
(Cheque)  
Total:

\$2,352,307.77  
\$193.29  
\$2,352,501.06

Third Party Deposit  
32102 00130 13

\$2,352,501.06

Thank You  
Have a good Day

CERTIFIED

KORMAN & COMPANY IN TRUST  
BARRISTERS & SOLICITORS

721 Queen St. E., Toronto, Ontario M4M 1H1  
Tel: (416) 465-4232 Fax: (416) 465-6912  
www.kormancompany.com

27833

20140428  
DATE Y Y Y Y M M D D

APR 28 2014

Canada Trust \$ BUCKNAM IN TRUST \$2,352,307.77

1511 Bayview Avenue 0255  
78 Canada Trust  
BAYVIEW & MILLWOOD  
TORONTO, ONTARIO M4G 4E2  
Tel: (416) 440-0537

FOR WROBLEWSKI

CERTIFIED CHEQUE  
DO NOT DESTROY



PER

KORMAN & COMPANY IN TRUST  
BARRISTERS & SOLICITORS - TRUST ACCOUNT

ACC # 255-5998472

5999472

9011500IF

CERTIFIED

KORMAN & COMPANY IN TRUST  
BARRISTERS & SOLICITORS

721 Queen St. E., Toronto, Ontario M4M 1H1  
Tel: (416) 465-4232 Fax: (416) 465-6912  
www.kormancompany.com

27834

20140428  
DATE Y Y Y Y M M D D

APR 29 2014

Canada Trust \$ BUCKNAM IN TRUST \$193.29

511 Bayview Avenue 0255  
TORONTO, ONTARIO M4G 4E2  
1511 BAYVIEW AT MILLWOOD  
TORONTO, ONTARIO M4G 4E2  
Tel: (416) 440-0537

FOR WROBLEWSKI 270-14

CERTIFIED CHEQUE  
DO NOT DESTROY



PER

KORMAN & COMPANY IN TRUST  
BARRISTERS & SOLICITORS - TRUST ACCOUNT

ACC # 255-5998472

5999472

9011500IF

83/19/2814 12:58 4164614592

SUNDAY

PAGE 01/02

# **OREA** Ontario Real Estate Association **Amendment to Agreement of Purchase and Sale**

**Real Estate Board**

BETWEEN BUYER:

Marcia Wroblewski

AND SELLER:

1636483 Ontario, Inc.

RE: Agreement of Purchase and Sale between the Seller and Buyer, dated the

21st day of February

2014

concerning the property located at 646 Broadview Avenue

Toronto

M4K 2P1

as more particularly described in the aforementioned Agreement

The Buyer(s) and Seller(s) hereby agree to the following Amendments to the aforementioned Agreement:

## **DELETE:**

This Offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new first Charge/Mortgage satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller not later than 6:00p.m. fifteen (15) business days after acceptance that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein.

## **INSERT:**

This Offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new first Charge/Mortgage satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller not later than 6:00p.m. twenty (20) business days after acceptance that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein.

INITIALS OF BUYER(s)

INITIALS OF SELLER(s)



© 2014, Ontario Real Estate Association (OREA). All rights reserved. This form was developed by OREA for the use and reproduction of its members and licensees.

**BUYER:**..... Marcin Wroblewski .....

**SELLER:**..... 1636483 Ontario Inc. ....

**REAL PROPERTY:**..... 646 Broadview Avenue .....

..... Toronto ..... M4K 2P1 .....

In accordance with the terms and conditions of the Agreement of Purchase and Sale dated the 26 day  
of February, 2014, regarding the above property, I/We hereby waive the condition(s) which read(s) as follows:

This Offer is conditional upon the inspection of the subject property by a home inspector at the Buyer's own expense, and the obtaining of a report satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller not later than 6:00p.m. ten (10) business days after acceptance of the offer, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property, all units, common areas and other for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein.

All other terms and conditions in the aforementioned Agreement of Purchase and Sale to remain unchanged.

For the purposes of this Waiver, "Buyer" includes purchaser, tenant, and lessee, and "Seller" includes vendor, landlord, and lessor, and "Agreement of Purchase and Sale" includes an Agreement to Lease.

WAIVED at Toronto, Ontario, at 9 am, this 11th day of March, 2014.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

X J. Bueshino  
(Witness)

X [Signature]  
(Buyer/Seller)

● DATE X 11/03/2014  
(Seal)

(Witness)

(Buyer/Seller)

● DATE  
(Seal)

Receipt acknowledged at ..... this ..... day of ..... 20 ..... by:

Print Name: ..... Signature: .....

02/27/2014 14:02 4872390200

HGVCLUB AT SEA WORLD

PAGE 02/12



# Agreement of Purchase and Sale

Real Estate  
Board

This Agreement of Purchase and Sale dated this 26 day of February, 2014

BUYER, Martin Wroblewski, agrees to purchase from  
(Full legal names of all Buyers)

SELLER, 1636483 Ontario Inc., the following  
(Full legal names of all Sellers)

## REAL PROPERTY:

Address, 646 Broadview Avenue

fronting on the West side of Broadview Avenue

in the City of Toronto

and having a frontage of 88.7 more or less by a depth of 116.2 more or less

and legally described as Part of Block A Registered Plan 274-E, Plan 56R- see attached Schedule B

(Legal description of land including easements not described elsewhere) 2,420,000.00 (the "property")

## PURCHASE PRICE:

TWO MILLION FOUR HUNDRED TWENTY THOUSAND Dollars (CDN\$) 2,420,000.00

DEPOSIT: Buyer submits Herewith One Hundred Thousand Dollars (CDN\$) 100,000.00

by negotiable cheque payable to Gillen, K.P. & Co. Realty Ltd. Brokerage "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit. Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A, B, attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by BUYER until 10:00 p.m. on 28 day of February, 2014 after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 28 day of April, 2014. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): MW

INITIALS OF SELLER(S): MR

© 2014, Ontario Real Estate Association (OREA). All rights reserved. This form was developed by OREA for the use and reproduction of its members and licensees.

02/27/2014 14:02 4072390200

HGVOLUB AT SEA WORLD

PAGE 03/12

3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counteroffer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: .....  
(For delivery of Documents to Seller)

FAX No.: .....  
(For delivery of Documents to Buyer)

Email Address: .....  
(For delivery of Documents to Seller)

Email Address: haina@tfnrealty.com  
(For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**

Seller to provide list to Buyer upon Acceptance

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**

6. **RENTAL ITEMS (including Lease, Lease to Own):** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

2 x Hot Water Heaters

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **HST:** If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be ~~included in~~ IN ADDITION TO INCLUDED IN the Purchase Price. If the sale of the property is not subject to HST, ~~it shall be included in~~ it shall be included in the Purchase Price. *MR*  
(included in/in addition to) *SSR*

Seller agrees to certify on or before closing, that the sale of the property is not subject to HST.  
Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S): MD

INITIALS OF SELLER(S): MR

 © 2014, Ontario Real Estate Association (OREA). All rights reserved. This form was developed by OREA for the use and reproduction of its members and licensees.

02/27/2014 14:02

4072398200

HGVCLUB AT SEA WORLD

PAGE 04/12

- me *HR MW*  
 8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 3 day of April, 2014, (Requisition Date) to examine the title to the property at Buyer's own expense and until the earlier of: (i) thirty days from the date of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or: (ii) five days prior to completion, to satisfy Buyer that there are no outstanding work orders or deficiency notices affecting the property, and that its present use Multiplex Residential

may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified time the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (title insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate act or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part II of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyers) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust and Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Co-op Societies or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller. The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the property.

INITIALS OF BUYER(S): *HW*INITIALS OF SELLER(S): *HR*

© 2014, Ontario Real Estate Association (OREA), All Rights Reserved. This form was developed by OREA for the use and reproduction of its members and associates only. Any other use or reproduction is prohibited except with prior written consent of OREA. Do not alter when printing or reproducing the standard printed portion.

Form 100 Revised 2014 Page 4 of 7  
 WREB/Proc-UP Nov2013

**26. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

*[Signature]*

*[Signature]*

DATE: *Feb 27/14*

(Witness)

(Witness)

DATE:

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the broker(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

*[Signature]*

*[Signature]*

DATE: *Feb. 27, 2014*

*[Signature]*

*[Signature]*

DATE: *FEB. 27, 2014*

**SPOUSAL CONSENT:** The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Witness)

DATE:

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at *3:47* a.m./p.m. this *28* day of *FEBRUARY* 20 *14*.

#### INFORMATION ON BROKERAGE(S)

Using Brokerage: <b>GILLEN, K.P. &amp; CO. REALTY LTD. BROKERAGE</b>	Tel. No. <b>(416) 964-9441</b>
<b>40 SCOLLARD ST. SUITE 200</b>	<b>TORONTO</b>
<b>MSR 351</b>	
Co-op/Buyer Brokerage: <b>TFN REALTY INC.</b>	Tel. No. <b>(416) 789-0288</b>
<b>125 VILLARBOIT CRESCENT</b>	<b>VAUGHAN</b>
<b>LAK 452</b>	

#### ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

*[Signature]* DATE: *Feb 28/14*

*[Signature]* DATE: *March 1st, 2014*

*[Signature]* DATE: *Feb 28/14*

*[Signature]* DATE:

Address for Service:

Address for Service: **7580 Creditview Road L6Y 0G5**

Tel. No.:

Tel. No. **416-771-5382**

Seller's Lawyer: **J. TERO HANNES**

Buyer's Lawyer: **Mitch Korman of Korman & Co**

Address: **95 BREAR GREEN RD SUITE 100**

Address: **721 Queen St. E**

Email: **terohannes@rogers.com**

Email: **mitch@kormancompany.com**

416-449-1400

416-465-4232 416-465-6912

416-449-1400

416-465-4232

416-449-1400

416-465-4232

416-449-1400

416-465-4232

FOR OFFICE USE ONLY	COMMISSION TRUST AGREEMENT
Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale: <b>TFN REALTY INC.</b>	
In consideration for the Co-operating Brokerage pursuing the foregoing Agreement of Purchase and Sale, I hereby declare that all monies retained or receivable by me in connection with the Transaction as contemplated by the above Sale and Repurchase of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the Real Estate Act and shall be subject to and governed by the rules and regulations of the Real Estate Board of Ontario.	
DATED on <i>28</i> day and <i>Feb</i> of the year of the completion of the foregoing Agreement of Purchase and Sale.	Accepted by:
(As consent to bind the Using Brokerage)	<i>[Signature]</i>
	(Authorizing to bind the Co-operating Brokerage)

Form 100 Revised 2014 Page 6 of 7

02/27/2014 14:02 4072390200

HGVCLUB AT SEA WORLD

PAGE 01/12

**OREA** Ontario Real Estate Association **Schedule A**  
**Agreement of Purchase and Sale**

**Toronto**  
**Real Estate**  
**Board**

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER**, ..... Marcin Wroblewski ..... and

**SELLER**, ..... 1636483 Ontario, Inc. .....

for the purchase and sale of ..... 646 Broadview Avenue .....

..... Toronto ..... M&K 2P1 ..... dated the 26 ..... day of February ..... 2014 .....

Buyer agrees to pay the balance as follows:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, by bank draft or certified cheque, to the Seller on the completion of this transaction.

This Offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new first Charge/Mortgage satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller not later than 6:00p.m. fifteen (15) business days after acceptance that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein.

*HW*  
*me*  
*18R*  
 The Purchaser shall have a period of fifteen (15) days to be approved by the first mortgagee to assume the first mortgage. The Purchaser shall promptly provide all information reasonably required by the mortgagee.

This Offer is conditional upon the inspection of the subject property by a home inspector at the Buyer's own expense, and the obtaining of a report satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller not later than 6:00p.m. 10 (TEN) business days after acceptance of the offer, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property, all units, common areas and other for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein.

Upon completion the Seller shall provide the buyer with a notice to all tenants advising them of the new owner and requiring all future rents to be paid as the Buyer directs. The Seller will pay to the Buyer any rent paid to the Seller in error or in violation of the direction for a period of 12 months following completion after which the Seller may refuse to accept rent from the tenants or return it to them. Upon Completion of this transaction, the seller agrees to pay the Buyer any advanced rent payments or damage deposits held by the Seller. ✓

Seller agrees that to their knowledge the home is free of any active knob and tube wiring. ✓

→ The Seller acknowledges that all 13 suites at 646 Broadview conform with all building code, fire code and hydro retrofit requirements as per the local municipality building codes and ESA standards. ✓

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S): *HW*

INITIALS OF SELLER(S): *18R*

© 2014, Ontario Real Estate Association (OREA). All rights reserved. This form was developed by OREA for the use and reproduction of its members and licensees only. Any other use or reproduction is prohibited except with prior written consent of OREA. Do not alter when printing or reproducing the standard printed portion.

Form 100 Revised 2014 Page 4 of 7  
 WELPForm100 Nov2013

**Toronto  
Real Estate  
Board**

Toronto M4K 2P1 dated the 25 day of February 2014

Form 700 Revised 2014 Page 7 of 7  
MATHCOUNTS.org




3/24/2014

v3.torontomls.net/Live/Pages/Public/Link.aspx?Key=6eac8c26b097467c85bb7d34b04248c3&amp;App=TREB

Prepared by: HALINA BUCCHINO, Salesperson  
TFN REALTY INC., BROKERAGE  
125 Villarboit Crescent, Vaughan, ON L4K4K2  
416-822-5976  
03/24/2014 2:08:55 PM

Links:

Actions: Help Print  
1

	646 Broadview Ave Toronto Ontario M4K2P1 Toronto E01 North Riverdale Toronto 115-22-Q Taxes: \$21,364.00 / 2013 / Annual SPIS: N Legal: Dir/Cross St: Montcrest/Riverdale Park DOM: 76		List: \$2,495,000.00 For Sale For: Sale Last Status: Sc																								
	Investment Apartment Apts-13 To 20 Units Possession: Tba	Occup: Tenant Freestanding: Y SPIS: N Com Cndo Fee:	Lease Term: / Holdover: 45 Franchise:																								
MLS# E2807558 Sellers: 1636483 Ontario Inc. Contact After Exp: N PIN#: ARN#:																											
Total Area: 9,000 Sq Ft Ofc/Apt Area: Indust Area: Retail Area: Apx Age: Volts: Amps: Zoning: R4 Truck Level: Grade Level: Drive-In: Double Man: Clear Height: Sprinklers: Heat: Gas Hot Water Phys Hdcap-Equip:	Survey: Lot/Bldg/Unit/Dim: 85.7 x 116.2 Feet Lot Lot Irreg: Crane: Bay Size: %Bldg: Washrooms: Water: Municipal Water Supply: Sewers: A/C: Part Utilities: Y Garage Type: Outside/Surface Park Spaces: #Trl 5pc: Energy Cert: Cert Level: GreenPIS:	Soil Test: Outside Storage: Rall: Basement: Elevator: UFFI: Assessment: Chattels: LLBO: Days Open: Hours Open: Employees: Seats: Area Infl:																									
<table border="0"> <tr> <td>Bus/Bldg Name:</td> <td>For Year:</td> <td>Financial Stmt:</td> <td></td> </tr> <tr> <td>Actual/Estimated:</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Taxes:</td> <td>Heat:</td> <td>Gross Inc/Sales:</td> <td>Est Value Inv At Cost:</td> </tr> <tr> <td>Insur:</td> <td>Hydro:</td> <td>-Vacancy Allow:</td> <td>Com Area Upcharge:</td> </tr> <tr> <td>Mgmt:</td> <td>Water:</td> <td>-Operating Exp:</td> <td>% Rent:</td> </tr> <tr> <td>Maint:</td> <td>Other:</td> <td>=Net Inc 84 Debt:</td> <td></td> </tr> </table>				Bus/Bldg Name:	For Year:	Financial Stmt:		Actual/Estimated:				Taxes:	Heat:	Gross Inc/Sales:	Est Value Inv At Cost:	Insur:	Hydro:	-Vacancy Allow:	Com Area Upcharge:	Mgmt:	Water:	-Operating Exp:	% Rent:	Maint:	Other:	=Net Inc 84 Debt:	
Bus/Bldg Name:	For Year:	Financial Stmt:																									
Actual/Estimated:																											
Taxes:	Heat:	Gross Inc/Sales:	Est Value Inv At Cost:																								
Insur:	Hydro:	-Vacancy Allow:	Com Area Upcharge:																								
Mgmt:	Water:	-Operating Exp:	% Rent:																								
Maint:	Other:	=Net Inc 84 Debt:																									
<p>Client Remks: A 'Trophy' 2 1/2 Storey Historic Mansion Perched High On A Hill Overlooking Riverdale Park And The City Skyline. 13 Unique Apartments Ranging From Bachelors To Spacious 2 Bedroom Units, Most With Private Decks Or Outdoor Area. This Prime Income Property Features A Handsome 'Edwardian Classicism' Facade, Impressive Entry Foyer With Sweeping Oak Staircase Rising To A South Facing Art Deco Stained Glass Window And Baronial 2nd Level.</p> <p>Extras: For More Property Information, Pls Go To K.P. Gillen &amp; Co. Realty Ltd Website.</p> <p>Brkage Remks: Contact La To Arrange All Tours. Do Not Go Direct, 24 Hrs Notice And No Tours On Week-Ends.3737Contact La For List Of Chattels And Fixtures Included</p>																											
Mortgage Comments:																											
<p>GILLEN, K.P., &amp; CO. REALTY LIMITED, BROKERAGE 416-964-9441 Fax: 416-964-7728 40 Scollard St., Ste. 200 Toronto M5R3S1 Appts: 416-964-9460 KEVIN P. GILLEN, Broker of Record 416-964-9460</p> <table border="0"> <tr> <td>Contract Date: 1/07/2014</td> <td>Condition: Inspection/Financing</td> <td>Ad: Y</td> </tr> <tr> <td>Expiry Date: 4/07/2014</td> <td>Cond Expiry: 3/26/2014</td> <td>Escape:</td> </tr> <tr> <td>Last Update: 3/19/2014</td> <td>CB Comm: 2%</td> <td>Original: \$2,780,000.00</td> </tr> </table>				Contract Date: 1/07/2014	Condition: Inspection/Financing	Ad: Y	Expiry Date: 4/07/2014	Cond Expiry: 3/26/2014	Escape:	Last Update: 3/19/2014	CB Comm: 2%	Original: \$2,780,000.00															
Contract Date: 1/07/2014	Condition: Inspection/Financing	Ad: Y																									
Expiry Date: 4/07/2014	Cond Expiry: 3/26/2014	Escape:																									
Last Update: 3/19/2014	CB Comm: 2%	Original: \$2,780,000.00																									

## STATEMENT OF ADJUSTMENTS

**Vendor:** 1636483 Ontario Inc.

**Purchaser:** 646 BROADVIEW INC.

**Property:** 646 Broadview Avenue, Toronto

**Adjusted as of:** April 28, 2014

	Credit Purchaser	Credit Vendor
<b><u>SALE PRICE</u></b>		\$2,465,000.00
<b><u>DEPOSIT</u></b>	\$100,000.00	
<b><u>INTEREST ON</u></b>		
Principal amount:	2,351,727.89	
Interest at 3.00% calculated from April 25, 2014 to April 28, 2014 (3 days):	579.88	
Credit Vendor:		579.88
<b><u>REALTY TAXES</u></b>		
2013 total taxes:	21,364.48	
Estimated Increase for 2014:	5.00%	
Estimated 2014 taxes:	22,432.70	
Vendor has paid:	10,682.24	
Vendor's share for 117 days:	7,190.76	
Credit Vendor:		3,491.48
<b><u>TENANCY- APT. 50A</u></b>		
Monthly rent:	1,035.00	
Tenant has paid for rental period commencing April 1, 2014		
Vendor's share for 27 days:	931.50	
Credit Purchaser:	103.50	
<b><u>PRE-PAID RENT- APT. 50A</u></b>		
Pre-paid rent amount:	1,010.00	
Accrued interest from June 1, 2011 to April 28, 2014 (1062 days):	63.30	
Credit Purchaser:	1,073.30	
<b><u>TENANCY- APT. 50B</u></b>		
Monthly rent:	1,000.00	
Tenant has paid for rental period commencing April 1, 2014		
Vendor's share for 27 days:	900.00	
Credit Purchaser:	100.00	

Continued...

		Credit Purchaser	Credit Vendor
<b><u>PRE-PAID RENT- APT. 50B</u></b>			
Pre-paid rent amount:	1,000.00		
Accrued interest from April 15, 2010 to April 28, 2014 (1474 days):	80.58		
Credit Purchaser:		1,080.58	
<b><u>TENANCY- APT. 50C</u></b>			
Monthly rent:	925.00		
Tenant has paid for rental period commencing April 1, 2014			
Vendor's share for 27 days:	832.50		
Credit Purchaser:		92.50	
<b><u>PRE-PAID RENT- APT. 50C</u></b>			
Pre-paid rent amount:	925.00		
Accrued interest from June 1, 2013 to April 28, 2014 (331 days):	15.93		
Credit Purchaser:		940.93	
<b><u>TENANCY- APT. 100A</u></b>			
Monthly rent:	1,280.00		
Tenant has paid for rental period commencing April 1, 2014			
Vendor's share for 27 days:	1,152.00		
Credit Purchaser:		128.00	
<b><u>PRE-PAID RENT- APT. 100A</u></b>			
Pre-paid rent amount:	1,000.00		
Accrued interest from December 1, 2013 to April 28, 2014 (148 days):	4.68		
Credit Purchaser:		1,004.68	
<b><u>TENANCY- APT. 100B</u></b>			
Monthly rent:	2,115.00		
Tenant has paid for rental period commencing April 1, 2014			
Vendor's share for 27 days:	1,903.50		
Credit Purchaser:		211.50	
<b><u>PRE-PAID RENT- APT. 100B</u></b>			
Pre-paid rent amount:	2,115.00		
Accrued interest from April 1, 2014 to April 28, 2014 (27 days):	1.25		
Credit Purchaser:		2,116.25	
<b><u>TENANCY- APT. 100C</u></b>			
Monthly rent:	950.00		
Tenant has paid for rental period commencing April 1, 2014			
Vendor's share for 27 days:	855.00		
Credit Purchaser:		95.00	

Continued...

		Credit Purchaser	Credit Vendor
<b><u>PRE-PAID RENT- APT. 100C</u></b>			
Pre-paid rent amount:	950.00		
Accrued interest from April 1, 2013 to April 28, 2014 (392 days):	20.33		
Credit Purchaser:		970.33	
<b><u>TENANCY- APT. 200A</u></b>			
Monthly rent:	1,000.00		
Tenant has paid for rental period commencing April 1, 2014			
Vendor's share for 27 days:	900.00		
Credit Purchaser:		100.00	
<b><u>PRE-PAID RENT- APT. 200A</u></b>			
Pre-paid rent amount:	1,000.00		
Accrued interest from December 1, 2013 to April 28, 2014 (148 days):	4.68		
Credit Purchaser:		1,004.68	
<b><u>TENANCY- APT. 200B</u></b>			
Monthly rent:	1,050.00		
Tenant has paid for rental period commencing April 1, 2014			
Vendor's share for 27 days:	945.00		
Credit Purchaser:		105.00	
<b><u>PRE-PAID RENT- APT. 200B</u></b>			
Pre-paid rent amount:	1,050.00		
Accrued interest from July 1, 2013 to April 28, 2014 (301 days):	15.92		
Credit Purchaser:		1,065.92	
<b><u>TENANCY- APT. 200C</u></b>			
Monthly rent:	1,150.00		
Tenant has paid for rental period commencing April 1, 2014			
Vendor's share for 27 days:	1,035.00		
Credit Purchaser:		115.00	
<b><u>PRE-PAID RENT- APT. 200C</u></b>			
Pre-paid rent amount:	1,080.00		
Accrued interest from May 1, 2008 to April 28, 2014 (2188 days):	123.05		
Credit Purchaser:		1,203.05	
<b><u>TENANCY- APT. 200D</u></b>			
Monthly rent:	1,385.00		
Tenant has paid for rental period commencing April 1, 2014			
Vendor's share for 27 days:	1,246.50		
Credit Purchaser:		138.50	

Continued...

		Credit Purchaser	Credit Vendor
<b><u>PRE-PAID RENT- APT. 200D</u></b>			
Pre-paid rent amount:	1,330.00		
Accrued interest from August 1, 2008 to April 28, 2014 (2096 days):	146.85		
Credit Purchaser:		1,476.85	
<b><u>TENANCY- APT. 300A</u></b>			
Monthly rent:	945.00		
Tenant has paid for rental period commencing April 1, 2014			
Vendor's share for 27 days:	850.50		
Credit Purchaser:		94.50	
<b><u>PRE-PAID RENT- APT. 300A</u></b>			
Pre-paid rent amount:	900.00		
Accrued interest from December 1, 2009 to April 28, 2014 (1609 days):	79.29		
Credit Purchaser:		979.29	
<b><u>TENANCY- APT. 300B</u></b>			
Monthly rent:	975.00		
Tenant has paid for rental period commencing April 1, 2014			
Vendor's share for 27 days:	877.50		
Credit Purchaser:		97.50	
<b><u>PRE-PAID RENT- APT. 300B</u></b>			
Pre-paid rent amount:	975.00		
Accrued interest from November 1, 2013 to April 28, 2014 (178 days):	6.57		
Credit Purchaser:		981.57	
<b><u>TENANCY- APT. 300C</u></b>			
Monthly rent:	1,280.00		
Tenant has paid for rental period commencing April 1, 2014			
Vendor's share for 27 days:	1,152.00		
Credit Purchaser:		128.00	
<b><u>PRE-PAID RENT- APT. 300C</u></b>			
Pre-paid rent amount:	1,255.00		
Accrued interest from April 1, 2010 to April 28, 2014 (1488 days):	102.16		
Credit Purchaser:		1,357.16	
<b><u>BALANCE DUE ON CLOSING</u></b>			
payable to Greening & Bucknam, in trust or as further directed		2,352,307.77	
		<b>\$2,469,071.36</b>	<b>\$2,469,071.36</b>

## *FOR SALE*



### *646 Broadview Avenue, Toronto*

A magnificently restored historic 2 ½ storey multi-unit residential mansion overlooking Riverdale Park and the City skyline, this prime income property features a handsome “Edwardian Classicism” façade, impressive entry foyer with sweeping oak staircase rising to a south facing art deco stained glass window and the baronial 2<sup>nd</sup> level.

- ◆ Elegant interior finishes throughout with multiple fireplaces & private decks and outdoor spaces
- ◆ Numerous recent mechanical and structural upgrades including new roof in 2013
- ◆ 13 character residences ranging from bachelor to spacious 2 bedroom units
- ◆ Stable operating income with no vacancies in the past 6 years.
- ◆ A “Trophy Property” investment and a solid alternative to the stock market.

**Offered at \$ 2,495,000.00 CDN by:**  
**K.P. Gillen & Co. Realty Ltd., Realtor**  
**(416) 964-9460, [kevin@kpgillen.com](mailto:kevin@kpgillen.com)**

**LOCATION:**

**646 Broadview Avenue** is located on the northwest corner of Broadview Avenue and Montcrest Boulevard "placed on a rise of land overlooking Riverdale Park". The property is approximately a 10-minute walk south of the intersection of Danforth Avenue and Broadview Avenue and the Danforth/Broadview Subway Station. The subject anchors the south end of a group of historically significant residential properties.

**SITE:**

Frontage: 88.7 Feet  
 Depth: 116.2 Feet  
 Site Area: 9980 Square Feet (please refer to attached survey)

**ZONING: R4 Z 1.0 -Multiple unit residential zoning****APARTMENT CONFIGURATION:** (please refer to attached building drawings)

Basement: 2 x 1 bedroom units, 1 bachelor  
 Main Floor: 1 x 2 bedroom, 1x1 bedroom, 1 bachelor  
 Second Floor: 2 x 1 bedroom, 2 bachelor  
 Third Floor: 1 x 1 bedroom, 2 bachelor  
 Gross Floor Area: 9000 sq. ft. (approximately)

**HISTORY:**

Originally built in 1907, the "James Harris House" was designed by Toronto architect James L. Havill, best known for the Elgie Building at 118 Yonge Street, built for Holt Renfrew and Company. The property is listed on the City of Toronto's inventory of Heritage Properties and was granted a Heritage Easement Agreement in 2005. Attributes to the building's cultural heritage value as a representative example of Edwardian Classicism "displaying a high degree of craftsmanship" include portions of the building's exterior and interior. Recent improvements include a new roof in 2013.

**2013 Income: \$173,820****2013 Expenses: \$ 62,546**

Realty Taxes: \$21,364  
 Gas: \$ 4,328  
 Hydro: \$ 9,115  
 Insurance: \$ 7,539  
 Water/Sewage: \$ 6,000  
 Maintenance: \$12,000  
 Cleaning : \$ 2,800  
 Management: -\$ 3,600  
 Bell telephone, : \$ 1,800  
 fire system  
**Total: \$62,546**

*The information detailed herein has been provided by the Vendor and is deemed to be correct.  
 K. P. Gillen & Co. Realty Ltd. assumes no responsibility for the accuracy of the information contained herein.*

**646 Broadview Income and Expense:**

Gross income: \$173,820 in 2013

Expenses: \$ 62,546 in 2013

Expense detail:

Property tax (as multi residential): \$21,364

Heating: \$ 4,328

Hydro: \$ 9,115

Water: \$ 6,000

Insurance: \$ 7,539

Maintenance/Repairs: \$ 6,000

Cleaning: \$ 2,800

Management: \$ 3,600

Bell telephone, fire system: \$ 1,800

Net income: \$111,274

RT 3  
Step 0.36 S  
N 33° 46' 00"  
5.75

P.I.N. 21068-0082(L7)

6.67  
(CED & Meas)

Concrete  
Step

Concrete Block Retaining Wall

13.50 (CED & Meas)

2

35.04 (P2 & Meas)

PART

35.97 (P2 & Meas)

PART 4

REGISTERED PLAN

PART 3

PART

PART 1

2 1/2 STOREY BRICK

N° 646

21872

PORCH

Concrete Steps

Concrete Walkway

Concrete

Walkway

13.55 (CED & Meas)

Walkway

Brick  
Patio

Concrete

Concrete

Concrete Steps

10.90

SUBJECT TO EASEMENT AS DESCRIBED  
IN INST. N°. ER 90785  
(NOTICE OF CLAIM, INST. N°. CA 637243)

18.00 (P1 & Meas)

30" W (P1 & Meas)

Concrete

Sidewalk

Concrete

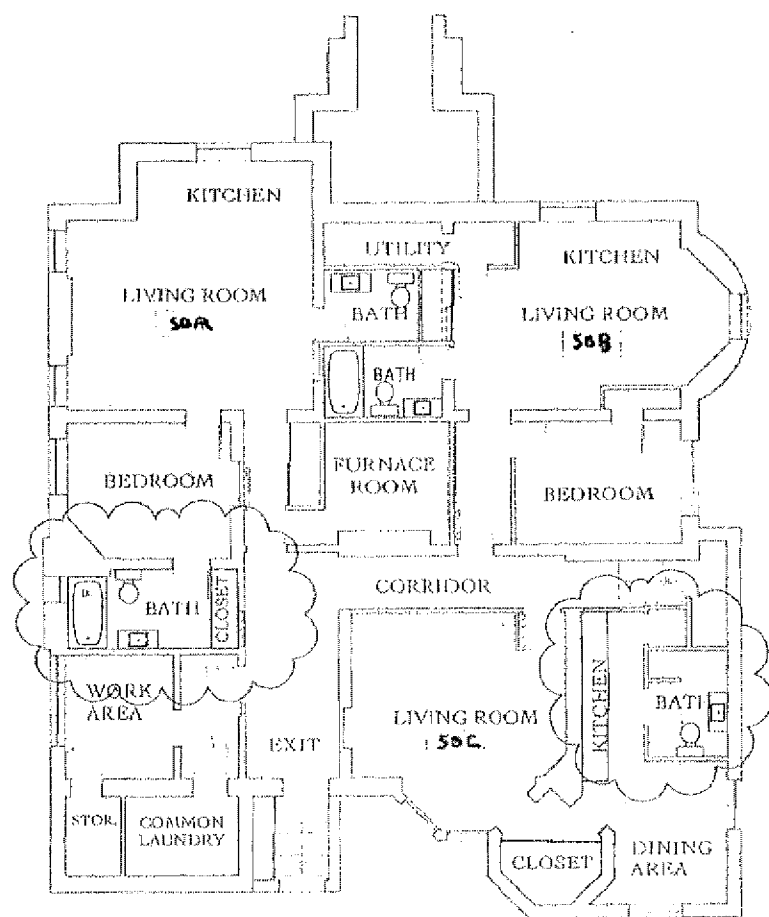
Curb

BROADVIEW AVENUE

( PART OF LOT 15, CONCESSION 1, FROM THE BAY )

( By By-Law 1526 )

P.I.N. 21064-0329

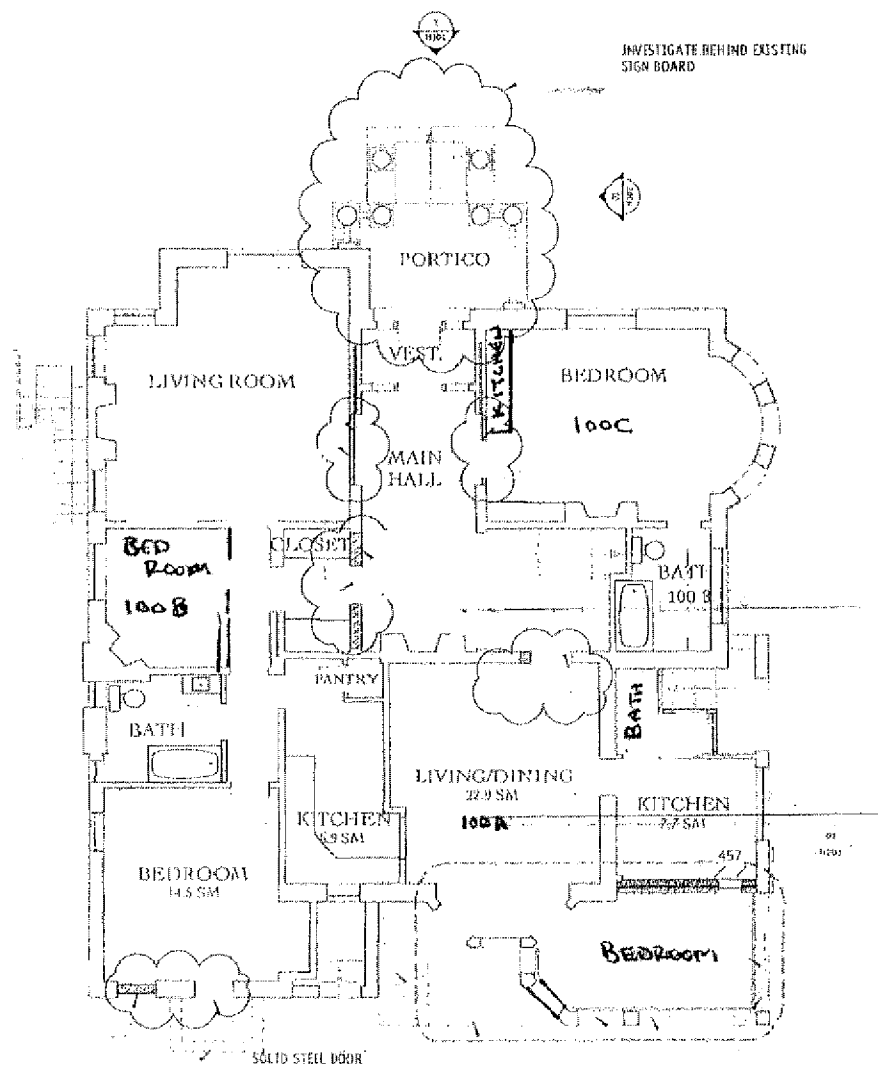


PROPOSED PROPERTY LINE

1

Basement Floor Plan

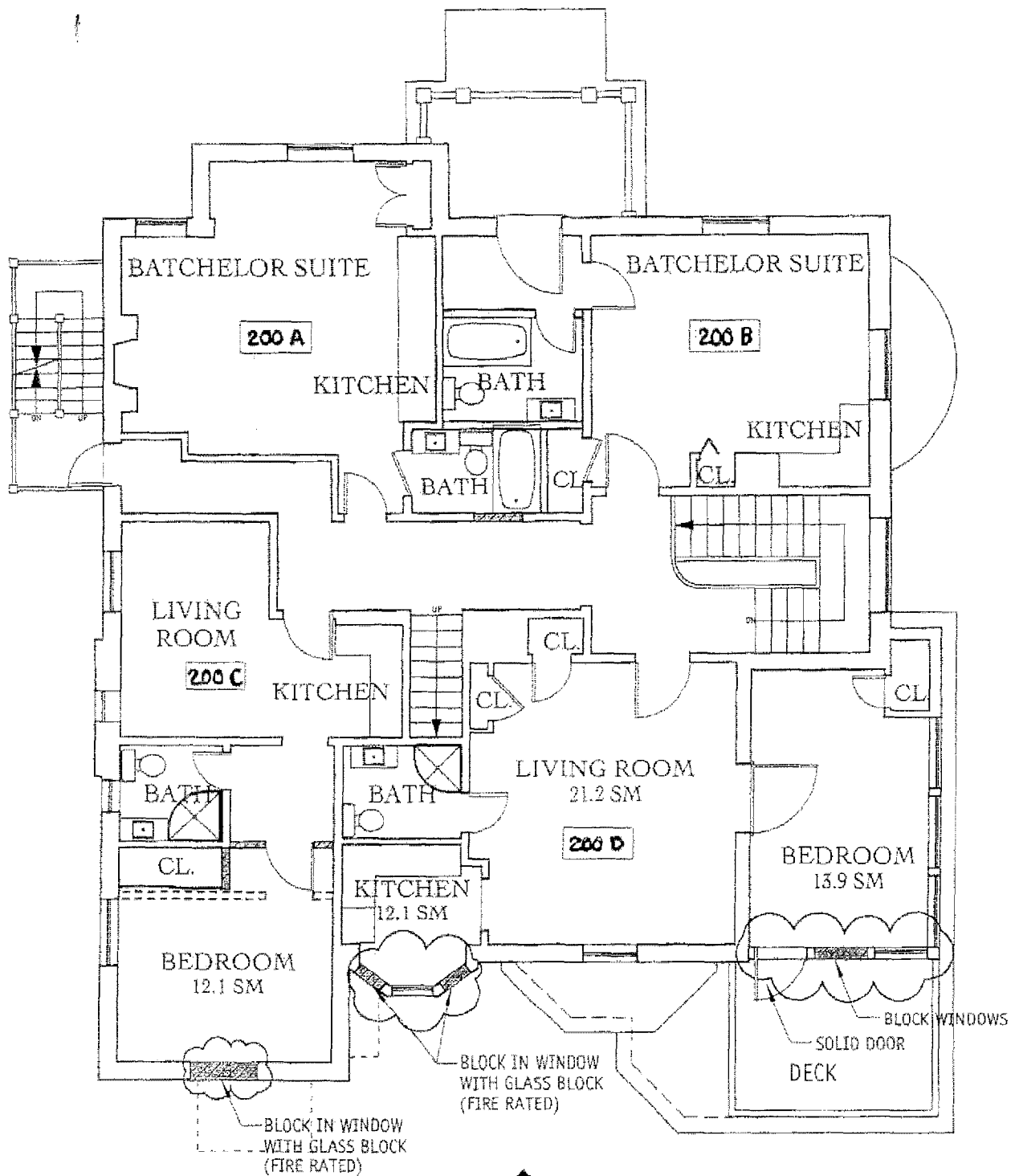
H201



2

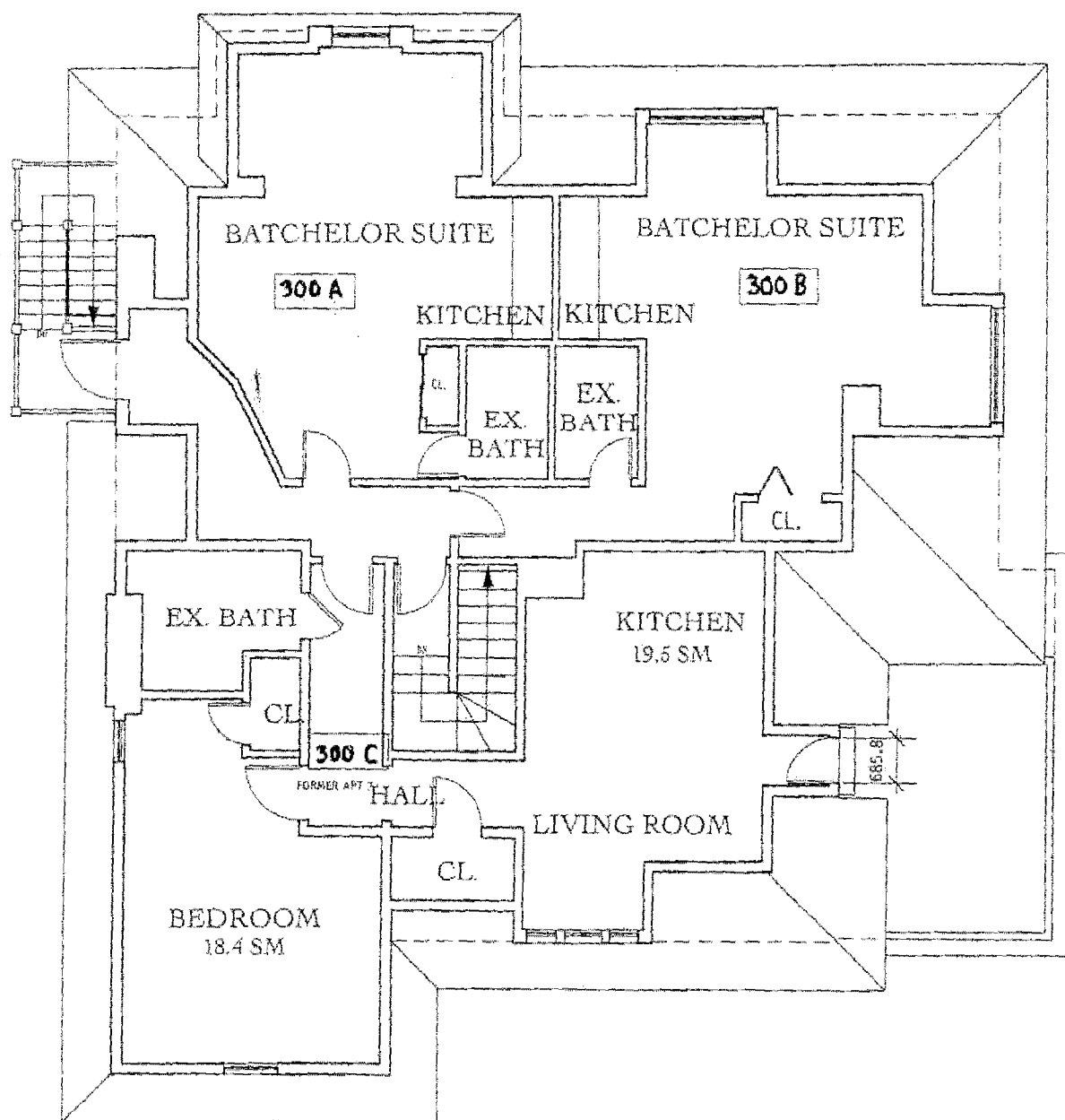
Ground Floor Plan

H201



1  
H202

## Second Floor Plan





City Clerk's Office

**Secretariat**  
Christine Archibald  
Toronto and East York Community Council  
City Hall, 12<sup>th</sup> Floor, West  
100 Queen Street West  
Toronto, Ontario M5H 2N2

**Ulli S. Watkiss**  
City Clerk

Tel: 416-392-7033  
Fax: 416-392-2860  
e-mail: teycc@toronto.ca  
Web: www.toronto.ca

**IN THE MATTER OF THE ONTARIO HERITAGE ACT  
R.S.O. 1990 CHAPTER 0.18 AND  
646 BROADVIEW AVENUE: JAMES HARRIS HOUSE  
CITY OF TORONTO, PROVINCE OF ONTARIO**

**NOTICE OF INTENTION TO DESIGNATE**

1636483 Ontario Limited  
30 Hazelton Avenue  
Toronto, Ontario  
M5R 2E2

Ontario Heritage Trust  
10 Adelaide Street East  
Toronto, Ontario  
M5C 1J3

Take notice that Toronto City Council intends to designate the lands and buildings known municipally as 646 Broadview Avenue: James Harris House under Part IV of the Ontario Heritage Act.

**Reasons for Designation**

**Description**

The property at 646 Broadview Avenue is worthy of designation under Part IV of the *Ontario Heritage Act* for its cultural heritage value or interest, and meets the criteria for municipal designation prescribed by the Province of Ontario under the three categories of design, historical and contextual value. Located on the northwest corner of Broadview Avenue and Montcrest Boulevard in the Riverdale neighbourhood, the construction in 1907 of the 2½-storey house form building and the adjoining coach house was documented in historical records. The house was originally occupied by James Marston Harris, managing director of the family-founded Harris Abattoir Company (later absorbed by Canada Packers). The property was listed on the City of Toronto Inventory of Heritage Properties in 1976, and authority was granted for a Heritage Easement Agreement in 2005.

**Cultural Heritage Value**

The James Harris House is a representative example of Edwardian Classicism, the style popularized for residential and commercial designs after the turn of the 20<sup>th</sup> century, which also displays a high degree of craftsmanship. The neighbouring coach house complements the James Harris House in its materials and design. Historically, the house form building and coach house reflect the practice of Toronto architect James L. Havill, whose commissions of note included alterations in 1910 to the Elgie Buildings at 118 Yonge Street as the location of Holt, Renfrew and Company. Placed on a

rise of land overlooking Riverdale Park, the James Harris House and Coach House anchor the south end of a group of residential properties along the west side of Broadview Avenue that are recognized on the City's heritage inventory.

#### Heritage Attributes: James Harris House

#### **Exterior**

The heritage attributes on the exterior of the James Harris House that are related to its cultural heritage value as a representative example of Edwardian Classicism displaying a high degree of craftsmanship are found on the principal (east) façade, the south elevation facing Montcrest Boulevard, and the roof, consisting of:

- The red brick construction with brick, stone and wood trim
- The 2½-storey plan above a rock-faced sandstone foundation with window openings
- The hip roof with flared eaves, wood modillions, brick chimneys, and gabled dormers with enclosed pediments and wood trim
- On the east slope of the roof, a gabled wall dormer with a segmental-arched opening and a cast iron balcony
- The smooth stone band course extending above the foundation along the principal (east) and south facades, and the brick band courses dividing the first and second stories on the latter elevations
- On the principal (east) façade, the organization of the wall into three parts with a projecting bay near the north (right) end and the main entrance at the centre of the wall
- The principal entry, where a wood door with a plate-glass panel is set in a segmental-arched wood surround and flanked by multi-paned sidelights with beveled glass
- The open portico that protects the main entry, with its sandstone base, stone balustrade, Doric columns, and a balcony with an iron railing (the round pediment with dentils is currently concealed)
- In the first and second stories of the east facade, the segmental-arched window openings with stone sills and brick flat arches with stone springers and single keystones
- In the first floor of the east facade, the openings containing three-part windows beneath transoms
- On the south elevation, the single-storey bowed bay window under a flat roof with a moulded cornice and a capping stone, which incorporates three window openings linked by continuous stone sills and lintels
- Near the centre of the south elevation, a large stair hall window containing stained glass in an Art Nouveau pattern
- At the west end of the south wall, a two-storey enclosed verandah with brick cladding and paired brick columns in the first floor and, above a wood cornice with a frieze and modillion blocks, wood cladding in the upper storey

The north and rear (west) walls, which have no distinguishing characteristics, are not included in the Reasons for Designation.

## Interior

The heritage attributes on the interior of the James Harris House that are related to its cultural heritage value as a representative example of Edwardian Classicism displaying a high degree of craftsmanship are found in the entrance hall with the main staircase, and the three parlour rooms on the first floor, consisting of:

- The entrance hall, with oak detailing, a door and sidelights, paneled wainscoting, two large paneled sliding doors leading to the south and north parlours, and a fireplace beneath a beamed ceiling with a Classically-detailed wood mantel, a paneled wood overmantel and a tiled surround
- The main staircase, located at the south end of the entrance hall, with wood wainscoting, square turned balusters and a square-cut newel post with carved detailing
- In the south, north and west parlours, the oak hardwood flooring laid in a concentric rectangular pattern
- The south parlour, with wood wainscoting, a coved ceiling with a wood cornice and, on the west wall, a fireplace with a wood mantel with Classical detailing, a wood overmantel with a mirrored panel, and a tiled surround flanked by wood cabinetry
- In the north parlour, a flat archway supported on fluted Ionic columns and, on the north wall, a fireplace with a wood mantel, paneled overmantel and tiled surround
- The west parlour, with wood detailing with wainscoting, ceiling beams and a built-in cupboard

## Heritage Attributes: Coach House

Located northwest of the James Harris House, the heritage attributes of the coach house are found on the exterior walls and the roof, consisting of:

- The wood-framed structure rising 1½ stories with brick cladding
- The truncated gable roof with extended eaves, a gabled dormer on the west slope, and a gabled wall dormer on the east slope with bargeboard, brick and stone trim, and a segmental-arched opening containing a pair of windows

The remaining door and window openings are flat-headed and are not included in the Reasons for Designation.

Notice of an objection to the proposed designation may be served on the City Clerk, Attention: Christine Archibald, Administrator, Toronto and East York Community Council, Toronto City Hall, 100 Queen Street West, 12<sup>th</sup> Floor, Toronto, Ontario, M5H 2N2, within thirty days of the 7<sup>th</sup> of August, 2007, **which is September 7th, 2007**. The notice must set out the reason(s) for the objection, and all relevant facts.

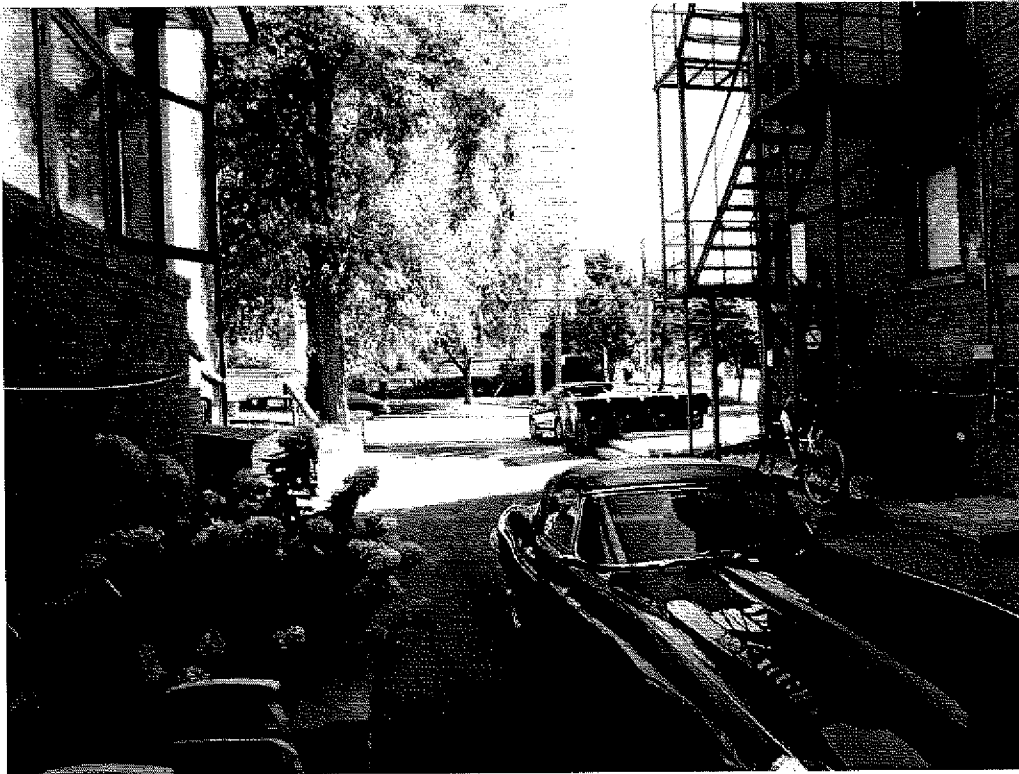
Dated at Toronto this 7th day of August, 2007.

Ulli S. Watkiss  
City Clerk

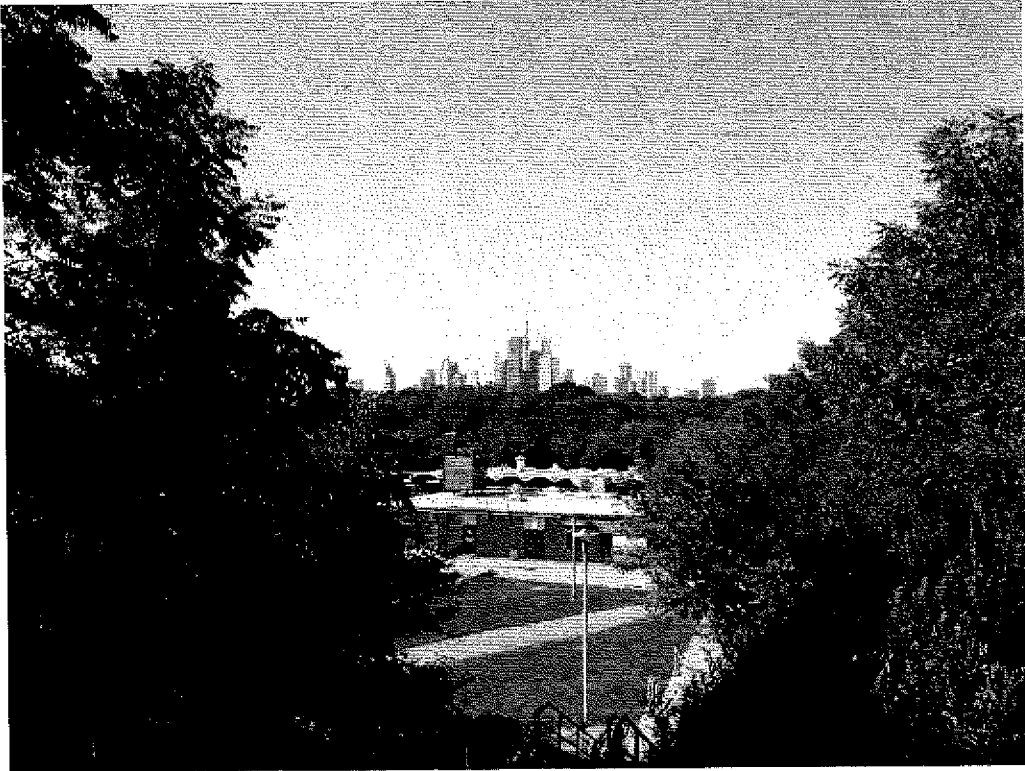
Front Entry



Driveway Looking East



Skyline View



South Wall Tenant Patio



Entrance Hall Looking East



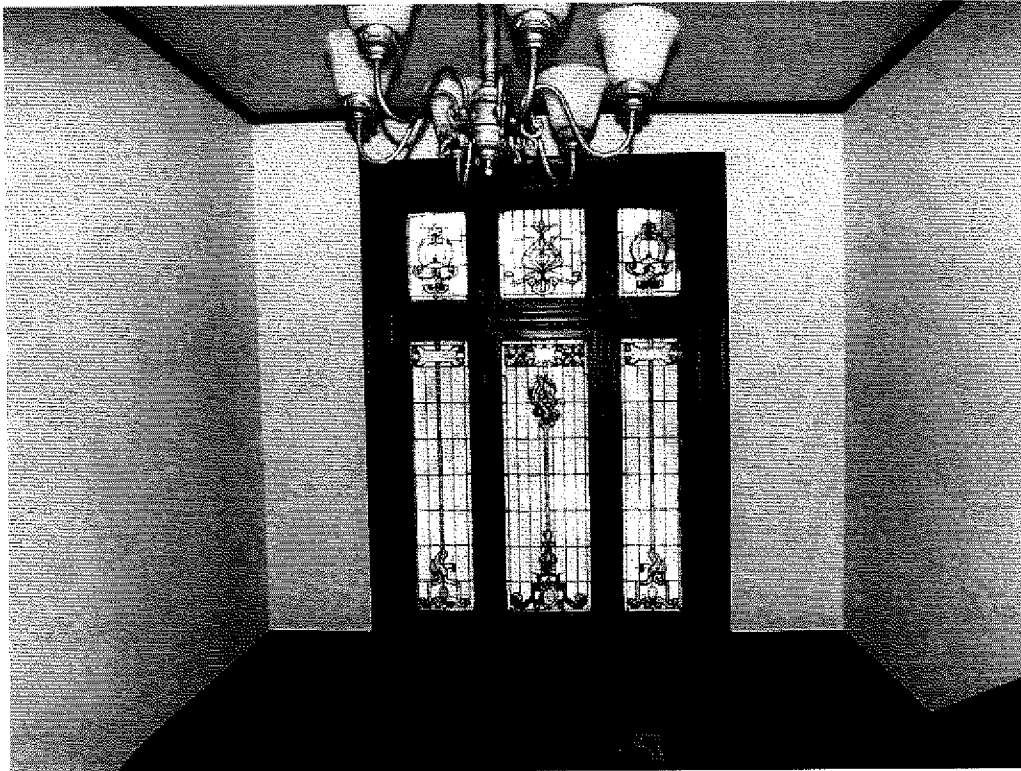
Interior Entrance Hall Looking West



Lower Hallway



Stained Glass Window on 2nd Floor Landing



Staircase to 2nd Floor



Main Floor 1br Unit



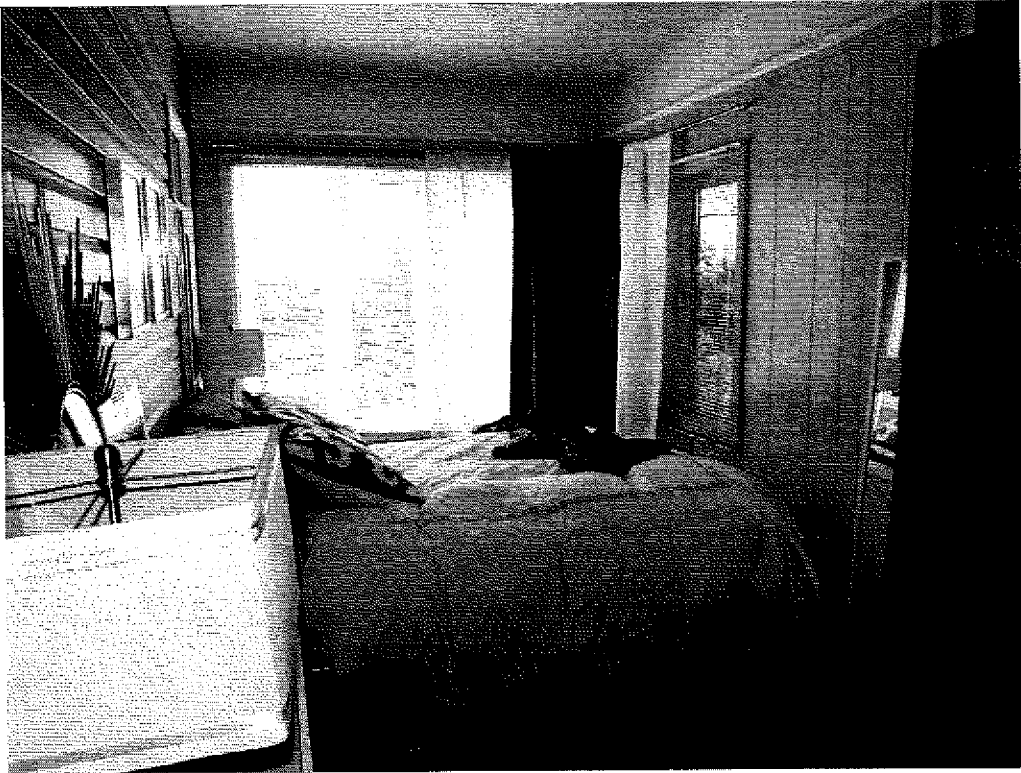
Main Floor 1br Unit Kitchen



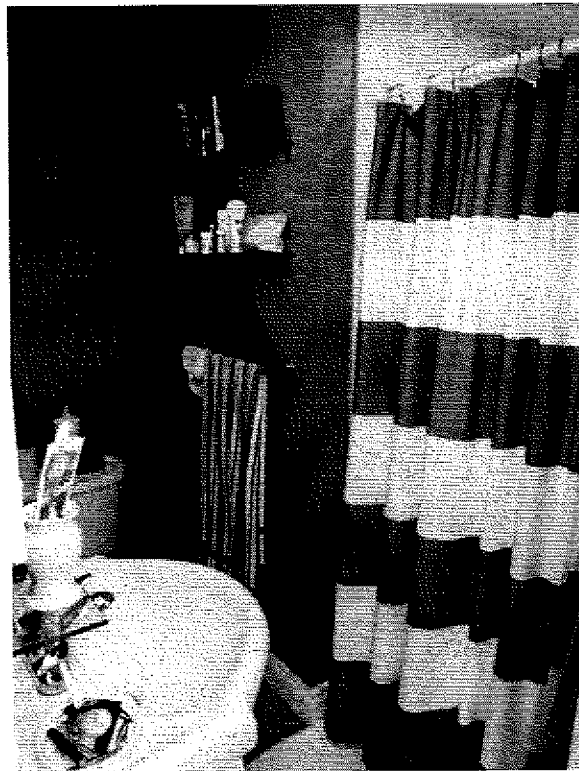
Main Floor 1br Unit LR



Main Floor 1br Unit Master



Main Floor 1br Unit Washroom



2nd Floor 1 Bedroom



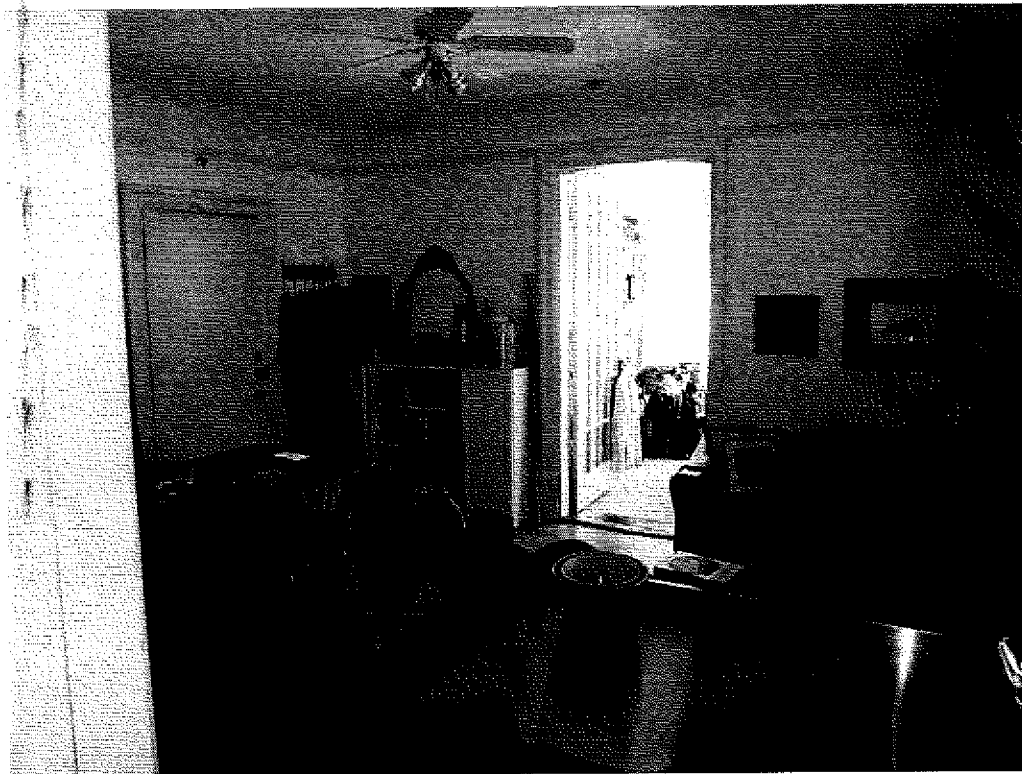
2nd Floor 1br Unit



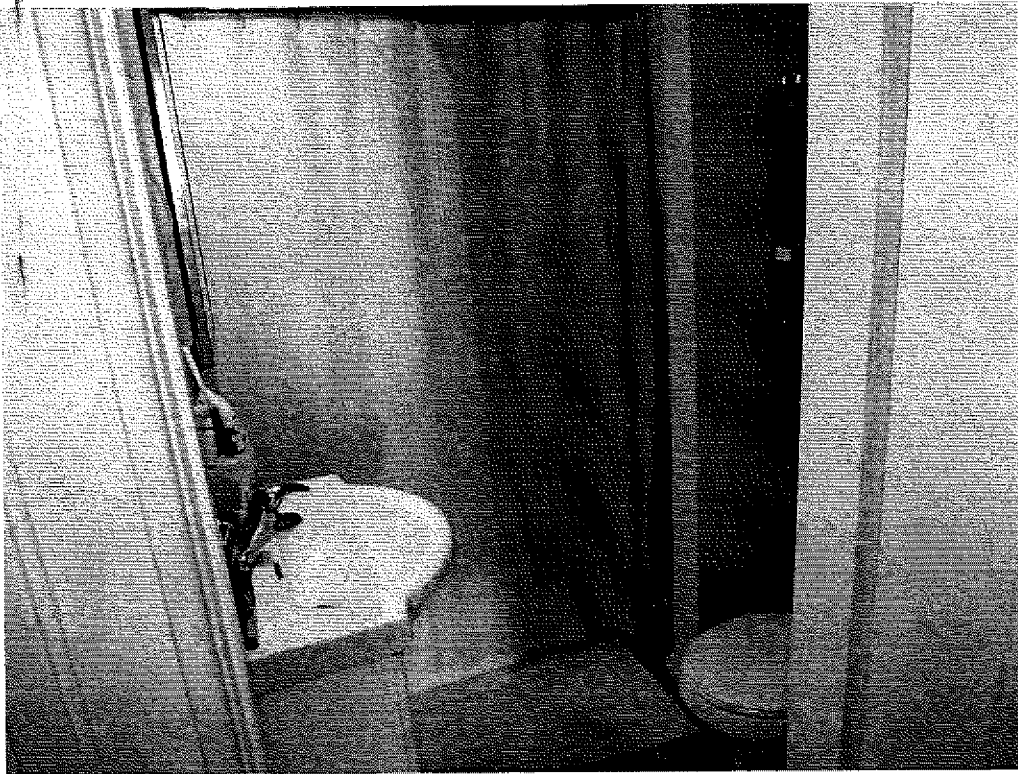
2nd Floor 1br Unit Kitchen



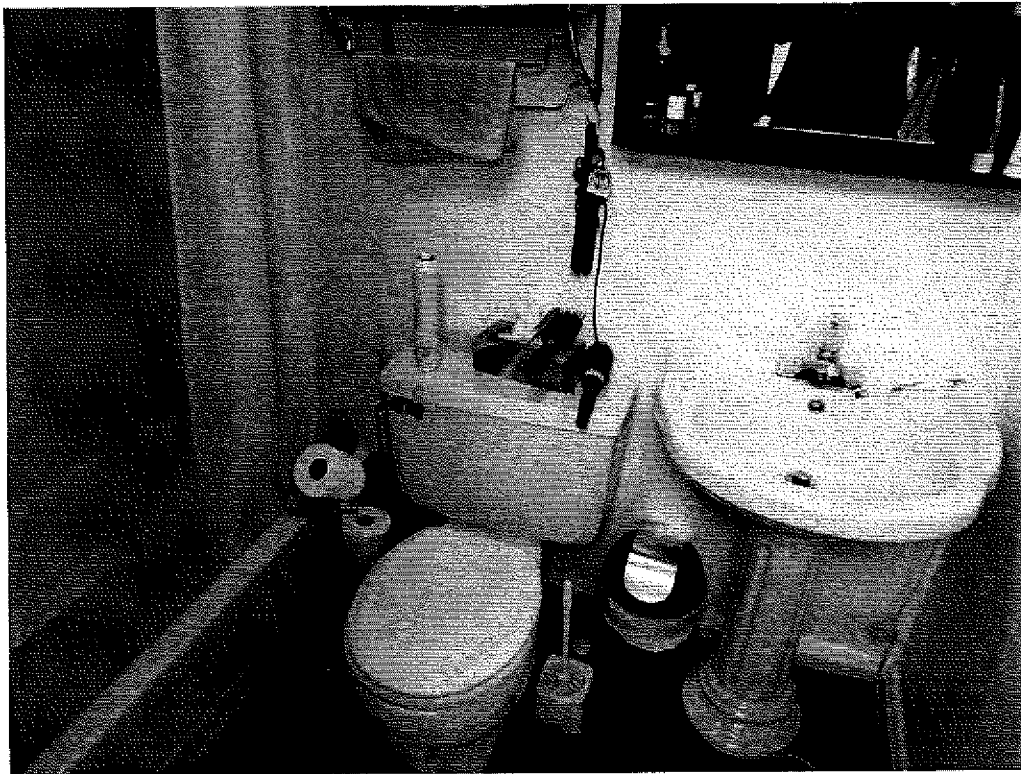
2nd Floor 1br Unit Living Area



2nd Floor 1br Unit Washroom



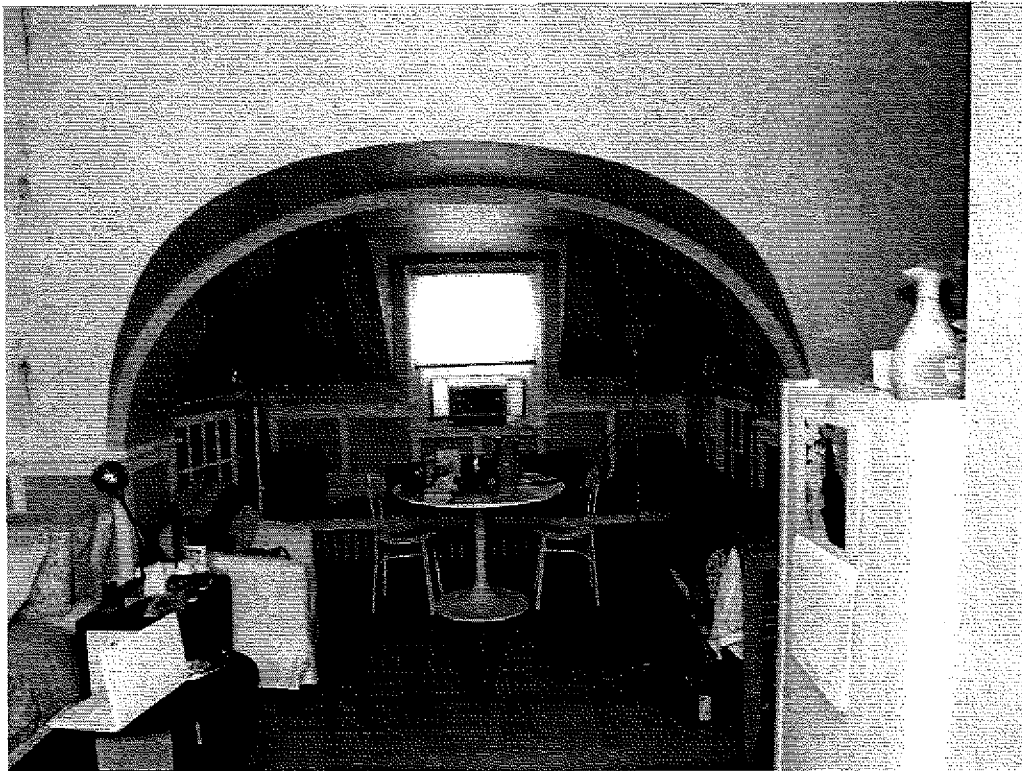
3rd Floor Bachelor Bathroom



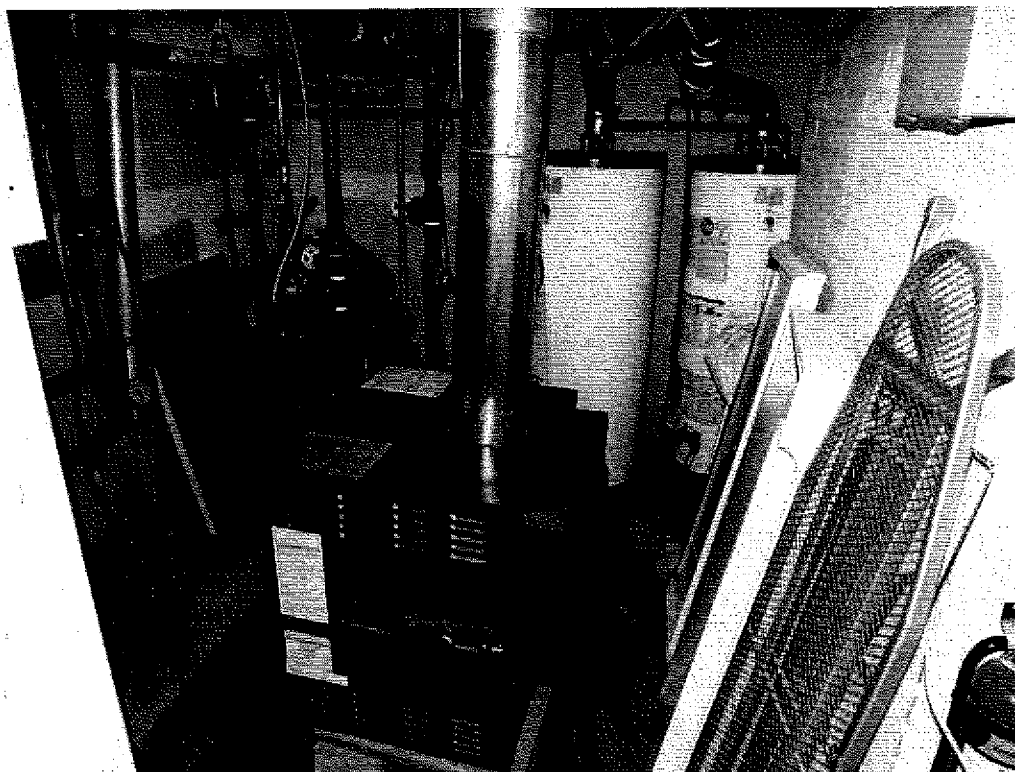
3rd Floor Bachelor Kitchen



3rd Floor Bachelor Living Area



Furnace Room



Maintenance Room



Request ID: 016306567  
 Transaction ID: 53817807  
 Category ID: (C)CC/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2014/03/31  
 Time Report Produced: 13:13:42  
 Page: 1

Certified a true copy of the data as recorded on the Ontario Business Information System.



Director  
 Ministry of Government Services  
 Toronto, Ontario

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
1636483	1636483 ONTARIO INC.	2004/10/21
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>	<b>Date Amalgamated</b>	<b>Amalgamation Ind.</b>
30 HAZELTON AVENUE	NOT APPLICABLE	NOT APPLICABLE
TORONTO	<b>New Amal. Number</b>	<b>Notice Date</b>
ONTARIO	NOT APPLICABLE	NOT APPLICABLE
CANADA M5R 2E2		<b>Letter Date</b>
<b>Mailing Address</b>		NOT APPLICABLE
16 MONTCREST BLVD	<b>Revival Date</b>	<b>Continuation Date</b>
	NOT APPLICABLE	NOT APPLICABLE
TORONTO	<b>Transferred Out Date</b>	<b>Cancel/Inactive Date</b>
ONTARIO	NOT APPLICABLE	NOT APPLICABLE
CANADA M4K 1J7	<b>EP Licence Eff. Date</b>	<b>EP Licence Term. Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>Date Commenced in Ontario</b>	<b>Date Ceased in Ontario</b>
	NOT APPLICABLE	NOT APPLICABLE
<b>Activity Classification</b>	<b>Number of Directors</b>	
NOT AVAILABLE	Minimum Maximum	
	00001 00015	

Request ID: 016306567  
Transaction ID: 53817807  
Category ID: (C)CC/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2014/03/31  
Time Report Produced: 13:13:42  
Page: 2

Certified a true copy of the data as recorded on the Ontario Business Information System.



Director  
Ministry of Government Services  
Toronto, Ontario

## CORPORATION PROFILE REPORT

Ontario Corp Number

1636483

Corporation Name

1636483 ONTARIO INC.

Corporate Name History

1636483 ONTARIO INC.

Effective Date

2004/10/21

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator:  
Name (Individual / Corporation)

JOHN

RAWLINGS

Address

16 MONTCREST BLVD

TORONTO  
ONTARIO  
CANADA M4K 1J7

Date Began

2012/02/29

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Request ID: 016306567  
Transaction ID: 53817807  
Category ID: (C)CC/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2014/03/31  
Time Report Produced: 13:13:42  
Page: 3

Certified a true copy of the data as recorded on the Ontario Business Information System.

  
Director  
Ministry of Government Services  
Toronto, Ontario

## CORPORATION PROFILE REPORT

Ontario Corp Number

1636483

Corporation Name

1636483 ONTARIO INC.

Administrator:  
Name (Individual / Corporation)

JOHN

RAWLINGS

Address

16 MONTCREST BLVD

TORONTO  
ONTARIO  
CANADA M4K 1J7

Date Began

2012/02/29

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

Administrator:  
Name (Individual / Corporation)

MYRNE

RAWLINGS

Address

16 MONTCREST BLVD

TORONTO  
ONTARIO  
CANADA M4K 1J7

Date Began

2012/02/29

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Request ID: 016306567  
Transaction ID: 53817807  
Category ID: (C)CC/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2014/03/31  
Time Report Produced: 13:13:42  
Page: 4

Certified a true copy of the data as recorded on the Ontario Business Information System.



Director  
Ministry of Government Services  
Toronto, Ontario

## CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
1636483	1636483 ONTARIO INC.

Administrator: Name (Individual / Corporation)	Address
MYRNE RAWLINGS	16 MONTCREST BLVD  TORONTO ONTARIO CANADA M4K 1J7

Date Began	First Director
2012/02/29	NOT APPLICABLE

Designation	Officer Type	Resident Canadian
OFFICER	SECRETARY	Y

Administrator: Name (Individual / Corporation)	Address
MYRNE RAWLINGS	16 MONTCREST BLVD  TORONTO ONTARIO CANADA M4K 1J7

Date Began	First Director
2012/02/29	NOT APPLICABLE

Designation	Officer Type	Resident Canadian
OFFICER	TREASURER	Y

Request ID: 016306567  
Transaction ID: 53817807  
Category ID: (C)CC/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2014/03/31  
Time Report Produced: 13:13:42  
Page: 5

Certified a true copy of the data as recorded on the Ontario Business Information System.



Director  
Ministry of Government Services  
Toronto, Ontario

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1636483

1636483 ONTARIO INC.

Last Document Recorded

Act/Code Description

Form

Date

CIA ANNUAL RETURN 2011

1C

2014/02/01

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this certified report in electronic form is authorized by the Ministry of Government Services.

**KORMAN & COMPANY**

Barristers &amp; Solicitors

721 Queen Street East

Toronto, Ontario

M4M 1H1

(416) 465-4232 tel

(416) 465-6912 fax

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

October 1, 2014

via email [jlabine@goodmans.ca](mailto:jlabine@goodmans.ca)via email [bempey@goodmans.ca](mailto:bempey@goodmans.ca)via email [mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)

Schonfeld Inc. Receivers &amp; Trustees

77 King Street West, Suite 3000

Toronto, Ontario M5K 1G8

Attention: S Harlan Schonfeld CPA, CIRP, and James Merryweather CPA, GGA

Goodmans

333 Bay Street, Suite 3400

Toronto, ON M5H 2S7

Attention: Brian Empey

Dear Sirs and Madams:

Re: DBDC Spadina Ltd. et al. v. Norma Walton et al.  
 Interim Order for 646 Broadview Avenue, Toronto, ON M4K 2P1 (the "Property")  
 Our File No.: 270-14

This letter is to confirm that we incorporated 646 Broadview Inc. (the "Corporation") on April 17, 2014.

The Directors and Officers of the Corporation are as follows:

Marcin Wroblewski

Director &amp; President

Adam Wroblewski

Director &amp; Secretary

The Shareholders of the Corporation are:

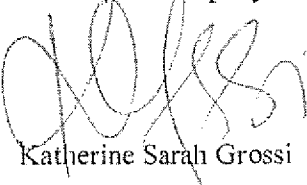
Marcin Wroblewski

Adam Wroblewski

No other parties have an interest in the Corporation.

Yours very truly,

Korman & Company



Katherine Sarah Grossi

E

Paul Fruitman  
 Direct: (416) 596-2870  
 pfruitman@counsel-toronto.com  
 File No. 13163

**LAX O'SULLIVAN SCOTT LISUS LLP**  
 Suite 2750, 145 King Street West  
 Toronto ON M5H 1J8 Canada  
 Tel: 416 598 1744 Fax: 416 598 3730

**LAX  
 O'SULLIVAN  
 SCOTT  
 LISUS**

October 7, 2014

**VIA EMAIL**

Mark Dunn  
 Goodmans LLP  
 Bay Adelaide Centre  
 333 Bay Street, Suite 3400  
 Toronto, ON M5H 2S7

Dear Mr. Dunn:

**Re: 346C Jarvis**

We have been retained by Carlos Carreiro in respect of 346C Jarvis Street, Toronto. We are submitting this letter further to paragraph 11 of the Order of Justice Brown dated August 12, 2014, which states:

THIS COURT ORDERS that if, within 60 days of the date of this Order, a registered owner of a Disputed Property provides evidence to Schonfeld Inc., to the satisfaction of Schonfeld Inc., that it acquired that Disputed Property for fair market value and that the Waltons no longer hold any interest of any kind in that Disputed Property, that Disputed Property shall be released from the other terms of this Order, and that paragraphs 8 and 9 of this Order shall apply to that Disputed Property.

As the enclosed documents show, 346C Jarvis was purchased by Mr. Carreiro and his wife, Colette Carreiro, for good and valuable consideration.

**Purchase of 346C Jarvis**

Attached at **Tab A** is the Agreement of Purchase and Sale dated June 1, 2010. The stated purchase price is \$699,899.40.

Attached at **Tab B** is email correspondence between Norma Walton, Ms. Walton's parents, Mr. and Mrs. Carreiro and their mortgage broker, Debi McKeon, from August through November 2010. I have highlighted the key passages.

As indicated in Ms. Walton's email of August 9, 2010, the consideration for 346C Jarvis was to be composed of a) a mortgage in the amount of \$559,872; b) \$57,750 to be paid directly by the Carreiros for finishing the property; and c) \$106,718 from the Carreiros' share of the proceeds from the sale of 110 Lombard Street.

- 2 -

Ms. Walton over-calculated the amount due by \$12,000, even accounting for the \$12,774.64 in legal fees Walton advocates charged the Carreiros. This is reflected in the Statement of Adjustments referred to in Ms. Walton's November 25, email, which is attached at **TAB C**. It shows a reduced amount for purchaser's completion costs of \$44,750. The Carreiros paid these costs directly. Walton Advocates' legal bill is attached at **Tab D**.

#### **Mortgage over 346C Jarvis**

The Mortgage Commitment from Equitable Trust in the amount of \$559,872, dated October 27, 2010, is attached at **Tab E**.

Mortgage Statements from Equitable Trust from January 2011 through December 2013 are attached at **Tab F**. These statements show that the Carreiros paid approximately \$40,000 towards the mortgage during this time period.

#### **Proceeds from Lombard Street Sale**

You will note in the email correspondence at **Tab B**, a request by the Carreiros' mortgage broker for the offer respecting the sale of this property and the ledger statement showing Mr. Carreiro's net proceeds of sale. A copy of the accepted Agreement of Purchase and Sale for 110 Lombard Street dated is attached at **Tab G**. A ledger showing the distribution of proceeds is attached at **Tab H**.

Attached at **Tab I** is an email exchange between Mr. Carreiro and his mortgage broker, Ms. McKeon, dated October 21-25, 2010. In Ms. McKeon's email of October 21, 2010, she asks for bank statements showing the deposit of funds received from the sale of 110 Lombard Street. In Mr. Carreiro's October 24 email, he indicates that he deposited \$213,000 and gave the balance to Ms. Walton for the purchase of 346C Jarvis. The Carreiros' bank statement from July through October 2010, showing this deposit on October 18, 2010, is attached at **Tab J**.

Mr. Carreiro advises that he returned the Carreiros' share certificates regarding the Lombard Street property at the time of the sale. These would now be in the possession of your client, or else held by Mr. Smith.

We trust the above summary and attached documents are sufficient evidence for you to release this property from Justice Brown's August 12, 2014 Order. If you require additional information, please advise as soon as possible. Otherwise, please confirm that the property has been released and that the Carreiros are free to deal with 346C Jarvis as they see fit.

Yours truly,



Paul Fruitman

A

**AGREEMENT OF PURCHASE AND SALE**  
(FOR USE IN THE PROVINCE OF ONTARIO)

**BUYER:** Carlos Carreiro and Colette Carreiro (Not legal names of the Buyer) Agreed to purchase from  
**SELLER:** 1780355 Ontario Inc. (Not legal name of the Seller) the following  
**REAL PROPERTY:** 346C Jarvis Street (Location on the Side of  
Address in the City of Toronto  
and having a frontage of .0 ft. more or less by a depth of .0 ft. more or less legally described as

**Part Lot 2, Plan D17, designated as Parts 3 and 11 on Plan 66R24790 being PIN 21105-0162** (The property)

**PURCHASE PRICE:** Six hundred ninety nine thousand eight hundred and forty Dollars (CDN\$ 699,840.00 )  
**DEPOSIT:** Buyer submits ( Herewith ) fifteen thousand Dollars (CDN\$ 15,000.00 )  
(Hereinafter called acceptance)

cash or negotiable cheque payable to **Walton Advocates, In Trust** to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. Buyer agrees to pay the balance as follows:

The Purchaser acknowledges the following:

1. That the Project is covered by TARION and governed by the *Ontario New Home Warranties Plan Act* R.S.O. 1990 c.O.31;
2. That the property is a PotI (parcel of tied land) and shares an undivided common interest in a utility corridor being Common Element Condominium Corporation No. 2091;
3. That a common expense payment in the approximate amount of \$30 is due monthly payable to the Condominium Elements Condominium Corporation No. 2091.
4. On closing the Purchaser will be responsible for the following:
  - i) a lump sum payment of \$90 representing 3 months monthly common expenses to the Common Elements Condominium Corporation No. 2091;
  - ii) a discharge fee of \$200 plus tax; and
  - iii) Ontario New Home Warranty enrollment fee of \$650 plus tax.

The purchaser confirms receipt of the Status Certificate and related Condominium Documents for the Condominium Corporation.

**SCHEDULE(S)** Tarion attached hereto form(s) part of this Agreement.

1. **CHATELLES INCLUDED:** Stainless steel appliances: Fridge, stove, dishwasher, microwave, white washer and dryer, light fixtures; all other permanent fixtures

2. **FIXTURES EXCLUDED:** none

3. **RENTAL ITEMS:** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:  
n/a

4. **IRREVOCABILITY:** This Offer shall be irrevocable by Buyer until 11:59 p.m. on the 1st day of June, 20 10  
(Not a Buyer)  
after which time, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

5. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 7th day of September, 20 10  
Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

6. **NOTICES:** Seller hereby appoints the Listing Broker as Agent for the purpose of giving and receiving notices pursuant to this Agreement. Only if the Co-operating Broker represents the interests of the Buyer in this transaction, the Buyer hereby appoints the Co-operating Broker as Agent for the purpose of giving and receiving notices pursuant to this Agreement. Any notice relating hereto or provided for herein shall be in writing. This offer, any counter offer, notice of acceptance or intent, or any notice shall be deemed given and received, when hand delivered to the address for service provided in the Acknowledgment below, or where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

FAX No. n/a (For delivery of notices to Seller) FAX No. n/a (For delivery of notices to Buyer)

7. **GST:** If this transaction is subject to Goods and Services Tax (G.S.T.), then such tax shall be Included in the Purchase Price.  
(included in addition to)

If this transaction is not subject to G.S.T., Seller agrees to certify, on or before closing, that the transaction is not subject to G.S.T.

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 31st day of August, 20 10 (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the date of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived; or (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders affecting the property, and Seller agrees to resolve and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the present use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Buyer is unable or unwilling to remove, remedy or satisfy or obtain insurance and except against risk of fire in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate act or negotiations in respect of such objections, shall be of an end and all monies paid shall be returned without interest or deduction and Seller, Listing Broker, and Co-operating Broker shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Buyer and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part II of the Land Registration Act, R.S.O. 1990, Chapter L4, and any amendments thereto, the Seller and Buyer acknowledge and agree that the delivery of documents and the release thereof to the Seller and Buyer may, at the lawyers' discretion; (a) not occur contemporaneously with the registration of the transfer/lease (and other registrable documentation) and (b) be subject to conditions whereby the lawyer receiving documents and/or money will be required to hold them in trust and not release them except in accordance with the terms of a written agreement between the lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not pay for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Registration Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust and Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing fund, a discharge in registrable form and to register same on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, together with a cheque executed by Seller financing payment of the amount required to obtain the discharge out of the balance due on completion.
13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller.
14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50 (22) of the Planning Act, R.S.O. 1990.
17. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not, then a non-resident of Canada.
18. **ADJUSTMENTS:** Any rents, mortgage interest, utility taxes including local improvement rates and unincorporated public or private utility charges and unmettered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself be apportioned to Buyer.
19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing any act completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
20. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
21. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under provisions of the Family Law Act, R.S.O. 1990 unless Seller's spouse has executed the consent, hereinafter provided.
22. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is subject of this transaction.
23. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
24. **AGENCY:** It is understood that the brokers involved in the transaction represent the parties as set out in the Confirmation of Representation below.
25. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provisions written or typed in this Agreement (including any Schedule attached hereto) and any provision in the standard on-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein. This Agreement shall be void with all changes of gender or number required by the context.
26. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

DATED at Toronto this 1st day of June 20 10  
 SIGNED, SEALED AND DELIVERED in the presence of:  
 (Witness) [Signature] IN WITNESS whereof I have hereunto set my hand and seal:  
Carlos Carreiro (Buyer) (Seal) DATE June 10  
Colette Carreiro (Buyer) (Seal) DATE June 10

I, the Undersigned Seller, agree to the above Offer, I hereby irrevocably instruct my lawyer to pay directly to the Listing Broker the unpaid balance of the commission together with applicable Goods and Services Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the Listing Broker to my lawyer.

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_  
 SIGNED, SEALED AND DELIVERED in the presence of:  
 (Witness) \_\_\_\_\_ IN WITNESS whereof I have hereunto set my hand and seal:  
 \_\_\_\_\_ (Seller) (Seal) DATE \_\_\_\_\_  
 \_\_\_\_\_ (Witness) \_\_\_\_\_ IN WITNESS whereof I have hereunto set my hand and seal:  
 \_\_\_\_\_ (Seller) (Seal) DATE \_\_\_\_\_

**SPOUSAL CONSENT:** The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.  
 (Witness) \_\_\_\_\_ (Spouse) \_\_\_\_\_ (Seal) DATE \_\_\_\_\_

**CONFIRMATION OF EXECUTION:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes incorporated and written into this copy as agreed by all parties at \_\_\_\_\_ this 1st day of June 20 10 (Signature of Co-Operating Broker)

**CONFIRMATION OF REPRESENTATION**  
 I hereby acknowledge and confirm the Listing Broker represents the interests of the  
 Seller (Seller/Seller and the Buyer) in this transaction.  
 N/A  
 Signature of Listing Broker or authorized representative  
 Name of Listing Broker  
 (416) \_\_\_\_\_ (416) \_\_\_\_\_  
 Tel No. FAX No.

**ACKNOWLEDGEMENT**  
 I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.  
 (Seller) \_\_\_\_\_ DATE \_\_\_\_\_  
 (Seller) \_\_\_\_\_ DATE \_\_\_\_\_  
 Address for Service \_\_\_\_\_ Tel No. ( ) \_\_\_\_\_  
 Seller's Lawyer \_\_\_\_\_  
 Address \_\_\_\_\_ Tel No. \_\_\_\_\_ FAX No. \_\_\_\_\_

**FOR OFFICE USE ONLY**  
**COMMISSION TRUST AGREEMENT**  
 To Co-Operating Broker shown on the foregoing Agreement of Purchase and Sale:  
 In consideration for the Co-Operating Broker procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS Rules and shall be subject to and governed by the MLS Rules pertaining to Commission Trust.  
 DATED as of the date and the time of the acceptance of the foregoing Agreement of Purchase and Sale Acknowledged by:  
 Signature of Listing Broker or authorized representative N/A  
 Signature of Co-Operating Broker or authorized representative

### Addendum to Agreement of Purchase and Sale Delayed Closing Warranty

This addendum, including the accompanying Statement of Critical Dates (the "Addendum"), forms part of the agreement of purchase and sale (the "Purchase Agreement") between the Vendor and the Purchaser relating to the Property. It contains important provisions that are part of the delayed closing warranty provided by the Vendor in accordance with the Ontario New Home Warranties Plan Act (the "Act"). If there are any differences between the provisions in the Addendum and the Purchase Agreement, then the Addendum provisions shall prevail. PRIOR TO SIGNING THE PURCHASE AGREEMENT OR ANY AMENDMENT TO IT, THE PURCHASER SHOULD SEEK ADVICE FROM A LAWYER WITH RESPECT TO THE PURCHASE AGREEMENT OR AMENDING AGREEMENT, THE ADDENDUM AND THE DELAYED CLOSING WARRANTY.

The Vendor shall complete all blanks set out below.

<b>VENDOR</b>	
1780355 Ontario Ltd	
Full Name(s)	
38377	30 Hazelton Avenue, Toronto, ON M5R 2P2
Mach Registration Number	Address
416-469-3171	City
Province	Postal Code
416-469-9973	Phone
Fax	Mobile
<b>PURCHASER</b>	
Carlos Cantero and Celeste Cantero	
Full Name(s)	
Address	
Province	City
Postal Code	Phone
Fax	Mobile
<b>PROPERTY DESCRIPTION</b>	
3450 Jarvis Street	
Municipal Address	
Toronto	ON
City	Province
Part Lot 2, Plan D17, designated as Parts 3 and 11 on Plan 66R24780 using PIN 21105-0162	
Street Legal Description	
<b>INFORMATION REGARDING THE PROPERTY</b>	
The Vendor confirms that:	
(a) The Property is within a plan of subdivision or a proposed plan of subdivision	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, the plan of subdivision is registered.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If the plan of subdivision is not registered, approval of the draft plan of subdivision has been given.	<input type="checkbox"/> Yes <input type="checkbox"/> No
(b) The Vendor has received confirmation from the relevant government authorities that there is sufficient:	
(i) water capacity, and (ii) sewage capacity to service the Property.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, the nature of the confirmation is as follows: Verbal	
If the availability of water and sewage capacity is uncertain, the issues to be resolved are as follows:	
(c) A building permit has been issued with respect to the Property.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(d) Commencement of Construction: <input checked="" type="checkbox"/> has occurred or <input type="checkbox"/> is expected to occur by the ____ day of _____, 20____.	
The Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.	

**1. Definitions**

"Business Day" means any day other than Saturday, Sunday, New Year's Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, and any special holiday proclaimed by the Governor General or the Lieutenant Governor, and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is not a Business Day; and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are not Business Days; and where Christmas Day falls on a Friday, the following Monday is not a Business Day.

"Closing" means the completion of the sale of the Property and "Close" has a corresponding meaning.

"Commencement of Construction" means the commencement of construction of foundation components or elements (such as footings, walls or piles) for the house.

"Critical Dates" means the Firm Closing Date, the Delayed Closing Date, the Outside Closing Date, and the last day of the Purchaser's Termination Period.

"Delayed Closing Date" means the date on which the Vendor agrees to Close, in the event the Vendor cannot close on the Firm Closing Date, as set in accordance with section 8.

"Early Termination Conditions" means the types of conditions listed in Schedule A.

"Firm Closing Date" means the firm date on which the Vendor agrees to Close, as set in accordance with this Addendum.

"Outside Closing Date" means the latest date that the Vendor can set as a Delayed Closing Date before the Purchaser's right to terminate the Purchase Agreement for delay arises, calculated in accordance with paragraph 11(b).

"Purchaser's Termination Period" means the 30-day period during which the Purchaser may terminate the Purchase Agreement for delay, in accordance with paragraph 11(b).

"Statement of Critical Dates" means the Statement of Critical Dates attached to or accompanying this Addendum (in form to be determined by the Tarion Registrar from time to time). The Statement of Critical Dates must be signed by both the Vendor and Purchaser.

"The Act" means the *Ontario New Home Warrantee Plan Act* including regulations, as amended from time to time.

"Unavoidable Delay" means an event which delays Closing which is a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Vendor and are not caused or contributed to by the fault of the Vendor.

"Unavoidable Delay Period" means the number of days between the Purchaser's receipt of written notice of the commencement of the Unavoidable Delay, as required by paragraph 7(b), and the date on which the Unavoidable Delay concludes.

**2. Early Termination - Conditions**

- (a) The Vendor and Purchaser may include conditions in the Purchase Agreement that, if not satisfied, give rise to early termination of the Purchase Agreement, but only in the limited way described in this section.
- (b) The Vendor is not permitted to include any conditions in the Purchase Agreement other than the types of Early Termination Conditions listed in Schedule A, and/or the conditions referred to in paragraph 2(c), (d) and (e) below. Any other condition included in a Purchase Agreement for the benefit of the Vendor that is not expressly permitted under Schedule A, or paragraph 2(d) or (e), is deemed null and void and is not enforceable by the Vendor, but does not affect the validity of the balance of the Purchase Agreement.
- (c) The Vendor confirms that:

- (i) This Purchase Agreement is subject to Early Termination Conditions that, if not satisfied for waived, (if applicable), will result in the automatic termination of the Purchase Agreement. ☐ Yes ☐ No
- (ii) If yes, the Early Termination Conditions are as follows. The obligation of each of the Purchaser and Vendor to complete this purchase and sale transaction is subject to satisfaction (or waiver, if applicable) of the following conditions:

Condition #1 (if applicable)

Description of the Early Termination Condition: Purchaser is provide to the Vendor a copy of their mortgage commitment to establish proof of its ability to close the transaction within 15 days.

The Approving Authority (as that term is defined in Schedule A) is: The Vendor

The date by which Condition #1 is to be satisfied is the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Condition #2 (if applicable)

Description of the Early Termination Condition: \_\_\_\_\_

The Approving Authority (as that term is defined in Schedule A) is: \_\_\_\_\_

The date by which Condition #2 is to be satisfied is the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The date for satisfaction of any Early Termination Condition cannot be later than 90 days before the Firm Closing Date, and will be deemed to be 30 days before the Firm Closing Date if no date is specified or if the date specified is later than 90 days before the Firm Closing Date. This time limitation does not apply to the conditions in subparagraph 11(b)(ii) of Schedule A which must be satisfied or waived by the Vendor within 60 days following signing of the Purchase Agreement.

*Note: The parties must add additional pages as an appendix to this Addendum if there are additional Early Termination Conditions.*

- (d) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph 2(c)(i) and any appendix listing additional Early Termination Conditions.
- (e) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions listed in subparagraph 2(c)(i).
- (f) For conditions under paragraph 11(a) of Schedule A the following applies:
- conditions in paragraph 11(a) of Schedule A may not be waived by either party;
  - the Vendor shall provide written notice not later than five (5) Business Days after the date specified for satisfaction of a condition that (A) the condition has been satisfied; or (B) the condition has not been satisfied (together with reasonable details and backup materials) and that as a result the Purchase Agreement is terminated; and
  - if notice is not provided as required by subparagraph (ii) above then the condition is deemed not satisfied and the Purchase Agreement is terminated.

**2. Early Termination - Conditions (continued)**

- (g) For conditions under paragraph 1(b) of Schedule A the following applies:
- (i) conditions in paragraph 1(b) of Schedule A may be waived by the Vendor;
  - (ii) the Vendor shall provide written notice on or before the date specified for satisfaction of the condition that (A) the condition has been satisfied or waived; or (B) the condition has not been satisfied nor waived and that as a result the Purchase Agreement is terminated; and
  - (iii) if notice is not provided as required by subparagraph (ii) above, then the condition is deemed satisfied or waived and the Purchase Agreement will continue to be binding on both parties.
- (h) If a Purchase Agreement or proposed Purchase Agreement contains Early Termination Conditions, the Purchaser has three (3) Business Days after the day of receipt of a true and complete copy of the Purchase Agreement or proposed Purchase Agreement to review the nature of the conditions (preferably with legal counsel). If the Purchaser is not satisfied, in the Purchaser's sole discretion, with the Early Termination Conditions, the Purchaser may revoke the Purchaser's offer to set out in the proposed Purchase Agreement, or terminate the Purchase Agreement, as the case may be, by giving written notice to the Vendor within those three Business Days.
- (i) The Purchase Agreement may be conditional until Closing, upon compliance with the subdivision control provisions (section 50) of the Planning Act (Ontario), which compliance shall be obtained by the Vendor at its sole expense, on or before Closing.
  - (j) The Purchaser is cautioned that there may be other conditions in the Purchase Agreement that allow the Vendor to terminate the Purchase Agreement due to the fault of the Purchaser.
  - (k) The Purchase Agreement may include any condition that is for the sole benefit of the Purchaser and that is agreed to by the Vendor (i.e., the sale of an existing dwelling, Purchaser financing or a loan to the Vendor). The Purchase Agreement may specify that the Purchaser has a right to terminate the Purchase Agreement if any such condition is not met and may set out the terms on which termination by the Purchaser may be effected.

**3. Setting the Firm Closing Date**

- (a) **Completing Construction Without Delay:** The Vendor shall take all reasonable steps to complete construction of the home on the Property and to Close without delay.
- (b) **Firm Closing Date:** The Vendor shall set a Firm Closing Date, and set out the calendar date in the Statement of Critical Dates.

**4. Changing the Firm Closing Date - Three Ways**

- (a) The Firm Closing Date, once set in accordance with section 3, can be changed only:
  - (i) by the mutual written agreement of the Vendor and Purchaser in accordance with section 5;
  - (ii) by the Vendor setting a Delayed Closing Date in accordance with section 6; or
  - (iii) as the result of an Unavoidable Delay of which proper written notice is given in accordance with section 7.
- (b) If a new Firm Closing Date is set in accordance with section 5 or 7, then the new date is the "Firm Closing Date" for all purposes in this Addendum.

**5. Changing Critical Dates - By Mutual Agreement**

- (a) This Addendum sets out a procedure for setting, extending and/or accelerating Closing dates, which cannot be altered contractually except as set out in this section 5 and in paragraph 7(c).
- (b) The Vendor and Purchaser may at any time, after signing the Purchase Agreement, mutually agree in writing to accelerate or extend a Firm Closing Date or a Delayed Closing Date in each case to a new specified calendar date. The amendment must comply with the requirements of section 10.
- (c) A Vendor is permitted to include a provision in the Purchase Agreement allowing the Vendor a one time unilateral right to extend a Firm Closing Date or a Delayed Closing Date, as the case may be, for one (1) Business Day to avoid the necessity of tender where a Purchaser is not ready to Close on the Firm Closing Date or Delayed Closing Date, as the case may be. Delayed closing compensation will not be payable for such period and the Vendor may not impose any penalty or interest charge upon the Purchaser with respect to such extension.
- (d) The Vendor and Purchaser may agree in the Purchase Agreement to any unilateral extension or acceleration rights that are for the benefit of the Purchaser.

**6. Changing the Firm Closing Date - By Setting a Delayed Closing Date**

- (a) If the Vendor cannot Close on the Firm Closing Date and sections 5 and 7 do not apply, the Vendor shall select and give written notice to the Purchaser of a Delayed Closing Date in accordance with this section, and delayed closing compensation is payable in accordance with section 9.
- (b) The Delayed Closing Date may become Business Day after the date the Purchaser receives written notice of the Delayed Closing Date. However, if the Vendor selects a Delayed Closing Date that is more than 365 days after the Firm Closing Date, then the Vendor's written notice setting the Delayed Closing Date shall include a statement explaining that the Purchaser need not accept the full delay and will have the right to terminate the Purchase Agreement after 365 days of delay as described in section 11 after the Vendor knows or ought reasonably to know that the Unavoidable Delay has commenced.
- (c) The Vendor shall give written notice to the Purchaser of the Delayed Closing Date as soon as the Vendor knows that it will be unable to Close on the Firm Closing Date, and in any event no later than 10 days before the Firm Closing Date, failing which delayed closing compensation is payable from the date that is 10 days before the Firm Closing Date, in accordance with paragraph 9(c).
- (d) If a Delayed Closing Date is set and the Vendor cannot Close on the Delayed Closing Date, the Vendor shall select and give written notice to the Purchaser of a new Delayed Closing Date, unless the delay arises due to Unavoidable Delay under section 7 or is mutually agreed upon under section 5, in which case the requirements of those sections must be met. Paragraphs 6(b) and 6(c) above apply with respect to the setting of the new Delayed Closing Date.
- (e) Nothing in this section affects the right of the Purchaser or Vendor to terminate the Purchase Agreement on the basis set out in section 11.

**7. Extending Dates - Due to Unavoidable Delay**

- (a) If Unavoidable Delay occurs, the Vendor may extend Critical Dates by no more than the length of the Unavoidable Delay Period, without the approval of the Purchaser and without the requirement to pay delayed closing compensation in connection with the Unavoidable Delay, provided the requirements of this section are met.
- (b) If the Vendor wishes to extend Critical Dates on account of Unavoidable Delay, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, and an estimate of the duration of the delay. Once the Vendor knows or ought reasonably to know that an Unavoidable Delay has commenced, the Vendor shall provide written notice to the Purchaser by the earlier of 10 days thereafter and the next Critical Date.
- (c) As soon as reasonably possible, and no later than 10 days after the Vendor knows or ought reasonably to know that an Unavoidable Delay has commenced, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, identifying the date of its commencement, and setting new Critical Dates. The new Critical Dates are calculated by adding to the then next Critical Date the number of days of the Unavoidable Delay period (the other Critical Dates changing accordingly), provided that the Firm Closing Date or Delayed Closing Date, as the case may be, must be at least 10 days after the day of giving notice unless the parties agree otherwise. Either the Vendor or the Purchaser may request in writing an earlier Firm Closing Date or Delayed Closing Date, and the other party's consent to the earlier date shall not be unreasonably withheld.
- (d) If the Vendor fails to give written notice of the completion of the Unavoidable Delay in the manner required by paragraph 7(c), the notice is ineffective, the existing Critical Dates are unchanged, and any delayed closing compensation payable under section 9 is payable from the existing Firm Closing Date.
- (e) Any notice setting new Critical Dates given by the Vendor under this section must set out the revised next Critical Date and state that the setting of such date may change other future Critical Dates, as applicable, in accordance with the terms of the Addendum.

**8. Building Code – Conditions of Occupancy**

- (a) On or before the date of Closing, the Vendor shall deliver to the Purchaser:
- (i) where a registered code agency has been appointed for the building or part of the building under the *Building Code Act* (Ontario), a final certificate with respect to the home that contains the prescribed information as required by s. 11(3) of the *Building Code Act*; or
  - (ii) where a registered code agency has not been so appointed, either:
    - (A) an Occupancy Permit (as defined in paragraph (d)) for the home; or
    - (B) a signed written confirmation by the Vendor that: (i) provisional or temporary occupancy of the home has been authorized under Article 1.3.3.1 of Division C of the *Building Code*; or (ii) the conditions for residential occupancy of the home as set out in s. 11 of the *Building Code Act* or Article 1.3.3.2 of Division C of the *Building Code*, as the case may be (the "Conditions of Occupancy") have been fulfilled.
- (b) Notwithstanding the requirements of paragraph (a), to the extent that the Purchaser and the Vendor agree that the Purchaser shall be responsible for certain Conditions of Occupancy (the "Purchaser Obligations"):
- (i) the Purchaser may not refuse to Close on the basis that the Purchaser Obligations have not been completed;
  - (ii) the Vendor shall deliver to the Purchaser, upon fulfilling the Conditions of Occupancy (other than Purchaser Obligations), a signed written confirmation that the Vendor has fulfilled such Conditions of Occupancy; and
  - (iii) if the Purchaser and Vendor have agreed that the Conditions of Occupancy (other than Purchaser Obligations) are to be fulfilled prior to Closing, then the Vendor shall provide the signed written confirmation (required by subparagraph (ii)) on or before the date of Closing.
- (c) If the Vendor cannot satisfy the requirements of paragraph (a) or subparagraph (b)(ii), the Vendor shall set a **Delayed Closing Date** for new Delayed Closing Date on a date that the Vendor reasonably expects to have satisfied the requirements of paragraph (a) or subparagraph (b)(ii), as the case may be. In setting the Delayed Closing Date (or new Delayed Closing Date), the Vendor shall comply with the requirements of section 6, and delayed closing compensation shall be payable in accordance with section 9. Despite the foregoing, delayed closing compensation shall not be payable for a delay under this paragraph (c) if the inability to satisfy the requirements of subparagraph (b)(ii) is because the Purchaser has failed to satisfy the Purchaser Obligations.
- (d) For the purposes of this section, an "Occupancy Permit" means any written document, however styled, whether final, provisional or temporary, provided by the chief building official (as defined in the *Building Code Act*) or a person designated by the chief building official, that evidences the fact that authority to occupy the home has been granted.

**9. Delayed Closing Compensation**

- (a) The Vendor warrants to the Purchaser that, if the Closing is delayed beyond the firm Closing Date (other than by mutual agreement or as a result of Unavoidable Delay as permitted under sections 5 or 7), then the Vendor shall compensate the Purchaser for all costs incurred by the Purchaser as a result of the delay up to a total amount of \$7,500, which amount includes payment to the Purchaser of \$150 a day for living expenses for each day of delay until the date of Closing or the date of termination of the Purchase Agreement, as applicable under paragraph (b).
- (b) Delayed closing compensation is payable only if: (i) Closing occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraphs 11(b), (c) or (e) of this addendum. Delayed closing compensation is payable only if the Purchaser's claim is made to Tarion in writing within one (1) year after Closing, or after termination of the Purchase Agreement, as the case may be, and otherwise in accordance with this Addendum. Compensation claims are subject to any further conditions set out in the Act.
- (c) If the Vendor gives written notice of a Delayed Closing Date to the Purchaser less than 10 days before the firm Closing Date, contrary to the requirements of paragraph 6(c), then delayed closing compensation is payable from the date that is 10 days before the firm Closing Date.
- (d) Living expenses are direct living costs such as for accommodation and meals. Receipts are not required in support of a claim for living expenses, as a set daily amount of \$150 per day is payable. The Purchaser must provide receipts in support of any claim for other delayed closing compensation, such as for moving and storage costs. Submission of false receipts disentitles the Purchaser to any delayed closing compensation in connection with a claim.
- (e) If delayed closing compensation is payable, the Purchaser may make a claim to the Vendor for that compensation within 180 days after Closing, and shall include all receipts (apart from living expenses) which evidence any part of the Purchaser's claim. The Vendor shall assess the Purchaser's claim by determining the amount of delayed closing compensation payable based on the rules set out in section 9 and the receipts provided by the Purchaser, and the Vendor shall promptly provide that assessment information to the Purchaser. The Purchaser and the Vendor shall use reasonable efforts to settle the claim and when the claim is settled, the Vendor shall prepare an acknowledgment signed by both parties which:
- (i) includes the Vendor's assessment of the delayed closing compensation payable;
  - (ii) describes in reasonable detail the cash amount, goods, services or other consideration which the Purchaser accepts as compensation (the "Compensation"); if any; and
  - (iii) contains a statement by the Purchaser that the Purchaser accepts the Compensation, in full satisfaction of any delayed closing compensation payable by the Vendor.
- A true copy of the acknowledgment (showing clearly the municipal address and enrolment number of the home on the first page) shall be provided to Tarion by the Vendor within 30 days after execution of the acknowledgment by the parties.
- (f) If the Vendor and Purchaser cannot agree as contemplated in paragraph 9(e), then to make a claim to Tarion, the Purchaser must file a claim with Tarion in writing within one (1) year after Closing. A claim may also be made and the same rules apply if the sales transaction is terminated under paragraphs 11(b), (c) or (e), in which case the deadline is 180 days after termination for a claim to the Vendor and one (1) year after termination for a claim to Tarion.

**10. Changes to Critical Dates**

- (a) Whenever the parties by mutual agreement extend or accelerate either the firm Closing Date or the Delayed Closing Date this section applies.
- (b) If the change involves acceleration of either the firm Closing Date or the Delayed Closing Date, then the amending agreement must set out each of the Critical Dates (as changed or confirmed).
- (c) If the change involves extending either the firm Closing Date or the Delayed Closing Date, then the amending agreement shall:
- (i) disclose to the Purchaser that the signing of the amendment may result in the loss of delayed closing compensation as described in section 9 above;
  - (ii) unless there is an express waiver of compensation, describe in reasonable detail the cash amount, goods, services or other consideration which the Purchaser accepts as compensation (the "Compensation"); and
  - (iii) contain a statement by the Purchaser that the Purchaser waives compensation or accepts the above-noted Compensation, in either case, in full satisfaction of any delayed closing compensation payable by the Vendor for the period up to the new firm Closing Date or Delayed Closing Date.
- (d) If the Purchaser for his or her own purposes requests a change of date or dates, then paragraph 10(c) shall not apply.

*Handwritten notes:*  
C.C.  
C.C.  
C.C.

**11. Termination of the Purchase Agreement**

- (a) The Vendor and the Purchaser may terminate the Purchase Agreement by mutual written consent, such written consent to be given at the time of the termination.
- (b) If for any reason (other than breach of contract by the Purchaser) Closing has not occurred within 365 days after the Firm Closing Date, the Purchaser has 30 days to terminate the Purchase Agreement by written notice to the Vendor. If the Purchaser does not provide written notice of termination, then the Delayed Closing Date shall be the date set by the Vendor under paragraph 5(b).
- (c) If calendar dates for the applicable (Critical Dates are not inserted in the Statement of Critical Dates) or any date for Closing is expressed in the Purchase Agreement or in any other document to be subject to change depending upon the happening of an event (other than as permitted in this Addendum), then the Purchaser may terminate the Purchase Agreement by written notice to the Vendor.
- (d) The Purchase Agreement may be terminated in accordance with the requirements of section 2.
- (e) Nothing in this Addendum derogates from any right of termination that either the Purchaser or the Vendor may have at law or in equity on the basis of, for example, frustration of contract or fundamental breach of contract.
- (f) Except as permitted in this section, the Purchase Agreement may not be terminated by reason of delay in Closing alone.

**12. Return of Monies Paid on Termination**

- (a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), the Vendor shall return all monies paid by the Purchaser, including deposits and monies for upgrades and extras within 10 days of such termination, with interest from the date each amount was paid to the Vendor to the date of return to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor and/or a termination agreement as a prerequisite to obtaining the return of monies payable as a result of termination of the Purchase Agreement under this paragraph.
- (b) The rate of interest payable on the Purchaser's monies is 2% less than the maximum rate at which the Bank of Canada makes short-term advances to members of the Canada Payments Association, as of the date of termination of the Purchase Agreement.
- (c) Notwithstanding paragraphs (2)(a) and (b), if either party initiates legal proceedings to contest termination of the Purchase Agreement or the return of monies paid by the Purchaser, and obtains a legal determination, such amounts and interest shall be payable as determined in those proceedings.

**13. Disputes Regarding Termination**

- (a) The Vendor and Purchaser agree that disputes arising between them relating to termination of the Purchase Agreement under section 11 shall be submitted to arbitration in accordance with the *Arbitration Act, 1991 (Ontario)* and subsection (7)(4) of the Act.
- (b) The parties agree that the arbitrator shall have the power and discretion, on motion by the Vendor or Purchaser or any other interested party, or of the arbitrator's own motion, to consolidate multiple arbitration proceedings on the basis that they raise one or more common issues of fact or law that can more efficiently be addressed in a single proceeding. The arbitrator has the power and discretion to prescribe whatever procedures are useful or necessary to adjudicate the common issues in the consolidated proceedings in the most just and expeditious manner possible. The *Arbitration Act, 1991 (Ontario)* applies to any consolidation of multiple arbitration proceedings.
- (c) The Vendor shall pay the costs of the arbitration proceedings and the Purchaser's reasonable legal expenses in connection with the proceedings unless the arbitrator for just cause orders otherwise.
- (d) The parties agree to cooperate so that the arbitration proceedings are conducted as expeditiously as possible, and agree that the arbitrator may impose such time limits or other procedural requirements, consistent with the requirements of the *Arbitration Act, 1991 (Ontario)*, as may be required to complete the proceedings as quickly as reasonably possible.
- (e) The arbitrator may grant any form of relief permitted by the *Arbitration Act, 1991 (Ontario)*, whether or not the arbitrator concludes that the Purchase Agreement may properly be terminated.

**14. Addendum Prevails**

The Addendum forms part of the Purchase Agreement. The Vendor and Purchaser agree that they shall not include any provision in the Purchase Agreement or any amendment to the Purchase Agreement or any other document (or indirectly do so through replacement of the Purchase Agreement) that derogates from, conflicts with or is inconsistent with the provisions of this Addendum, except where this addendum expressly permits the parties to agree or consent to an alternative arrangement. The provisions of this Addendum prevail over any such provision.

**15. Time Periods, and How Notice Must Be Sent**

- (a) Any written notice required under this Addendum may be given personally or sent by email, fax, courier or registered mail to the Purchaser or the Vendor at the address/contact numbers identified on page 2, or replacement address/contact numbers as provided in paragraph (c) below. Notice may also be sent to the solicitor for each party if necessary contact information is provided, but notices in all events must be sent to the Purchaser and Vendor, as applicable.
- (b) Written notice given by one of the means identified in paragraph (a) is deemed to be given and received on the date of delivery or transmission, if given personally or sent by email or fax (or the next Business Day if the date of delivery or transmission is not a Business Day); on the second Business Day following the date of sending by courier; or on the fifth Business Day following the date of sending, if sent by registered mail. If a postal stoppage or interruption occurs, notices shall not be sent by registered mail, and any notice sent by registered mail within 5 Business Days prior to the commencement of the postal stoppage or interruption must be re-sent by another means in order to be effective. For purposes of this paragraph 15(b), Business Day includes Remembrance Day, if it falls on a day other than Saturday or Sunday, and Easter Monday.
- (c) If either party wishes to receive written notice under this Addendum at an address/contact number other than those identified on page 2, the party shall send written notice of the change of address/contact number to the other party.
- (d) Time periods within which or following which any act is to be done shall be calculated by excluding the day of delivery or transmission and including the day on which the period ends.
- (e) Time periods shall be calculated using calendar days including Business Days but subject to paragraphs (f), (g) and (h) below.
- (f) Where the time for making a claim under this Addendum expires on a day that is not a Business Day, the claim may be made on the next Business Day.
- (g) Prior notice periods that begin on a day that is not a Business Day shall begin on the next earlier Business Day except that notices may be sent and/or received on Remembrance Day, if it falls on a day other than Saturday or Sunday, or Easter Monday.
- (h) Every Critical Date must occur on a Business Day. If the Vendor sets a Critical Date that occurs on a date other than a Business Day, the Critical Date is deemed to be the next Business Day.

For more information please visit [www.tarion.com](http://www.tarion.com)

CE  
P.6

**SCHEDULE A**  
**Types of Permitted Early Termination Conditions**  
(Section 2)

**1. The Vendor of a freehold home is permitted to make the Purchase Agreement conditional as follows:**

(a) upon receipt of Approval from an Approving Authority for:

- (i) a change to the official plan, other governmental development plan or zoning by-law (including a minor variance);
- (ii) a consent to creation of a lot(s) or part-lot(s);
- (iii) a certificate of water feasibility or other measure relating to domestic water supply to the home;
- (iv) a certificate of approval of septic system or other measure relating to waste disposal from the home;
- (v) completion of hard services for the property or surrounding area (i.e., roads, rail crossings, water lines, sewage lines, other utilities);
- (vi) allocation of domestic water or storm or sanitary sewage capacity;
- (vii) easements or similar rights serving the property or surrounding area;
- (viii) site plan agreements, density agreements, shared facilities agreements or other development agreements with Approving Authorities or nearby landowners, and/or any development Approvals required from an Approving Authority; and/or
- (ix) site plans, plans, elevations and/or specifications under architectural controls imposed by an Approving Authority.

The above-noted conditions are for the benefit of both the Vendor and the Purchaser and cannot be waived by either party.

(b) upon:

- (i) receipt of Approval from an Approving Authority for a basement walkout; and/or
- (ii) confirmation by the Vendor that it is satisfied the Purchaser has the financial resources to complete the transaction.

The above-noted conditions are for the benefit of the Vendor and may be waived by the Vendor in its sole discretion.

**2. The following definitions apply in this Schedule:**

"Approval" means an approval, consent or permission (in final form not subject to appeal) from an Approving Authority and may include completion of necessary agreements (i.e., site plan agreement) to allow lawful access to and use and occupancy of the property for its intended residential purpose.

"Approving Authority" means a government (federal, provincial or municipal), governmental agency, Crown corporation or quasi-governmental authority (a privately operated organization exercising authority delegated by legislation or a government)

**3. Each condition must:**

- (a) be set out separately;
- (b) be reasonably specific as to the type of Approval which is needed for the transaction; and
- (c) identify the Approving Authority by reference to the level of government and/or the identity of the governmental agency, Crown corporation or quasi-governmental authority.

**4. For greater certainty, the Vendor is not permitted to make the Purchase Agreement conditional upon:**

- (a) receipt of a building permit;
- (b) receipt of an occupancy permit; and/or
- (c) completion of the home.

C.L.  
C.C.

**B**

---

**From:** Norma Walton  
**Sent:** Thursday, November 25, 2010 1:03 PM  
**To:** 'cancarr58@sympatico.ca'  
**Cc:** Jackie McKinlay  
**Subject:** 346 Jarvis reconciliation and bill

Dear Carlos,

Hey there! I am attaching your bill, trust statement and revised statement of adjustments. You'll note that you owe \$12,774.64 to Walton Advocates. The reason is that instead of billing you directly, Diamond Drywall billed us for dividing the second floor into two bedrooms and doing the painting and PICO Stairs billed us for the stair railings, whereas we had originally contemplated in our original email that you would pay those amounts directly. See original email copied below for your ease of reference along with original excel spreadsheet. We've paid PICO in full, so I need the \$2,000 at some point, but the balance relates to Diamond Drywall and we have not yet paid them for Jarvis yet so I'll let you know when we do and you can reimburse at that point.

Cheers,  
Norma

---

**From:** Norma Walton  
**Sent:** Monday, August 09, 2010 1:09 PM  
**To:** 'cancarr58@sympatico.ca'; snowdonservices@sympatico.ca; 'myrne@sympatico.ca'  
**Subject:** FW: Carlos and John purchase of Jarvis

Dear Carlos, mom and papa,

I am having Jackie prepare agreements to purchase. I've set the closing dates for September 7 but if you need one or two more weeks to finish the places, we will delay as needed. Once signed by everyone (we'll do mom and papa's via PDF and fax) I'll send to Debi McKeon so she can obtain financing commitments for each of you.

Mom and papa, for House # 4:

1. If you also want to have TD quote on the mortgage, you obviously can and you'll have more bargaining leverage if you have a commitment from another lender already in hand;
2. Assuming you obtain financing of \$559,872, then the balance of \$164,468 can be covered as follows:
  - a) \$40,735 by transferring to us the Carlaw deposit;
  - b) \$61,750 by your paying for the finishes as set out in the attached Excel spreadsheet (more on this below); and
  - c) \$61,983 by a reduction in the loan you are owed by Rose and Thistle.

Carlos and Colette, for House # 3:

1. Assuming you obtain financing of \$559,872, then the balance of \$164,468 can be covered as follows:
  - a. \$57,750 by your paying for the finishes as set out in the attached Excel spreadsheet (more on this below); and
  - b. \$106,718 from your Lombard proceeds of sale.

Regarding the cost to complete the finishes, Carlos and I discussed this morning that Diamond, Wally and Marcello will bill us to complete their contracts with us. Other than those three suppliers, you will be responsible for arranging and paying for the finishing of the houses from this

point forward. We will be billed for anything done to today's date, and you will arrange billing for anything done after today's date. Let me know if that makes sense, and if there are any suppliers that should bill us similar to Diamond, Wally and Marcello.

Let me know if the above makes sense.

Thanks!  
Norma

---

**From:** Debi McKeon [mailto:mortgagelady@rogers.com]  
**Sent:** Monday, September 27, 2010 1:31 PM  
**To:** Norma Walton  
**Subject:** Re: Give me a call when you have a free moment

Dear Norma,

Could you please supply me with the following documentation for Carlos:

1. Listing and Offer for the Sale of 110 Lombard
2. Trust Ledger or Statement of Account showing Carlos' share of the net proceeds from the Sale
3. Rental Agreement for 19 Tennis
4. Property Tax 2010 for 19 Tennis

I have had to resubmit Carlos' deal. The Lender's are getting so strict on the number of rental properties with the total aggregate being over \$1,000,000 especially when using self-employed income. Also, even though there are four partners in 19 Tennis, I have to show Carlos as having 100% of the liability.

The Underwriter wants all documentation upfront. I will need the closing date moved to the end of next week but will try and have them close it asap. I am in Peterborough until Wednesday so if you could please email the documents to me then I can forward them right away.

Once I get back I will email you the commitment for Silverdale.

Many thanks, Debi.

On 27/09/10 11:00 AM, "Norma Walton" <nwalton@roseandthistle.ca> wrote:

Thanks!

Norma

anything done after today's date. Let me know if that makes sense, and if there are any suppliers that should bill us similar to Diamond, Wally and Marcello.

Let me know if the above makes sense.

Thanks!  
Norma

**From:** Norma Walton  
**Sent:** Monday, August 09, 2010 12:06 PM  
**To:** Jackie McKinlay  
**Subject:** Carlos and John purchase of Jarvis

Dear Jackie,

My parents and Carlos are going to purchase House # 4 and House # 3 at Jarvis respectively. Because we are now condo registered, just use our regular freehold APS with whatever schedules you need, including one referencing the common element condo corp and our Taron schedule.

Please prepare agreements of purchase and sale as follows:

Purchasers: Carlos and Colette Carreiro  
To purchase House # 3  
Purchasers: John and Myrne Rawlings  
To purchase House # 4  
Purchase price \$699,840  
Deposit with offer \$15,000 payable to Walton Advocates in trust  
Balance on closing  
Closing date September 7  
Requisition date August 31

Allan Strader will represent us in the sales. We'll represent Carlos and John in the purchases. Bring to me to review today.

Thanks,  
Norma

---

**From:** Norma Walton  
**Sent:** Thursday, August 05, 2010 2:22 PM  
**To:** snowdonservices@sympatico.ca; can carr58@sympatico.ca  
**Cc:** 'myrne@sympatico.ca'  
**Subject:** 346A, 346B, 346C and 346D Jarvis Street

Dear Carlos and papa,

Attached is an excel spreadsheet setting out prices net of realty commissions and cost to complete for each of the four houses at Jarvis. I have assumed a couple of things:

1. You would each arrange through Debi an 80% loan to value mortgage, which would carry for about \$2,500 per month assuming an interest rate of 4.09% (that was the rate she secured for Amy a few days ago); and
2. Adding in all carrying costs, the total carry per month would be about \$3,700 per month.

We would have to discuss how to treat cost to complete amounts as I anticipate the houses would have to be "finished" for purposes of mortgage financing being arranged.

Carlos could transfer his equity from Lombard over to Jarvis to purchase the house or houses, and papa would transfer Carlaw as part of his down payment and I could either repay part of the Rose and Thistle loan to papa for the difference, or papa could fund the balance.

Take a look and if of interest, let's discuss in the next day or two. We'd plan to close end of August.

Cheers,  
Norma

C

## STATEMENT OF ADJUSTMENTS

1780355 Ontario Inc. sale to Carreiro  
Description: Part of Lot 2, R Plan D17, designated as Parts 5 and 7, on Plan 66R24790  
Address: 346C Jarvis Street, Toronto  
Adjusted At: November 5, 2010

<b>TRANSFER CONSIDERATION</b>	\$666,514.29
(Unadjusted purchase price divided by 1.05)	
<b>+ G.S.T.</b>	\$33,325.71
(Unadjusted offer price less transfer consideration)	
 <b>UNADJUSTED OFFER PRICE – ALLOW VENDER</b>	 \$699,840.00
 <b>G.S.T. REBATE – ALLOW PURCHASER</b>	 \$11,997.26
(36% of G.S.T.)	
 <b>ASSIGNMENT OF G.S.T. REBATE – ALLOW VENDOR</b>	 \$11,997.26

### Deposit(s)

#### Purchaser's payment of cost to complete house:

Trim and carpentry	\$3,000.00	
Divide second floor into two bedrooms	\$0.00	
Paint	\$0.00	
Kitchen including granite	\$15,000.00	
Floor (hardwood, tile and laminate)	\$15,000.00	
Stairs	\$0.00	
A/C	\$1,500.00	
Hot water heater installation	\$250.00	
Appliances	\$5,000.00	
Miscellaneous	\$5,000.00	
	<hr/>	
	\$44,750.00	\$44,750.00

### Land Taxes

Realty taxes not individually assessed.  
Vendor has paid January 1 to June 30 land taxes.  
Purchaser will be responsible for any omit bills related to property post-closing, subject to readjustment.  
Purchaser and Vendor to re-adjust once bills issue.

### Interim Occupancy Fees

Mortgage Interest  
Common Expenses  
Taxes:  
Total Occupancy Fees 0  
Credit Purchaser for 00 days:

**Common Expenses**

Monthly Common Expenses \$30

Vendor has paid purchaser's share

Credit Vendor: \$23.00

**Ontario New Home Warranty Program**

See Agreement

Enrolment fee: \$650.00

GST at 5.0%: \$32.50

PST at %: \$52.00

Credit Vendor: \$734.50

**Legal Fees Partial Discharge**

See Para. 4 of the A of P &amp; S

Cost: \$200.00

GST: \$ 10.00

Credit Vendor: \$210.00

**BALANCE DUE ON CLOSING**

Payable to Walton Advocates, In Trust \$656,057.50

Or as further directed

**E & O E****CHEQUES REQUIRED FROM PURCHASER ON CLOSING**

1. You are hereby directed to make the balance due on closing herein payable by certified cheque payable to  
**Walton Advocates, In Trust:      \$                      \$656,057.50**

WALTON ADVOCATES

Per:

Norma Walton

2. Twelve (12) post-dated cheques payable to TORONTO COMMON ELEMENTS CONDOMINIUM NO. 2091, each in the amount of \$30, commencing December 1, 2010 and ending November 1, 2011.
3. One certified cheque in the amount of \$90 payable to TORONTO COMMON ELEMENTS CONDOMINIUM NO. 2091, representing three months common expense contribution to the reserve fund pursuant to the Agreement of Purchase and Sale.

**D**

WALTON ADVOCATES  
Barristers & Solicitors  
30 Hazelton Avenue  
Toronto, ON M5R 2E2  
(416) 489-3171 Fax: 489-9973

October 29, 2010

TO: Carlos and Colette Carreiro  
18 Sword Street  
Toronto, ON

Re: Real estate assistance \$ 200/hour

GST # R140308149

Fee:	\$ 675.00
Preferred Client Discount:	<u>\$ 675.00</u>
Total legal fees:	\$ 00.00
HST:	<u>\$ 00.00</u>

Total legal fees: \$ 00.00

Disbursements:

Title Insurance:	\$448.75
Status Certificate:	\$ 00.00
Tax certificate:	\$ 00.00
Building certificate:	\$ 00.00
Gas certificate:	\$ 00.00
Water certificate:	\$ 00.00
Conveyancers fees:	
Search:	\$ 00.00
Closing:	\$300.00
Law Society Levy:	\$ 00.00
Register transfer and charge	\$145.99
Executions:	\$ 22.00
Courier fees:	\$ 12.89
Miscellaneous:	<u>\$ 0.00</u>

Total Disbursements:	<u>\$ 929.63</u>
TOTAL LEGAL FEES AND DISBURSEMENTS:	\$ 929.63
GST # R140308149	

## TRUST LEDGER

### Receipts:

From clients:	\$ 106,718.00
From mortgage:	<u>\$ 557,688.09</u>
Total Receipts:	\$ 664,406.09

### Disbursements:

To vendors:	\$ 656,057.50
To provincial land transfer tax:	\$ 10,471.80
To municipal land transfer tax:	\$ 9,721.80
Walton Advocates for fees:	\$ 00.00
To Walton Advocates for disbursements	<u>\$ 929.63</u>
Total Disbursements:	\$ 677,180.73
Total amount owing to Walton Advocates:	\$ 12,774.64

**E**



## Mortgage Commitment

October 27, 2010

Carlos Carreiro  
346 Jarvis Street  
Suite 2  
Toronto, ON  
M4Y 2G6

**Attention:** Get A Better Mortgage Inc.

### FIRST MORTGAGE COMMITMENT

The Equitable Trust Company (**Equitable Trust**) is pleased to approve the following loan to be secured by a FIRST mortgage on the property hereinafter referred to, conditional on all information provided to Equitable Trust or provided in a mortgage application is correct and any terms and conditions are satisfied. This **Commitment** is not transferable and the benefit may not be assigned. Please note the interest rate quoted below is calculated semi-annually, not in advance.

Loan/App. Number:	111779
Applicant/Borrower:	Carlos Carreiro
Co-Applicant(s):	Colette Carreiro
Guarantor(s):	
Property:	346 Jarvis Street Suite #2 Toronto, ON
Principal:	\$559,872.00
Interest Rate:	03.450%
Principal and Interest:	\$2,490.84
Payment Frequency:	Monthly
Term:	24 months
Closing Date:	10/29/10
Amortization(months):	360
Prepayment Privileges:	20% once each calendar year
Commitment Expires:	11/03/10

Equitable Trust requires a current appraisal report confirming a market value of not less than \$699,940.00. The appraisal must be acceptable to Equitable Trust in its sole discretion, and the property must also be acceptable to Equitable Trust as security for the mortgage requested. All appraisal fees, legal and other expenses incurred with respect to the loan are the borrower's responsibility. The appraisal report is to be completed by Cross-Town Appraisals (416-652-3456). We must receive an original appraisal a minimum of three (3) business days prior to the closing date. Equitable Trust reserves the right to obtain an updated appraisal at any time prior to closing and retains the right to reduce the mortgage amount or cancel the Commitment if market value is deemed to be unacceptable.

The contact information for the Borrower's legal representative in this matter is: (to be completed when left blank)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Commitment is conditional on and subject to all information provided and representations made in connection with the application for this mortgage being accurate. No terms or conditions of this Commitment may be waived or varied, orally or by any course of conduct of any officer, employee, or agent of the lender. Any amendments to this Commitment shall be in writing and signed by a duly authorized officer of Equitable Trust and the Borrower.

**Payments:** All mortgage payments shall be made by pre-authorized cheque.

**Interest Adjustment Date:** Interest shall accrue from the date the first advance is made. Interest due to the Interest Adjustment Date (IAD) will be deducted from the advance of funds.

**Insurance(s):** Equitable Trust will obtain title insurance, at the Borrower(s) expense, the title insurance premium together with our 'Closing Service Fee' will be deducted from the initial advance. We also require evidence of fire insurance coverage acceptable to Equitable Trust for the full replacement value of the property with an insurer acceptable to us. Such policy must contain a standard mortgage clause and must indicate Equitable Trust's interest as first mortgagee and must denote Equitable Trust as additional loss payee. A copy of the insurance binder is required.

**Survey Requirements and Zoning:** An up-to-date survey/real property report certified under seal by a qualified land surveyor is required (unless waived in writing by Equitable Trust) together with a certificate of compliance endorsed thereon to ensure that the buildings and setbacks comply with all governmental requirements and to confirm that there are no encroachments by or against the property. Equitable Trust requires confirmation that the property secured, and all improvements thereon, and uses thereof complies with all applicable governmental requirements and that there are no outstanding work or violations and there are no letters or notices or advice indicating building deficiencies and/or requiring work to be done, that no demolition order has been made respecting same and that there is access and egress to public thoroughfares. If a condominium unit is secured the condominium structure must so comply.

**Prior Encumbrances:** The Borrower(s) shall provide statements from prior encumbrances confirming good standing, balances and terms.

**U.F.F.I.:** The Borrower(s) hereby warrant that the property does not contain and has never contained Urea Formaldehyde Foam Insulation (U.F.F.I.) and confirm that should it be discovered that the property did or does contain U.F.F.I., the loan will immediately become due and payable at Equitable Trust's option.

**Common Expenses and Estoppel Certificates:** By accepting the terms hereof the Borrowers authorize Equitable Trust's solicitor to obtain a status certificate, at the Borrower's expense but in favour of Equitable Trust, from the Condominium Corporation to confirm common expenses are in good standing and contain such other detail as the Equitable Trust or its solicitor deems necessary.

**Survival of Terms:** The terms and conditions of this Commitment shall not merge and shall remain binding and effective on the parties hereto.

**Construction Lien Act:** The Borrower(s) covenant that the loan to be made is not intended for the financing of an *improvement* as defined in the *Construction Lien Act*, nor is it taken for the purpose of repaying a mortgage which is currently securing or is intended to secure the financing of such an improvement.

A listing of the fees applicable to this loan is included in **Schedule A**.

## **PREPAYMENT PRIVILEGES AND PENALTIES:**

### **Prepayment for Closed Mortgages**

Unless we explicitly agree in writing otherwise, if your Mortgage is a Fixed Rate Mortgage, you may only make the following prepayments of the Fixed Rate Principal Amount of the Mortgage if the Mortgage is not in default and if you also pay certain prepayment costs.

- (i) Once each calendar year, you may prepay up to a maximum of twenty percent (20%) of the original Fixed Rate Principal Amount, but not less than \$1,000.00, without charge. This prepayment privilege is not cumulative from year to year. This prepayment privilege cannot be used in combination with the prepayment privilege described in (ii) below.
- (ii) If you prepay the Principal amount in full, or an amount greater than that expressed in section (i) above but less than the Principal amount, at any time before the Term has expired, you must also pay, in addition to all other amounts due as set out in the Mortgage, the GREATER of:
  - (a) three (3) months' interest at your existing Interest Rate as set out in the Mortgage or, if renewed, the Interest Rate as set out in the renewal agreement for the last renewal of the Mortgage; or,
  - (b) the amount calculated by Equitable Trust, if any, as of the date of prepayment, by which the present value of the future payments until maturity of your mortgage with respect to the prepayment amount discounted at the *Government of Canada Yield*, calculated semi-annually not in advance, exceeds the outstanding principal of the prepayment amount as determined by Equitable Trust.

*Government of Canada Yield* means the yield to maturity, calculated semi-annually, which an assumed new issue of non-callable Government of Canada bonds denominated in Canadian dollars would carry if issued at par for a term to maturity as close to possible but not shorter, to the remaining term of the Mortgage from and after the payment date.

## **CONDITIONS PRECEDENT TO FUNDING:**

Mortgage Commitment approval subject to the following:

- ☐ We require a non-refundable Commitment Fee of \$0.00 in the form of a cheque which will be deemed to be earned by the Equitable Trust Company upon acceptance of the Commitment and will be applied to the Commitment Fee of \$750.00 if funded in accordance with the Commitment.
- ☐ A copy of the deed or title to the property or a legal description of the property.
- ☐ A sample cheque marked "VOID", indicating the bank account number upon which the monthly mortgage payments are to be drawn.
- ☐ Verification of the identity of the Borrower, any guarantor/convenantor who is an individual, up to three officers for any Borrower or guarantor/convenantor that is a corporation whether or not such parties have signed documentation; and the attorney named in a Power of Attorney who will be executing the documents.
- ☐ Satisfactory interview with the Borrower(s).
- ☐ Receipt of a satisfactory credit rating three months prior to closing.

- Verification that applicant is not responsible for the collection of \$39,604.00 in favour of HFC. Proof must be provided before closing.
- Satisfactory receipt of proof of employment and income verification, as stated on the mortgage application, of the Borrower(s) as follows:  
Applicant: \$125,000.00 (ETC self-declared letter and business verification)  
Co-Applicant: \$39,293.80 (employment letter)  
\$48,000.00 & \$60,000.00 (lease agreements for 18 Sword Street and 221 Avenue Road)
- Receipt of satisfactory proof of the source of down payment (sale of existing home) and a statutory declaration signed by the Borrower(s) confirming that the down payment of \$139,968.00 is not borrowed. Documents must be in a form satisfactory to The Equitable Trust Company. In addition, the Borrower's solicitor is to provide a copy of the certified cheque representing verification of the down payment.
- Receipt of a Tarion New Home Warranty Certificate.
- Receipt of Status Certificate
- In addition to the regular monthly payments, Equitable Trust will collect approximately one twelfth (or such other amount as Equitable Trust deems necessary based on such other items as tax or utility arrears) of the annual taxes monthly. This amount is subject to change, based on taxes levied during the term of this mortgage.
- Equitable Trust shall instruct the solicitor for the Borrower to remit payment with respect to the total current year's final tax bill at the time of the advance, together with outstanding tax arrears, if any.
- A tax holdback equivalent to 4 months tax portion (or such other amount as Equitable Trust deems necessary based on such items as tax or utility arrears) totaling approximately \$1,000.00 will be deducted from the mortgage advance and applied towards future tax bills.
- All legal matters to be to the satisfaction of Equitable Trust's solicitor.
- Receipt of a Statutory Declaration from the Borrower stating that the subject property will be occupied as their principal residence.
- Solicitor to confirm no secondary financing is being placed on closing.
- Maximum Loan to Value of 80.00%.
- Receipt and satisfactory review of the executed Agreement of Purchase and Sale.
- Receipt of an amendment to the Agreement of Purchase and Sale confirming the closing date.
- If the borrower or any guarantor hereunder anticipates executing the security document by way of Power of Attorney, this fact must be disclosed to the lender prior to accepting this Letter of Commitment for Lender's approval. Failure to do so may, at Equitable Trust's sole discretion, be used to cancel this Letter of Commitment and/or will be an event of default under the terms of the mortgage.

The Borrower(s) hereby agree that Equitable Trust will not be responsible for any failure to comply with any term or condition of this Commitment, including the failure to advance funds on the Closing Date, if such failure is directly or indirectly caused by events beyond the reasonable control of Equitable Trust, including without limitation, fire, flood, earthquake, accident, civil disturbance, war, strikes or labour problems, failure in telecommunication facilities, declaration of health emergency by the World Health Organization or similar acts of God.

**If you have provided Equitable Trust with your social insurance number, you agree that Equitable Trust may use it for tax related purposes if you hold a product generating income and share it with the appropriate government agencies, and may also share it with credit reporting agencies as an aid to identify you.**

**Credit Bureau:** You agree that Equitable Trust may obtain a credit report on you (for the purposes aforesaid, in connection with any application, and on an annual basis or as frequently as Equitable Trust deems necessary) from Equifax Canada or Trans Union of Canada Inc., or any other credit reporting agency. If you wish to review your credit bureau file, contact Equifax Canada, Consumer Relations Department, P.O. Box 190, Station Jean Talon, Montreal, Quebec, H1S 2Z2, 1-800-465-7166 and/or Trans Union of Canada Inc., consumer Relations Centre, P.O. Box 338 LCD1, Hamilton, Ontario L8L 7W2, 1-877-713-3393 (Quebec) or 1-800-663-9980 (all other provinces).

Equitable Trust is required by law to provide you with disclosure of your cost of borrowing for this Mortgage at least two (2) business days before the advance of the funds. By signing this Commitment you consent to waiving the requirement of two (2) business days notice for cost of borrowing disclosure as required under the *Trust and Loan Companies Act*.

Please find attached our Statement(s) of Disclosure addressed to each of you as Borrower(s) showing the "Total Cost of Borrowing" and the "Annual Percentage Rate". I/We consent to being provided with the Statement(s) of Disclosure at the same time as receiving this Commitment and acknowledge that I/we have received, in writing, a copy of the Statement(s) of Disclosure.

This Commitment shall expire unless funds are advanced by October 29, 2010. Equitable Trust may, in its sole discretion, extend in writing this closing date.

By signing this Commitment, I / We hereby certify that the information provided and representations made in connection with the application for this mortgage are completely true and accurate in all respects.

By signing this Commitment, Borrower(s) agree to the terms of The Equitable Trust Company Privacy Agreement, a copy of which has been or will be provided to Borrower(s) and can be obtained at any office of The Equitable Trust Company and on the website at <http://www.equitabletrust.com>, and agree that The Equitable Trust Company may collect, use and disclose their information in accordance with federal and/or provincial privacy legislation, including providing information to third parties.

All mortgage documentation will be registered using a monthly repayment amount. This mortgage will be repaid monthly unless another payment frequency is indicated below. Such payment frequency is subject to authorization by Equitable Trust and may be changed at the discretion of Equitable Trust. Your payment frequency will be confirmed to you in writing upon funding of the mortgage. PLEASE INDICATE THE MORTGAGE PAYMENT FREQUENCY BY INITIALLING BELOW:

☒ Monthly (12 payments per year)  
☐ Semi-monthly (24 payments per year; 1st and 15th of the month only)  
☐ Bi-weekly (26 payments per year; 1st payment date will be 14 days after the date of advance)

If you have chosen the bi-weekly payment frequency you have the option to change your payment day by calling Payment Administration at 416-515-7000 no sooner than 30 days after the date of advance of your mortgage.

The Equitable Trust Company  
Per  
Anne Jones

The undersigned hereby consent to The Equitable Trust Company obtaining a credit information report on the undersigned from a consumer reporting agency. Note: In British Columbia this consent allows information on a spouse to be included in any report.

The terms and conditions as set out herein are accepted and agreed to this 27 day of October in the year 2010 by:

Applicant:

[Signature]  
Carlos Carreiro

Co-Applicant:

[Signature]  
Colette Carreiro

## Schedule A

THE AMOUNTS SET FORTH HEREIN SUPERSEDE ANY AMOUNTS THAT MAY BE CONTAINED IN THE CHARGE OR STANDARD CHARGE TERMS. NOTWITHSTANDING anything to the contrary contained in the Standard Charge Terms (and in the event of any contradiction, the following provisions shall prevail), the Borrower(s) covenants and agrees with Equitable Trust as follows:

To pay to The Equitable Trust Company (**Equitable Trust**) its servicing fees for the following matters, in the amounts set forth:

Missed Payment Fee	\$200 payable for each missed or late installment and for processing each NSF cheque or other returned payment. If any cheque is returned NSF, any replacement cheque must be certified and Equitable Trust shall be entitled to have it certified, and to add all the costs of certification (including courier charges to and from the Borrower(s)'s Bank) to the amount owing on the Mortgage.
Insurance	\$200 payable for dealing with each cancellation, premium payment or other non-compliance with insurance requirements.
Tax Administration	\$200 for tax status inquiry plus costs of municipal tax certificate.
Default Proceedings	\$750 payable for each demand letter, action or proceeding instituted.
Amortization Schedule	\$25 preparation of the Schedule.
Amortization Adjustment	\$100 fee payable for any increase or decrease in the amortization period outside the maturity date of the mortgage.
Mortgage Statements	\$100 for preparation of each Statement.
Discharge Administration	\$250 fee.
Default Payment	On default payment of an amount equal to three month's interest on the principal balance outstanding.
Assumption/Transfer Fee	\$500 (minimum for processing each application for assumption, whether or not approved or completed.)
PPSA Registration	\$100 fee including, but not limited to, registration of renewal, discharge, name change, etc.
Deferral Fee	\$50 for each deferment given to the Borrower(s) permitting a delay in payment to a date other than the due date of such payment.
Payment Change Fee	\$50 fee payable for each payment frequency change (i.e. bi-weekly/monthly) and each payment date change during the term of the mortgage.
Inspection Fee	Fee for the Equitable Trust's out of pocket costs for each inspection conducted after default, or to preserve the security herein charged.
Mortgage Verification Fee	Fee for Equitable Trust's out of pocket costs for verifying details of the Mortgage, including, but not limited to, title searches.
Any administration and/or servicing fees owing by the Borrower(s) to Equitable Trust which is not paid shall be added to the mortgage indebtedness and shall bear interest at the rate herein set forth.	

The fees contained herein are effective as of time of printing on October 27, 2010

**The above fee amounts are subject to change at any time.**



# STATEMENT OF DISCLOSURE

**Loan No:** 111779  
**Borrower:** Carlos Carreiro  
**Property Address:** 346 Jarvis Street Suite #2 Toronto, ON

October 27, 2010

<b>Principal Loan Amount</b>	<b>\$559,872.00</b>
<b>Term</b> (months)	<b>24</b> The term of this loan is closed, which means you can not repay more than your Prepayment Privilege without also paying the Mortgage Prepayment Amount expressed below.
<b>Amortization Period</b> (months)	<b>360</b> (based on your current terms and conditions, your mortgage will take this long to pay in full)
<b>Annual Interest Rate</b>	<b>3.45000 %</b> (fixed interest rate per year)
<b>Determination of Interest</b>	The Annual Interest Rate is fixed and will not change during the term of this loan.
<b>Interest Compound Frequency</b>	<b>Semi-Annual</b> (the interest for this mortgage will be charged in the same manner as your Regular Payment Frequency)
<b>Annual Percentage Rate (APR)</b>	<b>3.531 %</b> The APR represents the interest rate for a whole year (annualized), including applicable fees such as service charges or administration fees when applicable.
<b>Date of Advance</b>	<b>October 29, 2010</b> Interest shall accrue from the date the first advance is made. Interest due to the Interest Adjustment Date will be deducted from the advance of the funds.
<b>Regular Payment Amount</b> (Principal + Interest)	<b>\$2,490.84</b>
<b>Regular Payment Frequency</b>	<b>Monthly</b>
<b>Prepayment Privilege</b>	<b>20% once each calendar year</b> (annual amount you may prepay once each year without incurring penalty charges) You can not repay your mortgage more than this Prepayment Privilege unless you also pay the Mortgage Prepayment Amount described below.
<b>Mortgage Prepayment Amount</b> (the additional amount you must pay if you pay all or part of your mortgage in excess of your Prepayment Privilege before the end of the term)	<p>The <b>GREATER</b> of:</p> <ul style="list-style-type: none"> <li>(i) three (3) months' interest at the Annual Interest Rate; or</li> <li>(ii) the amount by which the present value of your future payments until maturity discounted at the <i>Government of Canada Yield</i>, calculated semi-annually, not in advance, <i>exceeds</i> the outstanding principal of the prepayment amount as determined by The Equitable Trust Company.</li> </ul> <p>For the purposes of your Mortgage Prepayment Amount, the <i>Government of Canada Yield</i> means the yield to maturity, calculated semi-annually, which an assumed new issue of non-callable Government of Canada bonds, denominated in Canadian dollars, would carry if issued at par for a term to maturity as close to possible to, but not shorter than, the remaining term of your mortgage from and after the payment date.</p>



**Additional Loan Particulars:**

<b>Interest Adjustment Date</b>	<b>November 1, 2010</b>
<b>First Payment Date</b>	<b>December 1, 2010</b>
<b>Total Interest</b>	<b>\$37,792.82</b> (including interest accrued to the Interest Adjustment Date)
<b>Total Commitment Fee Amount</b>	<b>\$750.00</b>
<b>Cost of Borrowing</b>	<b>\$38,801.82</b>
<b>Maturity Date</b>	<b>November 1, 2012</b>
<b>Other Fees</b>	<ul style="list-style-type: none"> <li>○ Discharge Administration Fee: <b>\$250.00</b></li> <li>○ Default Proceedings: <b>\$750.00</b> (for each demand letter, action or proceeding instituted)</li> <li>○ Returned or refused payment due to insufficient funds (NSF): <b>\$200.00</b></li> <li>○ Tax Account Status Inquiry: <b>\$200.00</b> (plus cost of municipal tax certificate)</li> <li>○ PPSA Registration: <b>\$100.00</b> (for each registration, renewal, discharge, name change, etc.)</li> <li>○ Lender Title Insurance and Closing Service Fee: <b>\$259.00</b> (plus applicable taxes)</li> </ul>

**Additional Notes:**

1. Each regular payment is applied first to the accumulated cost of borrowing and then to the outstanding principal.
2. The amount of monies advanced to you on the Date of Advance will be the Principal Loan Amount less certain reductions as a result of fees, holdbacks and/or any applicable taxes.
3. You shall also be liable for all amounts incurred by The Equitable Trust Company because of the failure to make the necessary payments or repayments either on a regular payment date or at maturity, including but not limited to, legal fees, realizing on or protecting any security interest and processing dishonoured payments.
4. A complete listing of all fees that are applicable to this mortgage are set out in the 'Schedule A' to the Commitment Letter already provided to you.



## STATEMENT OF DISCLOSURE

**Loan No:** 111779  
**Borrower:** Colette Carreiro  
**Property Address:** 346 Jarvis Street Suite #2 Toronto, ON

October 27, 2010

<b>Principal Loan Amount</b>	<b>\$559,872.00</b>
<b>Term</b> (months)	<b>24</b> The term of this loan is closed, which means you can not repay more than your Prepayment Privilege without also paying the Mortgage Prepayment Amount expressed below.
<b>Amortization Period</b> (months)	<b>360</b> (based on your current terms and conditions, your mortgage will take this long to pay in full)
<b>Annual Interest Rate</b>	<b>3.45000 %</b> (fixed interest rate per year)
<b>Determination of Interest</b>	The Annual Interest Rate is fixed and will not change during the term of this loan.
<b>Interest Compound Frequency</b>	<b>Semi-Annual</b> (the interest for this mortgage will be charged in the same manner as your Regular Payment Frequency)
<b>Annual Percentage Rate (APR)</b>	<b>3.531 %</b> The APR represents the interest rate for a whole year (annualized), including applicable fees such as service charges or administration fees when applicable.
<b>Date of Advance</b>	<b>October 29, 2010</b> Interest shall accrue from the date the first advance is made. Interest due to the Interest Adjustment Date will be deducted from the advance of the funds.
<b>Regular Payment Amount</b> (Principal + Interest)	<b>\$2,490.84</b>
<b>Regular Payment Frequency</b>	<b>Monthly</b>
<b>Prepayment Privilege</b>	<b>20% once each calendar year</b> (annual amount you may prepay once each year without incurring penalty charges) You can not repay your mortgage more than this Prepayment Privilege unless you also pay the Mortgage Prepayment Amount described below.
<b>Mortgage Prepayment Amount</b> (the additional amount you must pay if you pay all or part of your mortgage in excess of your Prepayment Privilege before the end of the term)	<p>The <b>GREATER</b> of:</p> <ul style="list-style-type: none"> <li>(i) three (3) months' interest at the Annual Interest Rate; or</li> <li>(ii) the amount by which the present value of your future payments until maturity discounted at the <i>Government of Canada Yield</i>, calculated semi-annually, not in advance, exceeds the outstanding principal of the prepayment amount as determined by The Equitable Trust Company.</li> </ul> <p>For the purposes of your Mortgage Prepayment Amount, the <i>Government of Canada Yield</i> means the yield to maturity, calculated semi-annually, which an assumed new issue of non-callable Government of Canada bonds, denominated in Canadian dollars, would carry if issued at par for a term to maturity as close to possible to, but not shorter than, the remaining term of your mortgage from and after the payment date.</p>



**Additional Loan Particulars:**

<b>Interest Adjustment Date</b>	<b>November 1, 2010</b>
<b>First Payment Date</b>	<b>December 1, 2010</b>
<b>Total Interest</b>	<b>\$37,792.82</b> (including interest accrued to the Interest Adjustment Date)
<b>Total Commitment Fee Amount</b>	<b>\$750.00</b>
<b>Cost of Borrowing</b>	<b>\$38,801.82</b>
<b>Maturity Date</b>	<b>November 1, 2012</b>
<b>Other Fees</b>	<ul style="list-style-type: none"> <li>o Discharge Administration Fee: <b>\$250.00</b></li> <li>o Default Proceedings: <b>\$750.00</b> (for each demand letter, action or proceeding instituted)</li> <li>o Returned or refused payment due to insufficient funds (NSF): <b>\$200.00</b></li> <li>o Tax Account Status Inquiry: <b>\$200.00</b> (plus cost of municipal tax certificate)</li> <li>o PPSA Registration: <b>\$100.00</b> (for each registration, renewal, discharge, name change, etc.)</li> <li>o Lender Title Insurance and Closing Service Fee: <b>\$259.00</b> (plus applicable taxes)</li> </ul>

**Additional Notes:**

1. Each regular payment is applied first to the accumulated cost of borrowing and then to the outstanding principal.
2. The amount of monies advanced to you on the Date of Advance will be the Principal Loan Amount less certain reductions as a result of fees, holdbacks and/or any applicable taxes.
3. You shall also be liable for all amounts incurred by The Equitable Trust Company because of the failure to make the necessary payments or repayments either on a regular payment date or at maturity, including but not limited to, legal fees, realizing on or protecting any security interest and processing dishonoured payments.
4. A complete listing of all fees that are applicable to this mortgage are set out in the 'Schedule A' to the Commitment Letter already provided to you.



### SELF-DECLARATION

Date: OCT 27th 2010

I CARLOS CARREIRO, confirm that I have been self-employed

for 8 years, as a BUILDER under the business

name: CAROL LTD. The nature of my business

is CONSTRUCTION. Operations are conducted out of

the following address: 18 SWORD ST. TORONTO

and phone number: (416) 277-4253 Please find attached a copy of my

business card/license (if available). The website address (if available)

is: \_\_\_\_\_

My income for the year 20 09, from all sources, will be \$ 125,000.00

Signed: [Signature]  
(insert borrower's name)

If you are self-employed, additional supporting documentation is required.

**F**



THE  
**EQUITABLE**  
TRUST COMPANY

Mr Carlos Carreiro  
Mrs Colette Carreiro  
346 Jarvis Street  
Toronto, ON  
M4Y 2G6

Dear Sir/Madam:

Jan 24 2011

Statement of Account

Re: Mortgagor # 1 : Mr Carlos Carreiro  
Mortgagor # 2 : Mrs Colette Carreiro  
Property : 346 Jarvis Street  
Toronto ON M4Y 2G6  
Loan Number: 111779

Principal Balance as of November 05, 2010	\$	559,872.00
Total advances during the previous 12 month period:	\$	.00

Payments received during the previous 12 month period:

Principal.\$	.00
Interest..\$	.00
Sales Tax.\$	.00
Taxes.....\$	.00

Principal Balance as of December 31, 2010	\$	558,979.34
Taxes Paid to Authority.: 0.00		

Loan Particulars:

Interest Rate.....	03.450
Principal /Or Interest...	2,490.84
Sales Tax.....	0.00
Tax Payment.....	257.50
Insurance Payment.....	0.00
Taxes Balance.....	1,000.00
Next Payment Due.....	Feb 01 2011
Payment Method.....	Pre-Authorized Cheque
Maturity Date.....	Dec 01 2012
Current Paid-Thru Date...	Jan 01 2011
Privileges.....	20% once each calendar year.

Yours truly,  
The Equitable Trust Company

Mortgage Services

E. & O.E.



**THE EQUITABLE TRUST COMPANY**

September 14, 2012

Carlos Carreiro  
18 Sword St  
Toronto, ON  
M5A 3N2

Dear Sir/Madam,

**RE:   Loan Number:   111779**  
          **Mortgagor(s):   Carlos Carreiro**  
                          **Colette Carreiro**  
          **Security:       346 Jarvis Street Suite C Toronto, ON**

---


May we take this opportunity to thank you for renewing your Res Single-Family Mortgage with The Equitable Trust Company.

If you should have any questions regarding the terms or details of your new facility, please do not hesitate to call us. The following confirmation of the terms and conditions of your Res Single-Family Mortgage should be kept for your records:

Remaining Principal:	\$540,581.29
Interest Rate:	03.4300000
Principal &/or Interest:	\$2,679.03
Tax Portion:	\$642.08
Insurance Portion:	\$ 0.00
Total Payment Amount:	\$3,321.11
Next Payment Date:	10/01/12
Payment Method:	Pre-Authorized Cheque
Maturity Date:	September 01, 2017
Term:	60 months
Payment Frequency:	- Monthly
Privileges:	20% once each calendar year.

In order to ensure quick and efficient customer service, please refer to the above-noted loan number when corresponding or inquiring about your Res Single-Family Mortgage.

Yours truly,  
**THE EQUITABLE TRUST COMPANY**

  
Stephanie Tong  
Renewals Administrator  
E.& O.E.



# EQUITABLE TRUST

Mr Carlos Carreiro  
Mrs Colette Carreiro  
18 Sword St  
Toronto, ON, M5A 3N2

Dear Sir/Madam:

Jan 31 2013

## Statement of Account

Re: Mortgagor # 1 : Mr Carlos Carreiro  
Mortgagor # 2 : Mrs Colette Carreiro  
Property : 346 Jarvis Street  
Toronto ON M4Y 2G6  
Loan Number: 111779

Principal Balance as of December 31, 2011	548,990.33
Total advances during the previous 12 month period:	.00

### Payments received during the previous 12 month period:

Principal.	11,853.18
Interest..	18,601.47
Sales Tax.	.00
Taxes.....	6,152.58
Principal Balance as of December 31, 2012	537,137.15
Taxes Paid to Authority.: 8,236.30	

### Loan Particulars:

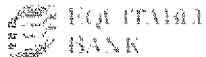
Interest Rate.....	03.4300000
Principal /Or Interest...	2,679.03
Sales Tax.....	0.00
Tax Payment.....	642.08
Insurance Payment.....	0.00
Taxes Balance.....	2,006.28
Next Payment Due.....	Feb 01 2013
Payment Method.....	Pre-Authorized Cheque
Maturity Date.....	Sep 01 2017
Current Paid-Thru Date...	Jan 01 2013
Privileges.....	20% once each calendar year.

Yours truly,  
The Equitable Trust Company

Mortgage Services

E. & O.E.

/Canada



December 31, 2013

Carlos Carreiro  
18 Sword St  
Toronto, ON M5A 3N2

Dear Sir/Madam:

Re: Mortgagor(s): Carlos Carreiro  
Colette Carreiro  
Property: 346 Jarvis Street Suite 4 Toronto, ON  
Loan Number: 111779

**Your Mortgage Particulars for the Period from January 01, 2013 to December 31, 2013**

**(a) Principal**

Opening Principal Balance as of January 01, 2013	\$537,137.15
Principal Advances during the Period:	\$ 0.00
Payments received and applied during the Period:	
• Principal <sup>1</sup>	\$14,073.17
• Interest	\$18,075.19
• Property Taxes	\$7,704.96
Total	\$39,853.32
Closing Principal Balance as of December 31, 2013:	\$523,063.98

**(b) Property Tax Account**

Property Taxes Paid to Authority during the Period:	\$5,071.20
Property Tax Account Balance as of December 31, 2013:	\$4,640.04

**Your Current Mortgage Particulars**

Regular Payment Amount	\$2,679.03
(Principal and Interest or Interest only as per your mortgage):	
Property Tax Amount (if applicable):	\$642.08
Total Regular Payment Amount:	\$3,321.11
Payment Frequency:	Monthly on the 1st of every month
Next Payment Date:	January 1, 2014
Maturity Date:	September 1, 2017
Prepayment Privileges:	20% once each calendar year

If you have any questions, please contact Customer Service, Mortgage Services Department.

**Equitable Bank**

E. & O. E. - Please note that if there is any conflict between the contents of this Annual Statement and the terms of your mortgage documentation, the terms of your mortgage documentation shall take precedence.

**G**

This Agreement of Purchase and Sale dated this 15th day of April, 2009

**BUYER,** 1423724 Ontario Limited o/a THE DRAGON ACADEMY, agrees to purchase from  
(Full legal names of all Buyers)

**SELLER,** Gildas Club Greater Toronto the following  
(Full legal names of all Sellers)

**REAL PROPERTY:**

Address: 110 Lombard Street fronting on the North side of Lombard Street

in the City of Toronto

and having a frontage of 64 ft more or less by a depth of 120 ft more or less legally described as

Part of Block A, Reg. Plan 558, Toronto  
(Legal description of land including easements not described elsewhere)

**PURCHASE PRICE:** Two Million Six Hundred Thousand Dollars (CDN\$ 2,600,000.00)  
("the property")

**DEPOSIT:** Sixty-Five Thousand Dollars Dollars (CDN\$ 65,000.00)

Buyer submits ( Upon acceptance ) Sixty-Five Thousand Dollars Dollars (CDN\$ 65,000.00)  
(Herein/Upon acceptance/as otherwise described in this

by negotiable cheque payable Ashlar Urban Realty Inc., Brokerage "Deposit Holder"  
to be held in trust without interest pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement.  
Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

**SCHEDULE(S)** \* A \* attached hereto form(s) part of this Agreement.

1. **CHATELS INCLUDED:**  
As per Schedule "A"

2. **FIXTURES EXCLUDED:**  
As per Schedule "A"

3. **RENTAL ITEMS:** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s) if assumable: Hot Water Tank(s)

4. **IRREVOCABILITY:** This Offer shall be irrevocable by Buyer until 5:00 p.m. on the 27th day of April, 2009  
(Seller/Buyer)  
offer which time, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

5. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 30th day of July, 2009  
Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

6. **NOTICES:** Seller hereby appoints the Listing Brokerage as Agent for the purpose of giving and receiving notices pursuant to this Agreement. Only if the **Co-operating Brokerage represents the interests of the Buyer in this transaction**, the Buyer hereby appoints the Co-operating Brokerage as Agent for the purpose of giving and receiving notices pursuant to this Agreement. Any notice relating hereto or provided for herein shall be in writing.

This offer, any counter offer, notice of acceptance thereof, or any notice shall be deemed given and received, when hand delivered to the address for service provided in the Acknowledgement below, or where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

FAX No. 416-205-9228 (For delivery of notices to Seller) FAX No. 416-964-7728 (For delivery of notices to Buyer)

7. **GST:** If this transaction is subject to Goods and Services Tax (GST), then such tax shall be in addition to the Purchase Price.  
The Seller will not collect GST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the GST payable and file the prescribed form and shall indemnify the Seller in respect of any GST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If this transaction is not subject to GST, Seller agrees to certify on or before closing, that the transaction is not subject to GST.

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 15th day of June, 2009 (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use

CR 14 C2.0 R4.0

INITIALS OF BUYER(S): MF

INITIALS OF SELLER(S): [Signature]



may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.
10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the present use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement not withstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.
11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the Property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.
12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.
13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller.
14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
17. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.
18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):





20. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
21. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless Seller's spouse has executed the consent hereinafter provided.
22. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
23. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
24. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
25. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
26. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

1423724 Ontario Limited

Per: *Margaret A. Fox*  
Dr. Margaret Fox (Buyer/Authorized Signing Officer)

24/04/09  
DATE

(Seal)

DATE

(Seal)

DATE

(Seal)

(Witness)

(Witness)

(Witness)

(Buyer/Authorized Signing Officer)

(Buyer/Authorized Signing Officer)

I, the Undersigned Seller, agree to the above Offer, I hereby irrevocably instruct my lawyer to pay directly to the Listing Broker the unpaid balance of the commission together with applicable Goods and Services Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the Listing Broker to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

Gildas Club Greater Toronto Per:

Per: *David Sutin*  
Gildas Club Greater Toronto (Seller/Authorized Signing Officer)  
DAVID SUTIN, DIRECTOR

4/29/09  
DATE

(Seal)

DATE

(Seal)

DATE

(Seal)

(Witness)

(Witness)

(Witness)

(Seller/Authorized Signing Officer)

(Seller/Authorized Signing Officer)

**SPOUSAL CONSENT:** The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

(Seal)

DATE

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by

all parties at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
(Time-am/pm)

(Signature of Seller/Buyer)

**INFORMATION ON BROKERAGE(S)**

Listing Brokerage

Tel. No. (\_\_\_\_\_) \_\_\_\_\_

Co-op/Buyer Brokerage

Tel. No. (\_\_\_\_\_) \_\_\_\_\_

INITIALS OF BUYER(S): *MF*

INITIALS OF SELLER(S): *DS*



# ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

DATE \_\_\_\_\_  
(Gildas Club Greater Toronto Seller)

DATE \_\_\_\_\_  
(1423724 Ontario Limited o/a THE DRAGON ACADEMY Buyer)

DATE \_\_\_\_\_  
(Seller)

DATE \_\_\_\_\_  
(Buyer)

Address for Service \_\_\_\_\_

Address for Service 35 Prince Arthur Avenue, Toronto

Tel No. ( \_\_\_\_\_ ) \_\_\_\_\_

Ontario, M5R 1B2 Tel No. ( 416 ) 323-3243

Seller's Lawyer \_\_\_\_\_

Buyer's Lawyer Robert Saunders

Address \_\_\_\_\_

Address 1 Dundas Street West, Suite 2400, Toronto,

( \_\_\_\_\_ ) ( \_\_\_\_\_ )  
Tel No. \_\_\_\_\_ FAX No. \_\_\_\_\_

( 416 ) 860-1952 ( 416 ) 860-1953  
Tel No. \_\_\_\_\_ FAX No. \_\_\_\_\_

FOR OFFICE USE ONLY

## COMMISSION TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:

In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the transaction as contemplated in the MLS Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS Rules and shall be subject to and governed by the MLS Rules pertaining to Commission Trust.

DATED as of the date and the time of the acceptance of the foregoing Agreement of Purchase and

acknowledged by:

(Authorized to bind the listing brokerage)

(Authorized to bind the selling brokerage)



© 2006 OREA Standard Form Do not alter when printing or reproducing the standard pre-set portion.

QuickOffer® [www.nereosoft.com](http://www.nereosoft.com)

Form 500 04/2006 Page 4 of 5

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER 1423724 Ontario Limited o/a THE DRAGON ACADEMY

SELLER Gildas Club Greater Toronto

For the purchase and sale of 110 Lombard Street

City of Toronto

dated 15<sup>th</sup> day of April, 2009  
One Hundred (100,000.00) MF

1. The Buyer agrees to pay a further sum of ~~Sixty-Five Thousand Dollars (\$65,000.00)~~ to Ashlar Urban Realty Inc., by negotiable cheque, within 2 business days after the removal of the Buyer's Conditions as set out hereafter, as a supplementary deposit to be held in trust in the same manner as the initial deposit pending completion or other termination of this Agreement. This amount is to be credited towards the purchase price on completion of this transaction.
2. The Buyer agrees to pay a balance on closing subject to adjustments, by bank draft or certified cheque, to the Seller on completion of this transaction.
3. Intentionally Deleted.
4. The Buyer and the Seller hereby direct the deposit holder to place all deposit monies in an interest bearing account or term deposit, with any accrued interest on the deposit to be paid to the Buyer as soon as possible after completion or other termination of this Agreement. In the event that the closing date is advanced or the transaction is terminated, the Buyer agrees to accept the short-term rate for deposits withdrawn before maturity.
5. All parties agree that this Agreement may be transmitted by the telecopier and that the reproduction of signatures by way of telecopier will be treated as though such reproduction were executed originals and each party undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the date of execution.
6. **Buyer's Conditions:**

Notwithstanding anything to the contrary herein contained, the completion of this agreement shall be conditional upon each of the following conditions precedent in this paragraph 6 being satisfied or complied with on or before the Buyer Deadline, all such conditions being for the exclusive benefit of the Buyer and which may be waived in whole or in part by the Buyer at any time, any such waiver to be ineffective unless made in writing by the Buyer or its solicitors:

- a) as herein after defined The Buyer being satisfied with all the Seller's Deliveries; MF
- b) The Buyer being satisfied with the zoning and official plan designation of the Subject Property;

MF

DS

- c) The Buyer being satisfied with respect to the condition of the Subject Property and the improvements thereto;
- d) The Buyer satisfying itself that there are no work orders, deficiency notices or active files affecting the Subject Property by the City of Toronto or other governmental authority;
- e) The Buyer obtaining satisfactory financing to complete the transaction;
- f) The Buyer being satisfied with the operating expenses of the Property; and
- g) The Buyer being satisfied with the condition of the chattels and fixtures; *included in the purchase price, if any.* **MF**

In the event any of the foregoing conditions have not been satisfied or complied with or waived by the Buyer on or before the Buyer Deadline, the Buyer shall have the sole right and option to terminate this agreement by notice in writing to the Seller in which event the Deposit shall be returned forthwith to the Buyer. In the event the Buyer does not waive all of the conditions on or before the Buyer's Deadline, the conditions in this paragraph 6 shall be deemed not to have been waived and satisfied.

*without deduction or interest* **MF**

For each of the conditions herein the Buyer must be satisfied in its sole and unfettered discretion. The Buyer's Deadline referred to in this Section 6 shall be 5:00 PM on the day that is 30 days after the Seller has delivered all of the Seller's Deliveries referred to below.

**7. Seller's Deliveries:**

Within five (5) business days of acceptance of the Offer to Purchase, The Seller agrees to supply to the Buyer the following if such are in the Seller's possession or control:

- a) All environmental reports and audits, pre-purchase reports, and any other reports relating to the environmental condition of the building or the land; and
- b) An existing survey completed by an Ontario Land Surveyor showing the current location of all buildings, structures, additions, fences, improvements, easements, right-of-way and encroachments affecting the property; and
- c) Provide a written authorization drafted by the Buyer to all municipal and governmental and other authorities having jurisdiction over the real property to release to the Buyer all information such authorities have on file respecting the property; and
- d) All architectural building plans, mechanical drawings, electrical drawings, structural engineering plans, renovation plans, contracts, estimates, "as built" building plans, and any other plans relating to the building; and
- e) All warranties and service manuals applicable to any equipment or chattels included in the purchase price; and
- f) All financial statements confirming operating expenses relating to

*Copies of*

**MF**

**MF**

*[Signature]*

**12. Leaseback:**

The Buyer and Seller covenant and agree to enter into a Leaseback (the "Leaseback") of the Property between the Seller as Tenant and the Buyer as Landlord which shall contain the following terms:

- a) The Term of the Leaseback shall begin on closing and terminate on July 29, 2010 (the "Term");
- b) Upon termination of the Term Tenant shall deliver vacant possession of the Property to Landlord in good condition and repair;
- c) Tenant shall pay the costs to operate, maintain and repair the Property during the Term including without limiting the generality of the foregoing, realty taxes, insurance, utilities, maintenance and repair costs; *with the exception of structural repairs* **FIFTEEN (\$15,000.00) dollars**
- d) **FIFTEEN (\$15,000.00) dollars** Tenant shall pay an annual net/net rental of **\$15.00** per rentable square foot, based on **13,823 sq. ft. gross leasable area, being \$17,278.75.00 monthly;**
- e) Such other terms as the parties shall agree upon.

This Agreement shall be conditional until the Buyers Deadline upon the parties agreeing to the remaining terms of the Leaseback in form and content. In the event that each of the parties does not deliver a notice in writing to the other party by the Buyer's Deadline that the Leaseback has been approved in form and content by such party then this Agreement shall be null and void and of no further effect and the deposit returned to the Buyer forthwith.

*MF* *[Signature]*

Н

110 Lombard Closing

110 Lombard Sale Receipt: \$3,491,479.45

Disbursements from sale proceeds:

To Bernstein for first mortgage:	\$2,271,685.07
To Kevin Gillen for 50% of commission:	\$79,100.00
To Brent Jorgens for 50% commission:	\$79,100.00
To Gilda's Club for deposit reimbursement:	\$135,000.00
To hold back related to basement leak and asphalt:	\$50,000.00
To property tax owing:	<u>\$8,000.00</u>

Total Disbursements paid from sale proceeds: \$2,622,885.07

Net proceeds of sale of 110 Lombard: \$868,594.38

To Carlos - 40% entitlement:	\$372,182.90
Less money applied to purchase 346C Jarvis:	-\$106,718.00
Less money applied to put a deposit down on 24 Cecil Street:	-\$60,000.00

Balance applied to purchase 24 Cecil Street for Carlos' 50% interest: \$205,464.90

Net proceeds of sale  
Jarvis payment  
Cecil Street deposit - 50%



## Paul Fruitman

---

**From:** Carlos Carreiro <cancarr58@sympatico.ca>  
**Sent:** October-01-14 12:57 PM  
**To:** Paul Fruitman  
**Subject:** Fwd: Your mortgage 346 C Jarvis

bank statement to follow.

Begin forwarded message:

**From:** Debi McKeon <mortgagelady@rogers.com>  
**Subject:** Re: Your mortgage  
**Date:** October 25, 2010 at 6:09:34 AM EDT  
**To:** Carlos Carreiro <cancarr58@sympatico.ca>

Hi Carlos,

Please see below and email or call me with any questions or concerns.

Many thanks, Debi.

On 24/10/10 9:20 PM, "Carlos Carreiro" <cancarr58@sympatico.ca> wrote:

Hi Debi,

Sorry for the delay, been swamped.

1- There are no rental agreements for 221 Avenue Rd, everyone is on month to month. Will send mortgage info. - I require something confirming the rent that the tenants pay. Do you have original leases and bank statements showing those deposits monthly?

2- I should have my taxes tomorrow and will forward to you ASAP. - Thanks.

3- Will fax tonight from both properties. - Received thanks.

4- Is this necessary since we have not completed the house 100% and don't want to show it until such time. - Please talk to Norma she may have someone that will sign a lease for \$4,000 a month. You need this additional income for the purpose of obtaining the mortgage.

5- We deposited \$213,000.00 and gave the balance to Norma towards the purchase price on Jarvis. I will send you the deposit statement. - Great thanks. Please make sure the statement shows your name if not then please also send me a void cheque so that I can cross reference the account ownership.

Thanks

Carlos

**From:** Debi McKeon [<mailto:mortgagelady@rogers.com>]

**Sent:** October-21-10 8:13 AM

**To:** c carreiro

**Subject:** Your mortgage

Hi Carlos,

Can you please email or fax me the following documentation asap so that I can complete your file with the Lender:

1. Rental/Lease Agreement, mortgage statement and property tax bill for 221 Avenue Road
2. NOA for 2009
3. Property tax bill for 18 Sword
4. Rental/Lease Agreement showing \$4,000 per month for Jarvis
5. Bank Statements showing deposit of money received from the sale of Lombard
6. Lawyer's Trust Ledger or Statement of Account and Firm Offer for Lombard – I will get this from Norma

As you are closing next Friday, if you could get the above to me by tomorrow or Monday at the latest that would be great. Please email or call me if you have any questions or concerns. I should have the commitment to you later today.

Many thanks, Debi.

Debra McKeon, Accredited Mortgage Professional

The Mortgage Centre - Get a Better Mortgage Inc.

C: 647-292-1578 F: 416-264-3324 E: [mortgagelady@rogers.com](mailto:mortgagelady@rogers.com)

Broker Lic.#M09000948 Franchise Lic.#10874

J

**Your branch address:**

2194 LAKE SHORE RD W  
ETOBICOKE, ONTARIO M8V1A2

# Everyday Banking



BMHEC12100\_8045107\_000 E D 0000 01452

MR CARLOS A CARREIRO  
MRS COLETTE CARREIRO  
18 SWORD ST  
TORONTO ON M5A 3N2

**Your Branch**  
LAKE SHORE & PARKLAWN TOR  
Transit number: 0419

**Your Relationship Manager**  
JASON MAJORANA  
(416) 251-3368

**Direct Banking**  
1-800-363-9992  
www.bmo.com

**Your Plan**  
Plus Plan

## Your Everyday Banking statement

For the period ending August 11, 2010

### Summary of your accounts

Account	Opening balance (\$)	Total amounts deducted (\$)	Total amounts added (\$)	Closing balance (\$) on Aug 11, 2010
Primary Chequing Account # 0419 3081-270	0.47	2,304.60	2,305.00	0.87
Premium Rate Savings # 0419 8045-439	3,519.37	2,643.29	500.60	1,376.68

### Your Security - Our Priority.

Social Networking websites can be a goldmine for identity thieves. Avoid posting any personal details such as birthdates, telephone numbers and addresses.

For more security tips, visit [www.bmo.com/security](http://www.bmo.com/security)

### Here's what happened in your accounts

Date	Description	Amounts deducted from your account (\$)	Amounts added to your account (\$)	Balance (\$)
------	-------------	--	---------------------------------------	--------------

#### Primary Chequing Account # 0419 3081-270



Owners:  
MR CARLOS A CARREIRO,  
MRS COLETTE CARREIRO

Jul 10	Opening balance			0.47
Jul 19	Online transfer, TF 0419#8045-439		300.00	300.47
Jul 19	Debit Card Purchase, THE BEER STORE	26.10		274.37
Jul 21	Cheque, NO.750	100.00		174.37
Jul 23	Cheque, NO.777	1,950.00		-1,775.63
Jul 23	Automatic Overdraft Transfer, 0419#8045-439 0000		1,776.00	0.37
Jul 27	Cheque, NO.752	60.00		-59.63
Jul 27	Automatic Overdraft Transfer, 0419#8045-439 0000		60.00	0.37

continued

[close](#)**Account Details – Savings**

<b>Account</b> Premium Rate Savings	<b>Transit</b> 0419	<b>Account #</b> 8045-439
<b>Account Balance</b> \$144,106.08	<b>Available Funds</b> \$144,106.08	<b>Funds on Hold</b> \$0.00

**Transaction History**

<u>Date</u>	<u>Code</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>	<u>Balance</u>
		Balance Forward			\$1,057.18
Oct 18, 2010	CD			\$213,464.90	\$214,522.08
Oct 18, 2010	DM	TRANSFER TO BUSINESS	\$60,000.00		\$154,522.08
Oct 21, 2010	TF	0419#3081-270 0000	\$4,716.00		\$149,806.08
Oct 25, 2010	IB	80 FRONT ST E	\$400.00		\$149,406.08
Oct 25, 2010	IB	80 FRONT ST E	\$100.00		\$149,306.08
Oct 26, 2010	IB	80 FRONT ST E	\$200.00		\$149,106.08
Oct 25, 2010	TF	0419#3081-270 0000	\$5,000.00		\$144,106.08

<b>Balance</b>	<b>Savings</b> 0419 8045-439	\$144,106.08
<b>Available Funds</b>	<b>Savings 0419 8045-439</b>	\$144,106.08

**K**

This Agreement of Purchase and Sale dated this 4th day of August 2010

**BUYER,** Completions International Academy Inc., agrees to purchase from  
(Full legal names of all Buyers)

**SELLER,** The Old Firehall Inc., the following  
(Full legal names of all Sellers)

**REAL PROPERTY:**

Address 110 Lombard Street fronting on the north side  
of Lombard Street in the City of Toronto

and having a frontage of 64 ft more or less by a depth of 120 ft more or less

and legally described as Part of Block A, Reg. Plan 558, Toronto PIN 214020118

(Legal description of land including easements not described elsewhere) \$ 3,500,000.00 (the "property").

**PURCHASE PRICE:**

Five Hundred  
Three Million Two Hundred Fifty Thousand Dollars (CDN\$) 3,250,000.00

**DEPOSIT:** Buyer submits upon acceptance  
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

Fifty Thousand Dollars (CDN\$) 50,000.00

by negotiable cheque payable to Walton Advocates in Trust "Deposit Holder"  
to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion.  
For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the  
Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that,  
unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's  
non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

**Buyer agrees to pay the balance as more particularly set out in Schedule A attached.**

**SCHEDULE(S) A** attached hereto form(s) part of this Agreement.

1. **IRREVOCABILITY:** This Offer shall be irrevocable by Buyer Seller until 5:00 p.m. on

the 6th day of August 2010, after which time, if not accepted, this  
Offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 14th day  
of October 2010. Upon completion, vacant possession of the property shall be given to the  
Buyer unless otherwise provided for in this Agreement.

3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant  
to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby  
appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a  
Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled  
or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any  
notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto,  
this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule  
hereto shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the  
Acknowledgement below, or where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

FAX No. 416-489-9973 (For delivery of notices to Seller) FAX No. 416-964-7728 (For delivery of notices to Buyer)

**INITIALS OF BUYER(S):** [Signature]

**INITIALS OF SELLER(S):** [Signature]

4. **CHATELS INCLUDED:**

As per Schedule "A"

5. **FIXTURES EXCLUDED:**

As per Schedule "A"

6. **RENTAL ITEMS:** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

7. **GST/HST:** If the sale of the property (Real Property as described above) is subject to Goods and Services Tax (GST) or Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect GST or HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the GST or HST payable and file the prescribed form and shall indemnify the Seller in respect of any GST or HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to GST or HST, Seller agrees to certify on or before closing, that the transaction is not subject to GST or HST. Any HST on chattels, if applicable, is not included in the purchase price.

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 1st day of October, 2010, (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use (CRT4.0 C2.0 R4.0) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the Property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller.
14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
17. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.
18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
20. **PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
21. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
22. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless Seller's spouse has executed the consent hereinafter provided.
23. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
24. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
25. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
26. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
27. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** Completions International Academy Inc. ...., and

**SELLER,** The Old Firehall Inc. ....

for the purchase and sale of 110 Lombard Street ..... Toronto

..... dated the 4th ..... day of August ..... 2010

Buyer agrees to pay the balance as follows:

1. The Buyer agrees to pay a further sum of Fifty Thousand Dollars (\$50,000.00), to Walton Advocates in Trust., by negotiable cheque, within 2 business days after the removal of the Buyer's Conditions as set out hereafter, as a supplementary deposit to be held in trust in the same manner as the initial deposit pending completion or other termination of this Agreement. This amount is to be credited towards the purchase price on completion of this transaction.

2. The Buyer agrees to pay a balance on closing subject to adjustments, by bank draft or certified cheque, to the Seller on completion of this transaction.

3. The Buyer and the Seller hereby direct the deposit holder to place all deposit monies in an interest bearing account or term deposit, with any accrued interest on the deposit to be paid to the Buyer as soon as possible after completion or other termination of this Agreement. In the event that the closing date is advanced or the transaction is terminated, the Buyer agrees to accept the short-term rate for deposits withdrawn before maturity.

4. All parties agree that this Agreement may be transmitted by the telecopier and that the reproduction of signatures by way of telecopier will be treated as though such reproduction were executed originals and each party undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the date of execution.

5. Buyer's Conditions:

Notwithstanding anything to the contrary herein contained, the completion of this agreement shall be conditional upon each of the following conditions precedent in this paragraph 6 being satisfied or complied with on or before the Buyer Deadline, all such conditions being for the exclusive benefit of the Buyer and which may be waived in whole or in part by the Buyer at any time, any such waiver to be ineffective unless made in writing by the Buyer or its solicitors:

- a) The Buyer being satisfied with all the Seller's Deliveries;
- b) The Buyer being satisfied with the zoning and official plan designation of the Subject Property;
- c) The Buyer being satisfied with respect to the condition of the Subject Property and the improvements thereto;
- d) The Buyer satisfying itself that there are no work orders, deficiency notices or active files affecting the Subject Property by the City of Toronto or other governmental authority;
- e) The Buyer obtaining satisfactory financing to complete the transaction;
- f) The Buyer being satisfied with the operating expenses of the Property; and

This form must be initialed by all parties to the Agreement of Purchase and Sale.

**INITIALS OF BUYER(S):**

**INITIALS OF SELLER(S):**

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** Completions International Academy Inc. ...., and

**SELLER,** The Old Firehall Inc. ....

for the purchase and sale of 110 Lombard Street ..... Toronto

..... dated the 4th ..... day of August ..... 2010

Buyer agrees to pay the balance as follows:

- g) The Buyer being satisfied with the condition of the chattels and fixtures; and
- h) The Buyer being satisfied with the existing lease to be assumed at closing with Gildas Club Greater Toronto; and
- i) The Buyer being satisfied that the Seller will completely remediate the cause of the existing water seepage into the basement at its sole expense on or before closing.

In the event any of the foregoing conditions have not been satisfied or complied with or waived by the Buyer on or before the Buyer Deadline, the Buyer shall have the sole right and option to terminate this agreement by notice in writing to the Seller in which event the Deposit shall be returned forthwith to the Buyer. In the event the Buyer does not waive all of the conditions on or before the Buyer's Deadline, the conditions in this paragraph 6 shall be deemed not to have been waived and satisfied.

For each of the conditions herein the Buyer must be satisfied in its sole and unfettered discretion. The Buyer's Deadline referred to in this Section 6 shall be 5:00 PM on the day that is 30 days after the Seller has delivered all of the Seller's Deliveries referred to below.

**6. Seller's Deliveries:**

Within five (5) business days of acceptance of the Offer to Purchase, The Seller agrees to supply to the Buyer the following if such are in the Seller's possession or control:

- a) All environmental reports and audits, pre-purchase reports, and any other reports relating to the environmental condition of the building or the land; and
- b) An existing survey completed by an Ontario Land Surveyor showing the current location of all buildings, structures, additions, fences, improvements, easements, right- of-way and encroachments affecting the property; and
- c) Provide a written authorization drafted by the Buyer to all municipal and governmental and other authorities having jurisdiction over the real property to release to the Buyer all information such authorities have on file respecting the property; and
- d) All architectural building plans, mechanical drawings, electrical drawings, structural engineering plans, renovation plans, contracts, estimates, "as built" building plans, and any other plans relating to the building; and
- e) All warranties and service manuals applicable to any equipment or chattels included in the purchase price; and

This form must be initialed by all parties to the Agreement of Purchase and Sale.

**INITIALS OF BUYER(S):**

**INITIALS OF SELLER(S):**



This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** Completions International Academy Inc. ...., and

**SELLER,** The Old Firehall Inc. ....

for the purchase and sale of 110 Lombard Street ..... Toronto

..... dated the 4<sup>th</sup> ..... day of August ..... 2010 .....

Buyer agrees to pay the balance as follows:

f) All financial statements confirming operating expenses relating to the property along with building expense invoices including property tax assessments for 2009 and 2010 and utility bills showing the yearly expense for gas, water, hydro and other building expenses along with copies of all building maintenance that has been performed in the past five years and the building maintenance plan going forward, if one exists; and

g) A list of all chattels and fixtures included in the Purchase Price.

h) All leases and/or offers to lease currently affecting the property including a true copy of the current lease between The Old Firehall Inc. And Gildas Club Greater Toronto.

It is agreed and understood that all original copies (if original copies are in the possession and control of the Seller) of all the above described appraisals, environmental reports, building plans, and surveys shall be delivered to the Buyer at closing as part of the Purchase Price.

**7. Assignment:**

Buyer shall have the right to assign all of its rights, obligations and liabilities hereunder on or before closing to a company to be incorporated and upon giving Seller notice of such assignment Buyer shall have no further rights, obligations or liabilities hereunder.

**8. Entry by Buyer:**

Buyer and all its authorized agents, representatives and consultants shall have the right (at its sole cost and expense) to enter on the Property at any time and from time to time until closing, upon reasonable notice to the Seller for the purposes of inspections, testing, measuring and examining the Property.

**9. Covenants, Representations and Warranties:**

Seller covenants, represents and warrants, which shall survive and not merge on closing that:

- a) All deliveries of the Seller shall be true and correct when made and on closing; and
- b) The Property shall be in the same condition and state of repair on closing as on the date of acceptance of this offer; and
- c) All chattels and fixtures are now and will on closing be in good repair and operating condition, free of all liens, charges, security interests or mortgages and Seller will have good and marketable title thereto.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

**INITIALS OF BUYER(S):** 

**INITIALS OF SELLER(S):** 



28. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

(Buyer/Authorized Signing Officer)

(Seal)

DATE Aug 5/2010

(Witness)

(Buyer/Authorized Signing Officer)

(Seal)

DATE

I, the Undersigned Seller, agree to the above Offer. I hereby irrevocably instruct my lawyer to pay directly to the Listing Brokerage the unpaid balance of the commission together with applicable Goods and Services Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the Listing Brokerage to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

(Seller/Authorized Signing Officer)

(Seal)

DATE Aug 4/10

(Witness)

(Seller/Authorized Signing Officer)

(Seal)

DATE

**SPOUSAL CONSENT:** The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

(Seal)

DATE

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all

changes both typed and written was finally accepted by all parties at 9:30 a.m./p.m. this 6<sup>th</sup> day

of August, 2010

(Signature of Seller or Buyer)

#### INFORMATION ON BROKERAGE(S)

Listing Brokerage..... Tel.No.....

Co-op/Buyer Brokerage GILLEN, K.P., & CO. REALTY LIMITED, BROKERAGE Tel.No. (416)964-9441

40 SCOLLARD ST., STE. 200 TORONTO

#### ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

(Seller) DATE Aug 9/10

(Seller) DATE

Address for Service.....

Tel.No. 416 489 3171

Seller's Lawyer Walton Advocates Ext 105

Address.....

Tel.No. FAX No.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

(Buyer) DATE

(Buyer) DATE

Address for Service.....

Tel.No.....

Buyer's Lawyer.....

Address.....

Tel.No. FAX No.

#### FOR OFFICE USE ONLY

#### COMMISSION TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale: GILLEN, K.P., & CO. REALTY LIMITED, BROKERAGE  
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.

Acknowledged by:

(Authorized to bind the Listing Brokerage)

(Authorized to bind the Co-operating Brokerage)



# Confirmation of Co-operation and Representation

**BUYER:** Completions International Academy Inc.

**SELLER:** The Old Firehall Inc.

For the transaction on the property known as: 110 Lombard Street Toronto

For the purposes of this Confirmation of Co-operation and Representation, a "Seller" includes a vendor, a landlord, or a prospective, seller, vendor or landlord and a "Buyer" includes a purchaser, a tenant, or a prospective, buyer, purchaser or tenant and a "sale" includes a lease.

The following information is confirmed by the undersigned salesperson/broker representatives of the Brokerage(s). If a Co-operating Brokerage is involved in the transaction, the brokerages agree to co-operate, in consideration of, and on the terms and conditions as set out below.

**DECLARATION OF INSURANCE:** The undersigned salesperson/broker representative(s) of the Brokerage(s) hereby declare that he/she is insured as required by the Real Estate and Business Brokers Act (REBBA) and Regulations.

## PROPERTY SOLD BY BUYER BROKERAGE - PROPERTY NOT LISTED

The Brokerage represents the Buyer and the property is not listed with any real estate brokerage. The Brokerage will be paid

☒ by the Seller in accordance with a Seller Customer Service Agreement

or: ☐ by the Buyer directly

Additional comments and/or disclosures by Buyer Brokerage:

### SIGNED BY THE BROKER/SALESPERSON REPRESENTATIVE(S) OF THE BROKERAGE(S) (Where applicable)

Ashlar Urban Realty Inc.

(Name of Listing Brokerage)  
350 Bay Street Suite 400 Toronto M5H 2S6

Tel.: 416-205-9222 Fax: 416-205-9228

Date: .....

(Authorized to bind the Listing Brokerage)

(Print Name of Broker/Salesperson Representative of the Brokerage)

GILLEN, K.P., & CO. REALTY LIMITED, BROKERAGE

(Name of Co-operating/Buyer Brokerage)  
40 SCOLLARD ST., STE. 200 TORONTO

Tel.: (416)964-9441 Fax: (416)964-7728

Date: .....

(Authorized to bind the Co-operating/Buyer Brokerage)

KEVIN P. GILLEN

(Print Name of Broker/Salesperson Representative of the Brokerage)

### CONSENT FOR MULTIPLE REPRESENTATION (To be completed only if the Brokerage represents more than one client for the transaction.)

The Seller/Buyer consent with their initials to their Brokerage representing more than one client for this transaction.

SELLER'S INITIALS

BUYER'S INITIALS

### ACKNOWLEDGEMENT

I have received, read, and understand the above information.

(Signature of Seller) Date: Aug 9/10

(Signature of Seller) Date: .....

(Signature of Buyer) Date: Aug 6/2010

(Signature of Buyer) Date: .....



This Agreement of Purchase and Sale dated this 15th day of April, 2009

**BUYER,** 1423724 Ontario Limited o/a THE DRAGON ACADEMY, agrees to purchase from  
(Full legal names of all Buyers)

**SELLER,** Gildas Club Greater Toronto the following  
(Full legal names of all Sellers)

**REAL PROPERTY:**

Address: 110 Lombard Street fronting on the North side of Lombard Street

in the City of Toronto

and having a frontage of 64 ft more or less by a depth of 120 ft more or less legally described as

Part of Block A, Reg. Plan 558, Toronto  
(Legal description of land including easements not described elsewhere)

**PURCHASE PRICE:** Two Million Six Hundred Thousand Dollars (CDN\$) 2,600,000.00

**DEPOSIT:** Buyer submits ( Upon acceptance ) Sixty-Five Thousand Dollars Dollars (CDN\$) 65,000.00  
(Herewith/Upon acceptance/as otherwise described in this)

by negotiable cheque payable Ashlar Urban Realty Inc., Brokerage "Deposit Holder"  
to be held in trust without interest pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement.  
Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

**SCHEDULE(S)** \* A \* attached hereto form(s) part of this Agreement.

1. **CHATELS INCLUDED:**  
As per Schedule "A"

2. **FIXTURES EXCLUDED:**  
As per Schedule "A"

3. **RENTAL ITEMS:** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s) if assumable: Hot Water Tank(s)

4. **IRREVOCABILITY:** This Offer shall be irrevocable by Buyer until 5:00 p.m. on the 27th day of April, 20 09  
(Seller/Buyer)

offer which time, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

5. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 30th day of July, 20 09  
Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

6. **NOTICES:** Seller hereby appoints the Listing Brokerage as Agent for the purpose of giving and receiving notices pursuant to this Agreement. Only if the Co-operating Brokerage represents the interests of the Buyer in this transaction, the Buyer hereby appoints the Co-operating Brokerage as Agent for the purpose of giving and receiving notices pursuant to this Agreement. Any notice relating hereto or provided for herein shall be in writing.  
This offer, any counter offer, notice of acceptance thereof, or any notice shall be deemed given and received, when hand delivered to the address for service provided in the Acknowledgement below, or where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

FAX No. 416-205-9228 (For delivery of notices to Seller) FAX No. 416-964-7728 (For delivery of notices to Buyer)

7. **GST:** If this transaction is subject to Goods and Services Tax (GST), then such tax shall be in addition to the Purchase Price.  
The Seller will not collect GST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the GST payable and file the prescribed form and shall indemnify the Seller in respect of any GST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If this transaction is not subject to GST, Seller agrees to certify on or before closing, that the transaction is not subject to GST.

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 15th day of June, 20 09 (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use

CRT4 C20 R40

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.
10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the present use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.
11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the Property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.
12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.
13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller.
14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
17. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.
18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):





20. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
21. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless Seller's spouse has executed the consent hereinafter provided.
22. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
23. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
24. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
25. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
26. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

1423724 Ontario Limited

Per: *Margaret A. Fox*  
Dr. Margaret Fox (Buyer/Authorized Signing Officer)

(Witness)

(Witness)

(Witness)

(Buyer/Authorized Signing Officer)

(Buyer/Authorized Signing Officer)

24/04/09  
DATE  
(Seal)  
DATE  
(Seal)  
DATE  
(Seal)

I, the Undersigned Seller, agree to the above Offer, I hereby irrevocably instruct my lawyer to pay directly to the Listing Broker the unpaid balance of the commission together with applicable Goods and Services Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the Listing Broker to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

Gildas Club Greater Toronto Per:

Per: *David Sutin*  
Gildas Club Greater Toronto (Seller/Authorized Signing Officer)  
DAVID SUTIN, DIRECTOR  
(Seller/Authorized Signing Officer)

(Witness)

(Witness)

(Witness)

(Seller/Authorized Signing Officer)

(Seller/Authorized Signing Officer)

4/29/09  
DATE  
(Seal)  
DATE  
(Seal)  
DATE  
(Seal)

**SPOUSAL CONSENT:** The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

DATE  
(Seal)

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by

all parties at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_  
(Time-am/pm)

(Signature of Seller/Buyer)

**INFORMATION ON BROKERAGE(S)**

Listing Brokerage	Tel. No. (_____)
Co-op/Buyer Brokerage	Tel. No. (_____)

INITIALS OF BUYER(S): *MF*

INITIALS OF SELLER(S): *DS*



# ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

DATE \_\_\_\_\_  
(Gidas Club Greater Toronto Seller)

DATE \_\_\_\_\_  
(1423724 Ontario Limited o/c THE DRAGON ACADEMY Buyer)

DATE \_\_\_\_\_  
(Seller)

DATE \_\_\_\_\_  
(Buyer)

Address for Service \_\_\_\_\_  
Tel No. ( ) \_\_\_\_\_

Address for Service 35 Prince Arthur Avenue, Toronto  
Ontario, M5R 1B2 Tel No. ( 416 ) 323-3243

Seller's Lawyer \_\_\_\_\_  
Address \_\_\_\_\_  
( ) \_\_\_\_\_  
Tel No. \_\_\_\_\_ FAX No. \_\_\_\_\_

Buyer's Lawyer Robert Saunders  
Address 1 Dundas Street West, Suite 2400, Toronto,  
( 416 ) 860-1952 ( 416 ) 860-1953  
Tel No. \_\_\_\_\_ FAX No. \_\_\_\_\_

FOR OFFICE USE ONLY

## COMMISSION TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:

In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the transaction as contemplated in the MLS Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS Rules and shall be subject to and governed by the MLS Rules pertaining to Commission Trust.

DATED as of the date and the time of the acceptance of the foregoing Agreement of Purchase and

acknowledged by:

(Authorized to bind the Listing Brokerage)

(Authorized to bind the Listing Brokerage)



© 2006 OREA Standard Form Do not alter when printing or reproducing the standard pre-set portion.

QuickOffer® [www.nereosoft.com](http://www.nereosoft.com)

Form 500 04/2006 Page 4 of 5

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER** 1423724 Ontario Limited o/a THE DRAGON ACADEMY

**SELLER** Gildas Club Greater Toronto

For the purchase and sale of 110 Lombard Street

City of Toronto

dated 15<sup>th</sup> day of April, 2009  
One Hundred (100,000,00) MF

1. The Buyer agrees to pay a further sum of ~~Sixty-Five Thousand Dollars (\$65,000.00)~~ to Ashlar Urban Realty Inc., by negotiable cheque, within 2 business days after the removal of the Buyer's Conditions as set out hereafter, as a supplementary deposit to be held in trust in the same manner as the initial deposit pending completion or other termination of this Agreement. This amount is to be credited towards the purchase price on completion of this transaction.
2. The Buyer agrees to pay a balance on closing subject to adjustments, by bank draft or certified cheque, to the Seller on completion of this transaction.
3. Intentionally Deleted.
4. The Buyer and the Seller hereby direct the deposit holder to place all deposit monies in an interest bearing account or term deposit, with any accrued interest on the deposit to be paid to the Buyer as soon as possible after completion or other termination of this Agreement. In the event that the closing date is advanced or the transaction is terminated, the Buyer agrees to accept the short-term rate for deposits withdrawn before maturity.
5. All parties agree that this Agreement may be transmitted by the telecopier and that the reproduction of signatures by way of telecopier will be treated as though such reproduction were executed originals and each party undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the date of execution.
6. **Buyer's Conditions:**

Notwithstanding anything to the contrary herein contained, the completion of this agreement shall be conditional upon each of the following conditions precedent in this paragraph 6 being satisfied or complied with on or before the Buyer Deadline, all such conditions being for the exclusive benefit of the Buyer and which may be waived in whole or in part by the Buyer at any time, any such waiver to be ineffective unless made in writing by the Buyer or its solicitors:

- a) The Buyer being satisfied with all the Seller's Deliveries; *as herein after defined MF*
- b) The Buyer being satisfied with the zoning and official plan designation of the Subject Property;

MF

MF

- c) The Buyer being satisfied with respect to the condition of the Subject Property and the improvements thereto;
- d) The Buyer satisfying itself that there are no work orders, deficiency notices or active files affecting the Subject Property by the City of Toronto or other governmental authority;
- e) The Buyer obtaining satisfactory financing to complete the transaction;
- f) The Buyer being satisfied with the operating expenses of the Property; and
- g) The Buyer being satisfied with the condition of the chattels and fixtures; *included in the purchase price, if any.* **MF**

*without deduction or interest* **MF**  
In the event any of the foregoing conditions have not been satisfied or complied with or waived by the Buyer on or before the Buyer Deadline, the Buyer shall have the sole right and option to terminate this agreement by notice in writing to the Seller in which event the Deposit shall be returned forthwith to the Buyer. In the event the Buyer does not waive all of the conditions on or before the Buyer's Deadline, the conditions in this paragraph 6 shall be deemed not to have been waived and satisfied.

For each of the conditions herein the Buyer must be satisfied in its sole and unfettered discretion. The Buyer's Deadline referred to in this Section 6 shall be 5:00 PM on the day that is 30 days after the Seller has delivered all of the Seller's Deliveries referred to below.

**7. Seller's Deliveries:**

Within five (5) business days of acceptance of the Offer to Purchase, The Seller agrees to supply to the Buyer the following if such are in the Seller's possession or control:

- a) All environmental reports and audits, pre-purchase reports, and any other reports relating to the environmental condition of the building or the land; and
- b) An existing survey completed by an Ontario Land Surveyor showing the current location of all buildings, structures, additions, fences, improvements, easements, right-of-way and encroachments affecting the property; and
- c) Provide a written authorization drafted by the Buyer to all municipal and governmental and other authorities having jurisdiction over the real property to release to the Buyer all information such authorities have on file respecting the property; and
- d) All architectural building plans, mechanical drawings, electrical drawings, structural engineering plans, renovation plans, contracts, estimates, "as built" building plans, and any other plans relating to the building; and
- e) All warranties and service manuals applicable to any equipment or chattels included in the purchase price; and
- f) All financial statements confirming operating expenses relating to

*Copies of* **MF**

**12. Leaseback:**

The Buyer and Seller covenant and agree to enter into a Leaseback (the "Leaseback") of the Property between the Seller as Tenant and the Buyer as Landlord which shall contain the following terms:

- a) The Term of the Leaseback shall begin on closing and terminate on July 29, 2010 (the "Term");
- b) Upon termination of the Term Tenant shall deliver vacant possession of the Property to Landlord in good condition and repair;
- c) Tenant shall pay the costs to operate, maintain and repair the Property during the Term including without limiting the generality of the foregoing realty taxes, insurance, utilities, maintenance and repair costs; *with the exception of structural repairs*
- d) ~~Tenant shall pay an annual net/net rental of \$15.00 per rentable square foot, based on 13,823 sq. ft. gross leasable area, being \$17,278.75.00 monthly;~~  
*USE FIFTEEN (15.00) dollars*
- e) Such other terms as the parties shall agree upon.

This Agreement shall be conditional until the Buyers Deadline upon the parties agreeing to the remaining terms of the Leaseback in form and content. In the event that each of the parties does not deliver a notice in writing to the other party by the Buyer's Deadline that the Leaseback has been approved in form and content by such party then this Agreement shall be null and void and of no further effect and the deposit returned to the Buyer forthwith.

*MF* *[Signature]*



Paul Fruitman  
Direct: (416) 596-2870  
pfruitman@counsel-toronto.com  
File No. 13183

**LAX O'SULLIVAN SCOTT LISUS LLP**  
Suite 2750, 145 King Street West  
Toronto ON M5H 1J8 Canada  
Tel: 416 598 1744 Fax: 416 598 3730

**LAX  
O'SULLIVAN  
SCOTT  
LISUS**

October 22, 2014

**VIA EMAIL**

Mr. Mark Dunn  
Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

Dear Mr. Dunn:

**Re: 346C Jarvis**

We write further to my letter of October 7, 2014, my email of October 16, 2014 and our discussion concerning on the release of this property from Justice Brown's August 12, 2014 Order.

We understand that your concern about releasing 346C Jarvis stems from uncertainty as to the equity the Carreiros had in 110 Lombard Street, a portion of which was used to fund the purchase of 346 Jarvis. We have attached some additional documents we trust will allay these concerns.

First, and for reference, we have re-attached the Agreements of Purchase and Sale respecting:

1. The 2009 purchase of 110 Lombard by The Old Firehall Inc., a Walton entity in which the Carreiros were investors<sup>1</sup>, and;
2. The 2010 sale of the property by The Old Firehall Inc.

These agreements show that the The Old Firehall Inc. sold the property in 2010 for \$900,000 more than it paid in 2009. We have also attached the current parcel register for 110 Lombard and one from the time of The Old Firehall Inc.'s purchase.

To further evidence the Carreiros as bona fide purchasers for value, we have enclosed documents showing the source of the funds the Carreiros used to invest in 110 Lombard. Specifically, the Carreiros funded their investment with a mortgage over a property they owned at 221 Avenue Road. Attached are:

1. The parcel register for 221 Avenue Road. It shows that the Carreiros purchased the property in 2005 and mortgaged it on several occasions,

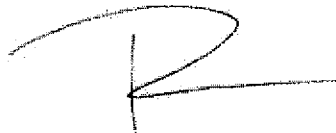
including on September 10, 2009, the date the Lombard Street purchase by The Old Firehall Inc. closed;

2. A letter from Norma Walton to Seymour German dated August 11, 2009 regarding a proposed mortgage over 221 Avenue by 368230 Ontario Limited;
3. A September 10, 2009 Charge over 221 Avenue Road in the amount of \$620,000 in favour of 368230 Ontario Limited;
4. A discharge statement from First National Financial dated September 3, 2009 in the amount of \$281,053.84.

The Carreiros used the \$620,000 advanced by 368230 Ontario Limited to discharge First National's mortgage and the remaining \$338,946.16 to pay for their 40% share of 110 Lombard Street. When the property sold in 2010, they received \$372,192.90 (see attached ledger statement), from which they used \$106,718.00 to complete the purchase of 346C Jarvis.

Given the above, there should be not doubt that the Carreiros's purchase of 346C Jarvis was bona fide. Please confirm that the property has been released and that the Carreiros are free to deal with 346C Jarvis as they see fit.

Yours truly,

A handwritten signature in black ink, appearing to be 'P. Fruitman', with a large, stylized 'P' and a horizontal line extending to the right.

Paul Fruitman

PF/amh  
Enclosures

---

<sup>1</sup> Note that while the Agreement of Purchase and Sale lists The Dragon Academy as the buyer, this was changed to The Old Firehall Inc. at the time of transfer. See the attached PIN for 110 Lombard Street.

I

This Agreement of Purchase and Sale dated this 4th day of August 2010

**BUYER**, Completions International Academy Inc., agrees to purchase from  
(Full legal names of all Buyers)

**SELLER**, The Old Firehall Inc., the following  
(Full legal names of all Sellers)

**REAL PROPERTY:**

Address 110 Lombard Street fronting on the north side  
of Lombard Street in the City of Toronto

and having a frontage of 64 ft more or less by a depth of 120 ft more or less

and legally described as Part of Block A, Reg. Plan 558, Toronto PIN 214020118

(Legal description of land including easements not described elsewhere) the "property".

**PURCHASE PRICE:**

Five Hundred  
Three Million Two Hundred Fifty Thousand Dollars (CDN\$) 3,250,000.00

**DEPOSIT:** Buyer submits upon acceptance  
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

Fifty Thousand Dollars (CDN\$) 50,000.00

by negotiable cheque payable to Walton Advocates in Trust "Deposit Holder"  
to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion.  
For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the  
Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that,  
unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's  
non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

**Buyer agrees to pay the balance as more particularly set out in Schedule A attached.**

**SCHEDULE(S) A** attached hereto form(s) part of this Agreement.

1. **IRREVOCABILITY:** This Offer shall be irrevocable by Buyer Seller until 5:00 p.m. on  
(Seller/Buyer)  
the 6th day of August 2010, after which time, if not accepted, this  
Offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 14th day  
of October, 2010. Upon completion, vacant possession of the property shall be given to the  
Buyer unless otherwise provided for in this Agreement.

3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant  
to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby  
appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a  
Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled  
or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any  
notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto,  
this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule  
hereto shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the  
Acknowledgement below, or where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

FAX No. 416-489-9973 (For delivery of notices to Seller) FAX No. 416-964-7728 (For delivery of notices to Buyer)

**INITIALS OF BUYER(S):** KE

**INITIALS OF SELLER(S):** [Signature]

4. **CHATELS INCLUDED:**

As per Schedule "A"

5. **FIXTURES EXCLUDED:**

As per Schedule "A"

6. **RENTAL ITEMS:** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

7. **GST/HST:** If the sale of the property (Real Property as described above) is subject to Goods and Services Tax (GST) or Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect GST or HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the GST or HST payable and file the prescribed form and shall indemnify the Seller in respect of any GST or HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to GST or HST, Seller agrees to certify on or before closing, that the transaction is not subject to GST or HST. Any HST on chattels, if applicable, is not included in the purchase price.

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 1<sup>st</sup> day of October, 2010, (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use (CRT4.0 C2.0 R4.0) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the Property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller.
14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
17. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.
18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
20. **PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
21. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
22. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless Seller's spouse has executed the consent hereinafter provided.
23. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
24. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
25. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
26. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
27. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** Completions International Academy Inc. ...., and

**SELLER,** The Old Firehall Inc. ....

for the purchase and sale of 110 Lombard Street ..... Toronto .....

..... dated the 4th ..... day of August ..... 2010 .....

Buyer agrees to pay the balance as follows:

1. The Buyer agrees to pay a further sum of Fifty Thousand Dollars (\$50,000.00), to Walton Advocates in Trust., by negotiable cheque, within 2 business days after the removal of the Buyer's Conditions as set out hereafter, as a supplementary deposit to be held in trust in the same manner as the initial deposit pending completion or other termination of this Agreement. This amount is to be credited towards the purchase price on completion of this transaction.

2. The Buyer agrees to pay a balance on closing subject to adjustments, by bank draft or certified cheque, to the Seller on completion of this transaction.

3. The Buyer and the Seller hereby direct the deposit holder to place all deposit monies in an interest bearing account or term deposit, with any accrued interest on the deposit to be paid to the Buyer as soon as possible after completion or other termination of this Agreement. In the event that the closing date is advanced or the transaction is terminated, the Buyer agrees to accept the short-term rate for deposits withdrawn before maturity.

4. All parties agree that this Agreement may be transmitted by the telecopier and that the reproduction of signatures by way of telecopier will be treated as though such reproduction were executed originals and each party undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the date of execution.

5. Buyer's Conditions:

Notwithstanding anything to the contrary herein contained, the completion of this agreement shall be conditional upon each of the following conditions precedent in this paragraph 6 being satisfied or complied with on or before the Buyer Deadline, all such conditions being for the exclusive benefit of the Buyer and which may be waived in whole or in part by the Buyer at any time, any such waiver to be ineffective unless made in writing by the Buyer or its solicitors:

- a) The Buyer being satisfied with all the Seller's Deliveries;
- b) The Buyer being satisfied with the zoning and official plan designation of the Subject Property;
- c) The Buyer being satisfied with respect to the condition of the Subject Property and the improvements thereto;
- d) The Buyer satisfying itself that there are no work orders, deficiency notices or active files affecting the Subject Property by the City of Toronto or other governmental authority;
- e) The Buyer obtaining satisfactory financing to complete the transaction;
- f) The Buyer being satisfied with the operating expenses of the Property; and

This form must be initialed by all parties to the Agreement of Purchase and Sale.

**INITIALS OF BUYER(S):** 

**INITIALS OF SELLER(S):** 

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** Completions International Academy Inc. ...., and

**SELLER,** The Old Firehall Inc. ....

for the purchase and sale of 110 Lombard Street ..... Toronto

..... dated the 4th ..... day of August ..... 2010

Buyer agrees to pay the balance as follows:

- g) The Buyer being satisfied with the condition of the chattels and fixtures; and
- h) The Buyer being satisfied with the existing lease to be assumed at closing with Gildas Club Greater Toronto; and
- i) The Buyer being satisfied that the Seller will completely remediate the cause of the existing water seepage into the basement at its sole expense on or before closing.

In the event any of the foregoing conditions have not been satisfied or complied with or waived by the Buyer on or before the Buyer Deadline, the Buyer shall have the sole right and option to terminate this agreement by notice in writing to the Seller in which event the Deposit shall be returned forthwith to the Buyer. In the event the Buyer does not waive all of the conditions on or before the Buyer's Deadline, the conditions in this paragraph 6 shall be deemed not to have been waived and satisfied.

For each of the conditions herein the Buyer must be satisfied in its sole and unfettered discretion. The Buyer's Deadline referred to in this Section 6 shall be 5:00 PM on the day that is 30 days after the Seller has delivered all of the Seller's Deliveries referred to below.

**6. Seller's Deliveries:**

Within five (5) business days of acceptance of the Offer to Purchase, The Seller agrees to supply to the Buyer the following if such are in the Seller's possession or control:

- a) All environmental reports and audits, pre-purchase reports, and any other reports relating to the environmental condition of the building or the land; and
- b) An existing survey completed by an Ontario Land Surveyor showing the current location of all buildings, structures, additions, fences, improvements, easements, right- of-way and encroachments affecting the property; and
- c) Provide a written authorization drafted by the Buyer to all municipal and governmental and other authorities having jurisdiction over the real property to release to the Buyer all information such authorities have on file respecting the property; and
- d) All architectural building plans, mechanical drawings, electrical drawings, structural engineering plans, renovation plans, contracts, estimates, "as built" building plans, and any other plans relating to the building; and
- e) All warranties and service manuals applicable to any equipment or chattels included in the purchase price; and

This form must be initialed by all parties to the Agreement of Purchase and Sale.

**INITIALS OF BUYER(S):**



**INITIALS OF SELLER(S):**



This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** Completions International Academy Inc. ...., and

**SELLER,** The Old Firehall Inc. ....

for the purchase and sale of 110 Lombard Street ..... Toronto

..... dated the 4th ..... day of August ..... 2010

Buyer agrees to pay the balance as follows:

f) All financial statements confirming operating expenses relating to the property along with building expense invoices including property tax assessments for 2009 and 2010 and utility bills showing the yearly expense for gas, water, hydro and other building expenses along with copies of all building maintenance that has been performed in the past five years and the building maintenance plan going forward, if one exists; and

g) A list of all chattels and fixtures included in the Purchase Price.

h) All leases and/or offers to lease currently affecting the property including a true copy of the current lease between The Old Firehall Inc. And Gildas Club Greater Toronto.

It is agreed and understood that all original copies (if original copies are in the possession and control of the Seller) of all the above described appraisals, environmental reports, building plans, and surveys shall be delivered to the Buyer at closing as part of the Purchase Price.

**7. Assignment:**

Buyer shall have the right to assign all of its rights, obligations and liabilities hereunder on or before closing to a company to be incorporated and upon giving Seller notice of such assignment Buyer shall have no further rights, obligations or liabilities hereunder.

**8. Entry by Buyer:**

Buyer and all its authorized agents, representatives and consultants shall have the right (at its sole cost and expense) to enter on the Property at any time and from time to time until closing, upon reasonable notice to the Seller for the purposes of inspections, testing, measuring and examining the Property.

**9. Covenants, Representations and Warranties:**

Seller covenants, represents and warrants, which shall survive and not merge on closing that:

- a) All deliveries of the Seller shall be true and correct when made and on closing; and
- b) The Property shall be in the same condition and state of repair on closing as on the date of acceptance of this offer; and
- c) All chattels and fixtures are now and will on closing be in good repair and operating condition, free of all liens, charges, security interests or mortgages and Seller will have good and marketable title thereto.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

**INITIALS OF BUYER(S):** 

**INITIALS OF SELLER(S):** 



28. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

(Buyer/Authorized Signing Officer)

(Seal)

DATE Aug 5/2010

(Witness)

(Buyer/Authorized Signing Officer)

(Seal)

DATE

I, the Undersigned Seller, agree to the above Offer. I hereby irrevocably instruct my lawyer to pay directly to the Listing Brokerage the unpaid balance of the commission together with applicable Goods and Services Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the Listing Brokerage to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

(Seller/Authorized Signing Officer)

(Seal)

DATE Aug. 4/10

(Witness)

(Seller/Authorized Signing Officer)

(Seal)

DATE

**SPOUSAL CONSENT:** The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

(Seal)

DATE

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 9:30 a.m./p.m. this 6<sup>th</sup> day of August, 2010.

**INFORMATION ON BROKERAGE(S)**

Listing Brokerage..... Tel.No.....

Co-op/Buyer Brokerage GILLEN, K.P., & CO. REALTY LIMITED, BROKERAGE Tel.No. (416)964-9441

40 SCOLLARD ST., STE. 200 TORONTO

**ACKNOWLEDGEMENT**

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

(Seller)

DATE Aug 9/10

(Buyer)

DATE

(Seller)

DATE

(Buyer)

DATE

Address for Service.....

Address for Service.....

Tel.No. 416 489 3771

Tel.No.

Seller's Lawyer Walton Advocates Ext 105

Buyer's Lawyer.....

Address.....

Address.....

Tel.No.

FAX No.

Tel.No.

FAX No.

**FOR OFFICE USE ONLY**

**COMMISSION TRUST AGREEMENT**

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale: GILLEN, K.P., & CO. REALTY LIMITED, BROKERAGE  
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.

Acknowledged by:

(Authorized to bind the Listing Brokerage)

(Authorized to bind the Co-operating Brokerage)



# Confirmation of Co-operation and Representation

**BUYER:** Completions International Academy Inc.

**SELLER:** The Old Firehall Inc.

For the transaction on the property known as: 110 Lombard Street Toronto

For the purposes of this Confirmation of Co-operation and Representation, a "Seller" includes a vendor, a landlord, or a prospective, seller, vendor or landlord and a "Buyer" includes a purchaser, a tenant, or a prospective, buyer, purchaser or tenant and a "sale" includes a lease.

The following information is confirmed by the undersigned salesperson/broker representatives of the Brokerage(s). If a Co-operating Brokerage is involved in the transaction, the brokerages agree to co-operate, in consideration of, and on the terms and conditions as set out below.

**DECLARATION OF INSURANCE:** The undersigned salesperson/broker representative(s) of the Brokerage(s) hereby declare that he/she is insured as required by the Real Estate and Business Brokers Act (REBBA) and Regulations.

## PROPERTY SOLD BY BUYER BROKERAGE - PROPERTY NOT LISTED

The Brokerage represents the Buyer and the property is not listed with any real estate brokerage. The Brokerage will be paid

☒ by the Seller in accordance with a Seller Customer Service Agreement

or: ☐ by the Buyer directly

Additional comments and/or disclosures by Buyer Brokerage:

### SIGNED BY THE BROKER/SALESPERSON REPRESENTATIVE(S) OF THE BROKERAGE(S) (Where applicable)

Ashlar Urban Realty Inc.

(Name of Listing Brokerage)  
350 Bay Street Suite 400 Toronto M5H 2S6

Tel: 416-205-9222 Fax: 416-205-9228

Date: \_\_\_\_\_  
(Authorized to bind the Listing Brokerage)

(Print Name of Broker/Salesperson Representative of the Brokerage)

GILLEN, K.P., & CO. REALTY LIMITED, BROKERAGE

(Name of Co-operating/Buyer Brokerage)  
40 SCOLLARD ST., STE. 200 TORONTO

Tel: (416)964-9441 Fax: (416)964-7728

Date: \_\_\_\_\_  
(Authorized to bind the Co-operating/Buyer Brokerage)

KEVIN P. GILLEN

(Print Name of Broker/Salesperson Representative of the Brokerage)

### CONSENT FOR MULTIPLE REPRESENTATION (To be completed only if the Brokerage represents more than one client for the transaction.)

The Seller/Buyer consent with their initials to their Brokerage representing more than one client for this transaction.

SELLER'S INITIALS

BUYER'S INITIALS

I have received, read, and understand the above information.

(Signature of Seller) Date: Aug 9/10

(Signature of Seller) Date: \_\_\_\_\_

(Signature of Buyer) Date: Aug 6/2010

(Signature of Buyer) Date: \_\_\_\_\_

II

This Agreement of Purchase and Sale dated this 15th day of April, 2009

**BUYER,** 1423724 Ontario Limited o/a THE DRAGON ACADEMY, agrees to purchase from  
(Full legal names of all Buyers)

**SELLER,** Gildas Club Greater Toronto the following  
(Full legal names of all Sellers)

**REAL PROPERTY:**

Address: 110 Lombard Street fronting on the North side of Lombard Street

in the City of Toronto

and having a frontage of 64 ft more or less by a depth of 120 ft more or less legally described as

Part of Block A, Reg. Plan 558, Toronto  
(Legal description of land including easements not shown elsewhere)

**PURCHASE PRICE:** Two Million Six Hundred Thousand Dollars (CDN\$ 2,600,000.00)

**DEPOSIT:** Buyer submits ( Upon acceptance ) Sixty-Five Thousand Dollars Dollars (CDN\$ 65,000.00)

by negotiable cheque payable Ashlar Urban Realty Inc., Brokerage "Deposit Holder"  
to be held in trust without interest pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement.  
Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

**SCHEDULE(S)** \* A \* attached hereto form(s) part of this Agreement.

1. **CHATELS INCLUDED:**  
As per Schedule "A"

2. **FIXTURES EXCLUDED:**  
As per Schedule "A"

3. **RENTAL ITEMS:** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s) if assumable: Hot Water Tank(s)

4. **IRREVOCABILITY:** This Offer shall be irrevocable by Buyer until 5:00 p.m. on the 27th day of April, 2009  
(Seller/Buyer)

after which time, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

5. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 30th day of July, 2009  
Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

6. **NOTICES:** Seller hereby appoints the Listing Brokerage as Agent for the purpose of giving and receiving notices pursuant to this Agreement. Only if the Co-operating Brokerage represents the interests of the Buyer in this transaction, the Buyer hereby appoints the Co-operating Brokerage as Agent for the purpose of giving and receiving notices pursuant to this Agreement. Any notice relating hereto or provided for herein shall be in writing.

This offer, any counter offer, notice of acceptance thereof, or any notice shall be deemed given and received, when hand delivered to the address for service provided in the Acknowledgement below, or where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

FAX No. 416-205-9228 (For delivery of notices to Seller) FAX No. 416-964-7728 (For delivery of notices to Buyer)

7. **GST:** If this transaction is subject to Goods and Services Tax (GST), then such tax shall be in addition to the Purchase Price.  
The Seller will not collect GST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the GST payable and file the prescribed form and shall indemnify the Seller in respect of any GST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If this transaction is not subject to GST, Seller agrees to certify on or before closing, that the transaction is not subject to GST.

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 15th day of June, 2009 (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use

CR 14 C2.0 R4.0

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



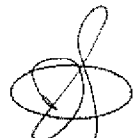
may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.
10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the present use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire in favour of the Buyer and any mortgagee, (with all related costs of the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.
11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the Property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.
12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion..
13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller.
14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
17. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.
18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):





20. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
21. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless Seller's spouse has executed the consent hereinafter provided.
22. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
23. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
24. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
25. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
26. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

1423724 Ontario Limited

Per: Margaret Aetix  
Dr. meg Fox (Buyer/Authorized Signing Officer)

24/04/09  
DATE  
(Seal)  
DATE  
(Seal)  
DATE  
(Seal)

(Witness)

(Buyer/Authorized Signing Officer)

(Witness)

(Buyer/Authorized Signing Officer)

I, the Undersigned Seller, agree to the above Offer, I hereby irrevocably instruct my lawyer to pay directly to the Listing Broker the unpaid balance of the commission together with applicable Goods and Services Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the Listing Broker to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

Gildas Club Greater Toronto Per:

Per: DAVID SUTIN, DIRECTOR  
Gildas Club Greater Toronto (Seller/Authorized Signing Officer)

4/29/09  
DATE  
(Seal)  
DATE  
(Seal)  
DATE  
(Seal)

(Witness)

(Seller/Authorized Signing Officer)

(Witness)

(Seller/Authorized Signing Officer)

**SPOUSAL CONSENT:** The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

DATE  
(Seal)

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by

all parties at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_  
(Time-am/pm)

(Signature of Seller/Buyer)

**INFORMATION ON BROKERAGE(S)**

Listing Brokerage

Tel. No. ( )

Co-op/Buyer Brokerage

Tel. No. ( )

INITIALS OF BUYER(S):

MEF

INITIALS OF SELLER(S):

[Signature]



# ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

DATE \_\_\_\_\_  
(Galdas Club Greater Toronto Seller)

DATE \_\_\_\_\_  
(Seller)

Address for Service \_\_\_\_\_

Tel No. ( ) \_\_\_\_\_

Seller's Lawyer \_\_\_\_\_

Address \_\_\_\_\_

( ) \_\_\_\_\_  
Tel No. \_\_\_\_\_ FAX No. \_\_\_\_\_

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

DATE \_\_\_\_\_  
(1423724 Ontario Limited o/a THE DRAGON ACADEMY Buyer)

DATE \_\_\_\_\_  
(Buyer)

Address for Service 35 Prince Arthur Avenue, Toronto

Ontario, M5R 1B2 Tel No. ( 416 ) 323-3243

Buyer's Lawyer Robert Saunders

Address 1 Dundas Street West, Suite 2400, Toronto,

( 416 ) 860-1952 ( 416 ) 860-1953  
Tel No. \_\_\_\_\_ FAX No. \_\_\_\_\_

FOR OFFICE USE ONLY

## COMMISSION TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:  
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the transaction as contemplated in the MLS Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS Rules and shall be subject to and governed by the MLS Rules pertaining to Commission Trust.

DATED as of the date and the time of the acceptance of the foregoing Agreement of Purchase and

acknowledged by:

(Authorized to bind the Listing Brokerage)

(Authorized to bind the Listing Brokerage)



© 2006 OREA Standard Form Do not alter when printing or reproducing the standard pre-set portion.

QuickOffer® [www.herepsoft.com](http://www.herepsoft.com)

Form 500 04/2006 Page 4 of 5

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER** 1423724 Ontario Limited o/a THE DRAGON ACADEMY

**SELLER** Gildas Club Greater Toronto

For the purchase and sale of 110 Lombard Street

City of Toronto

dated 15<sup>th</sup> day of April, 2009  
One Hundred (100,000.00) MF

1. The Buyer agrees to pay a further sum of ~~Sixty-Five Thousand Dollars (\$65,000.00)~~, to Ashlar Urban Realty Inc., by negotiable cheque, within 2 business days after the removal of the Buyer's Conditions as set out hereafter, as a supplementary deposit to be held in trust in the same manner as the initial deposit pending completion or other termination of this Agreement. This amount is to be credited towards the purchase price on completion of this transaction.
2. The Buyer agrees to pay a balance on closing subject to adjustments, by bank draft or certified cheque, to the Seller on completion of this transaction.
3. Intentionally Deleted.
4. The Buyer and the Seller hereby direct the deposit holder to place all deposit monies in an interest bearing account or term deposit, with any accrued interest on the deposit to be paid to the Buyer as soon as possible after completion or other termination of this Agreement. In the event that the closing date is advanced or the transaction is terminated, the Buyer agrees to accept the short-term rate for deposits withdrawn before maturity.
5. All parties agree that this Agreement may be transmitted by the telecopier and that the reproduction of signatures by way of telecopier will be treated as though such reproduction were executed originals and each party undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the date of execution.
6. **Buyer's Conditions:**

Notwithstanding anything to the contrary herein contained, the completion of this agreement shall be conditional upon each of the following conditions precedent in this paragraph 6 being satisfied or complied with on or before the Buyer Deadline, all such conditions being for the exclusive benefit of the Buyer and which may be waived in whole or in part by the Buyer at any time, any such waiver to be ineffective unless made in writing by the Buyer or its solicitors:

- a) The Buyer being satisfied with all the Seller's Deliveries; *as herein after defined MF*
- b) The Buyer being satisfied with the zoning and official plan designation of the Subject Property;

MF

MF

- c) The Buyer being satisfied with respect to the condition of the Subject Property and the improvements thereto;
- d) The Buyer satisfying itself that there are no work orders, deficiency notices or active files affecting the Subject Property by the City of Toronto or other governmental authority;
- e) The Buyer obtaining satisfactory financing to complete the transaction;
- f) The Buyer being satisfied with the operating expenses of the Property; and
- g) The Buyer being satisfied with the condition of the chattels and fixtures; *included in the purchase price, if any.* **MF**

In the event any of the foregoing conditions have not been satisfied or complied with or waived by the Buyer on or before the Buyer Deadline, the Buyer shall have the sole right and option to terminate this agreement by notice in writing to the Seller in which event the Deposit shall be returned forthwith to the Buyer. In the event the Buyer does not waive all of the conditions on or before the Buyer's Deadline, the conditions in this paragraph 6 shall be deemed not to have been waived and satisfied.

*without deduction or interest* **MF**

For each of the conditions herein the Buyer must be satisfied in its sole and unfettered discretion. The Buyer's Deadline referred to in this Section 6 shall be 5:00 PM on the day that is 30 days after the Seller has delivered all of the Seller's Deliveries referred to below.

**7. Seller's Deliveries:**

Within five (5) business days of acceptance of the Offer to Purchase, The Seller agrees to supply to the Buyer the following if such are in the Seller's possession or control:

- a) All environmental reports and audits, pre-purchase reports, and any other reports relating to the environmental condition of the building or the land; and
- b) An existing survey completed by an Ontario Land Surveyor showing the current location of all buildings, structures, additions, fences, improvements, easements, right-of-way and encroachments affecting the property; and
- c) Provide a written authorization drafted by the Buyer to all municipal and governmental and other authorities having jurisdiction over the real property to release to the Buyer all information such authorities have on file respecting the property; and
- d) All architectural building plans, mechanical drawings, electrical drawings, structural engineering plans, renovation plans, contracts, estimates, "as built" building plans, and any other plans relating to the building; and
- e) All warranties and service manuals applicable to any equipment or chattels included in the purchase price; and
- f) All financial statements confirming operating expenses relating to

*Copies of*

**MF**

**MF**

*[Signature]*

**12. Leaseback:**

The Buyer and Seller covenant and agree to enter into a Leaseback (the "Leaseback") of the Property between the Seller as Tenant and the Buyer as Landlord which shall contain the following terms:

- a) The Term of the Leaseback shall begin on closing and terminate on July 29, 2010 (the "Term");
- b) Upon termination of the Term Tenant shall deliver vacant possession of the Property to Landlord in good condition and repair;
- c) Tenant shall pay the costs to operate, maintain and repair the Property during the Term including without limiting the generality of the foregoing, realty taxes, insurance, utilities, maintenance and repair costs; *with the exception of structural repairs*
- d) *USE FIFTEEN* ~~Ten~~ *thirteen* ~~(\$15.00)~~ *(\$13.00)* dollars Tenant shall pay an annual net/net rental of \$13.00 per rentable square foot, based on 13,823 sq. ft. gross leasable area, being \$17,278.75.00 monthly;
- e) Such other terms as the parties shall agree upon.

This Agreement shall be conditional until the Buyers Deadline upon the parties agreeing to the remaining terms of the Leaseback in form and content. In the event that each of the parties does not deliver a notice in writing to the other party by the Buyer's Deadline that the Leaseback has been approved in form and content by such party then this Agreement shall be null and void and of no further effect and the deposit returned to the Buyer forthwith.

*ME* 

**III**

LAND  
REGISTRY  
OFFICE #66

21402-0118 (LT)

PAGE 1 OF 2  
PREPARED FOR NWalton01  
ON 2010/04/12 AT 16:11:59

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

**PROPERTY DESCRIPTION:** PT BLK A PL 558 CITY EAST PT 1, 63R3640 EXCEPT PT 8, 64R16763; S/T EASE OVER PART 1 PLAN 66R20421 IN FAVOUR OF OWNERS OF PARTS 1, 2, 3, 4, 5, 6 AND 7 PLAN 66R19702 AS IN AT334381; S/T AN TEMPORARY EASEMENT OVER PRT 1, PL-66R-20421 IN FAVOUR OF LT 4 & PRT LT 3 NRTH SIDE LOMBARD ST. PL-9A, AS SET OUT IN CT-299235 AS IN AT-416451. CITY OF TORONTO.

**PROPERTY REMARKS:** CORRECTION: INSTRUMENT NUMBER 66R20421 WAS OMITTED FROM THIS PROPERTY IN ERROR AND WAS ADDED AND CERTIFIED ON 2004/02/25 BY CHRIS T JUBB.

**ESTATE/QUALIFIER:**  
FEE SIMPLE  
LT CONVERSION QUALIFIED

**RECENTLY:**  
FIRST CONVERSION FROM BOOK

**PIN CREATION DATE:**  
2003/09/22

**OWNERS' NAMES**                      **CAPACITY SHARE**  
THE OLD FIREHALL INC.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2003/09/22 **						
63BA435	1973/07/26	PLAN BOUNDRIES ACT				C
REMARKS: CT10729; A401041						
CORRECTIONS: 'DATE OF REGN.' CHANGED FROM '1973/08/15' TO '1973/07/26' ON 2003/08/20 BY KARL WIERCINSKI.						
63R3640	1986/07/09	PLAN REFERENCE				C
CT817878	1986/09/25	BYLAW				C
CA667414	2000/05/29	NOTICE		GILDA'S CLUB GREATER TORONTO	CITY OF TORONTO	C
CORRECTIONS: 'PARTY' CHANGED FROM 'GIDA'S CLUB GREATER TORONTO' TO 'GILDA'S CLUB GREATER TORONTO' ON 2004/03/30 BY MARIA RODRIGUES.						
64R16763	2000/09/01	PLAN REFERENCE				C
CA687865	2000/09/14	AGREEMENT			CITY OF TORONTO	C
REMARKS: SKETCH ATTACHED.						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
CA791798	2002/11/14	BYLAW				C
66R20421	2003/05/16	PLAN REFERENCE				C
		REMARKS: LAND TITLES : PART OF LOT 9, PLAN 9-A, TORONTO AS PART 2 THEREON AND LAND REGISTRY : PART OF BLOCK A, PLAN 558, TORONTO AS PART 1 THEREON.				
CA804278	2003/08/12	BYLAW EX PART LOT				C
AT334381	2003/11/14	TRANSFER EASEMENT		GILDA'S CLUB GREATER TORONTO	INTRACORP DEVELOPMENTS (FRENCH QUARTER II) LTD.	C
AT416451	2004/02/25	TRANSFER EASEMENT	\$2	GILDA'S CLUB GREATER TORONTO	HUMBOLD PROPERTIES LIMITED	C
AT2172706	2009/09/10	TRANSFER	\$2,600,000	GILDA'S CLUB GREATER TORONTO	THE OLD FIREHALL INC.	C
		REMARKS: PLANNING ACT STATEMENTS				
AT2172811	2009/09/10	NOTICE		THE OLD FIREHALL INC.		C
		REMARKS: CA687865				
AT2172990	2009/09/10	CHARGE	\$2,000,000	THE OLD FIREHALL INC.	368230 ONTARIO LIMITED	C
AT2172991	2009/09/10	NO ASSGN RENT GEN		THE OLD FIREHALL INC.	368230 ONTARIO LIMITED	C
		REMARKS: AT2172990				
AT2172992	2009/09/10	CHARGE	\$150,000	THE OLD FIREHALL INC.	ZUKERMAN, SOPHIE ZUKERMAN, STANLEY ESKIND, JANET	C
AT2172993	2009/09/10	NO ASSGN RENT GEN		THE OLD FIREHALL INC.	ZUKERMAN, SOPHIE ZUKERMAN, STANLEY ESKIND, JANET	C
		REMARKS: AT2172992				

**IV**

LAND  
REGISTRY  
OFFICE #66

21402-0118 (LT)

PAGE 1 OF 4  
PREPARED FOR APRIL  
ON 2014/10/21 AT 14:55:17

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

**PROPERTY DESCRIPTION:** PT BLK A PL 558 CITY EAST PT 1, 63R3640 EXCEPT PT 8, 64R16763; S/T EASE OVER PART 1 PLAN 66R20421 IN FAVOUR OF OWNERS OF PARTS 1, 2, 3, 4, 5, 6 AND 7 PLAN 66R19702 AS IN AT334381; S/T AN TEMPORARY EASEMENT OVER PRT 1, PL-66R-20421 IN FAVOUR OF LT 4 & PRT LT 3 NRTH SIDE LOMBARD ST. PL-9A, AS SET OUT IN CT-299235 AS IN AT-416451. CITY OF TORONTO.

**PROPERTY REMARKS:** CORRECTION: INSTRUMENT NUMBER 66R20421 WAS OMITTED FROM THIS PROPERTY IN ERROR AND WAS ADDED AND CERTIFIED ON 2004/02/25 BY CHRIS T JUBB.

**ESTATE/QUALIFIER:**  
FEE SIMPLE  
LT CONVERSION QUALIFIED

**RECENTLY:**  
FIRST CONVERSION FROM BOOK

**PIN CREATION DATE:**  
2003/09/22

**OWNERS' NAMES**  
DEFT INVESTMENTS INC.

**CAPACITY SHARE**

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2003/09/19 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
**	SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO LAND TITLES: 2003/09/22 **						
63BA435	1973/07/26	PLAN BOUNDRIES ACT				C
REMARKS: CT10729; A401041						
CORRECTIONS: 'DATE OF REGN.' CHANGED FROM '1973/08/15' TO '1973/07/26' ON 2003/08/20 BY KARL WIERCINSKI.						
63R3640	1986/07/09	PLAN REFERENCE				C
CT817878	1986/09/25	BYLAW				C
CA579339	1998/12/23	TRANSFER		*** COMPLETELY DELETED ***	GILDA'S CLUB GREATER TORONTO	
CA579341	1998/12/23	CHARGE		*** COMPLETELY DELETED ***	THE TORONTO-DOMINION BANK	
CA579340	1998/12/23	NOTICE		*** DELETED AGAINST THIS PROPERTY *** GILDA'S CLUB GREATER TORONTO	CITY OF TORONTO	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
CA667414	2000/05/29	NOTICE CORRECTIONS: 'PARTY' CHANGED FROM 'GILDA'S CLUB GREATER TORONTO' TO 'GILDA'S CLUB GREATER TORONTO' ON 2004/03/30 BY MARIA RODRIGUES.		GILDA'S CLUB GREATER TORONTO	CITY OF TORONTO	C
64R16763	2000/09/01	PLAN REFERENCE				C
CA687865	2000/09/14	AGREEMENT REMARKS: SKETCH ATTACHED.			CITY OF TORONTO	C
CA710166	2001/01/31	POSTPONEMENT REMARKS: CA579341, CA667414		*** COMPLETELY DELETED ***		
CA716914	2001/03/23	NOTICE		*** COMPLETELY DELETED ***		
CA791798	2002/11/14	BYLAW				C
CA802521	2003/05/16	AGREEMENT REMARKS: AMENDING CA579340; EXPIRED INTEREST DELETED 2009/09/04 PURSUANT TO BULLETIN 89004		*** COMPLETELY DELETED ***	CITY OF TORONTO	
66R20421	2003/05/16	PLAN REFERENCE REMARKS: LAND TITLES : PART OF LOT 9, PLAN 9-A, TORONTO AS PART 2 THEREON AND LAND REGISTRY : PART OF BLOCK A, PLAN 558, TORONTO AS PART 1 THEREON.				C
CA804184	2003/07/29	CHARGE		*** COMPLETELY DELETED ***	THE TORONTO-DOMINION BANK	
CA804278	2003/08/12	BYLAW EX PART LOT				C
AT334381	2003/11/14	TRANSFER EASEMENT		GILDA'S CLUB GREATER TORONTO	INTRACORP DEVELOPMENTS (FRENCH QUARTER II) LTD.	C
AT416451	2004/02/25	TRANSFER EASEMENT	\$2	GILDA'S CLUB GREATER TORONTO	HUMBOLD PROPERTIES LIMITED	C
AT865866	2005/07/20	CHARGE		*** COMPLETELY DELETED *** GILDA'S CLUB GREATER TORONTO	THE TORONTO-DOMINION BANK	
AT883898	2005/08/08	DISCH OF CHARGE REMARKS: RE: CA804184		*** COMPLETELY DELETED *** THE TORONTO-DOMINION BANK		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT1945126	2008/11/06	CHARGE		*** COMPLETELY DELETED *** GILDA'S CLUB GREATER TORONTO	THE TORONTO-DOMINION BANK	
AT1963452	2008/12/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE TORONTO-DOMINION BANK		
		REMARKS: RE: CA579341				
AT2119125	2009/07/14	APL (GENERAL)		*** COMPLETELY DELETED *** GILDA'S CLUB GREATER TORONTO		
		REMARKS: RE, CA716914				
AT2119126	2009/07/14	APL (GENERAL)		*** COMPLETELY DELETED *** GILDA'S CLUB GREATER TORONTO		
		REMARKS: RE, CA579340				
AT2172706	2009/09/10	TRANSFER		*** COMPLETELY DELETED *** GILDA'S CLUB GREATER TORONTO	THE OLD FIREHALL INC.	
		REMARKS: PLANNING ACT STATEMENTS				
AT2172811	2009/09/10	NOTICE		THE OLD FIREHALL INC.		C
		REMARKS: CA687865				
AT2172990	2009/09/10	CHARGE		*** COMPLETELY DELETED *** THE OLD FIREHALL INC.	368230 ONTARIO LIMITED	
AT2172991	2009/09/10	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** THE OLD FIREHALL INC.	368230 ONTARIO LIMITED	
		REMARKS: AT2172990				
AT2172992	2009/09/10	CHARGE		*** COMPLETELY DELETED *** THE OLD FIREHALL INC.	ZUKERMAN, SOPHIE ZUKERMAN, STANLEY ESKIND, JANET	
AT2172993	2009/09/10	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** THE OLD FIREHALL INC.	ZUKERMAN, SOPHIE ZUKERMAN, STANLEY ESKIND, JANET	
		REMARKS: AT2172992				
AT2177618	2009/09/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE TORONTO-DOMINION BANK		
		REMARKS: AT865866.				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT2177619	2009/09/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE TORONTO-DOMINION BANK		
	REMARKS: AT1945126.					
AT2352776	2010/04/15	CHARGE		*** COMPLETELY DELETED *** THE OLD FIREHALL INC.	368230 ONTARIO LIMITED	
AT2352777	2010/04/15	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** THE OLD FIREHALL INC.	368230 ONTARIO LIMITED	
	REMARKS: AT2352776					
AT2353752	2010/04/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** 368230 ONTARIO LIMITED		
	REMARKS: AT2172990.					
AT2353753	2010/04/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** ZUKERMAN, SOPHIE ZUKERMAN, STANLEY ESKIND, JANET		
	REMARKS: AT2172992.					
AT2526882	2010/10/14	DISCH OF CHARGE		*** COMPLETELY DELETED *** 368230 ONTARIO LIMITED		
	REMARKS: AT2352776.					
AT2526900	2010/10/14	TRANSFER	\$3,500,000	THE OLD FIREHALL INC.	DEFT INVESTMENTS INC.	C
	REMARKS: PLANNING ACT STATEMENTS					
AT2526901	2010/10/14	CHARGE	\$2,605,000	DEFT INVESTMENTS INC.	THE TORONTO-DOMINION BANK	C
AT2526918	2010/10/14	NO ASSGN RENT GEN		DEFT INVESTMENTS INC.	THE TORONTO-DOMINION BANK	C
	REMARKS: RE, AT2526901					
AT2839268	2011/10/13	CHARGE	\$1,000,000	DEFT INVESTMENTS INC.	EARLE, PAMELA EARLE, RICHARD	C

V

PROPERTY DESCRIPTION: PT BLK A PL 124E TORONTO AS IN CA692854; T/W & S/T CA692854; CITY OF TORONTO.

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:

FIRST CONVERSION FROM BOOK

PIN CREATION DATE:

2002/09/23

OWNERS' NAMES

CAPACITY SHARE

JOE BERSANI INVESTMENTS LIMITED

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2002/09/20 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
**	SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO LAND TITLES: 2002/09/23 **						
CA692854	2000/10/13	TRANSFER		*** COMPLETELY DELETED ***	D. R. S. INVESTMENTS LIMITED	
AT727168	2005/02/08	APL (GENERAL)		*** COMPLETELY DELETED *** D. R. S. INVESTMENTS LIMITED		
REMARKS: DELETE S/T DEBTS IN CA692854 AND S/T BENEFICIARIES INTEREST IN CA692854						
AT727455	2005/02/08	TRANSFER		*** COMPLETELY DELETED *** D. R. S. INVESTMENTS LIMITED	CARREIRO, CARLOS CARREIRO, COLETTE	
AT727456	2005/02/08	CHARGE		*** COMPLETELY DELETED *** CARREIRO, CARLOS CARREIRO, COLETTE	FIRST NATIONAL FINANCIAL CORPORATION	
AT727457	2005/02/08	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** CARREIRO, CARLOS CARREIRO, COLETTE	FIRST NATIONAL FINANCIAL CORPORATION	
REMARKS: RENTS RE;AT727456						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT1442095	2007/05/09	CHARGE		*** COMPLETELY DELETED *** CARREIRO, CARLOS CARREIRO, COLETTE	SULAMICH FINANCIAL LIMITED	
AT1605292	2007/10/16	CHARGE		*** COMPLETELY DELETED *** CARREIRO, CARLOS CARREIRO, COLETTE	SHUTER, DIANA	
AT1611282	2007/10/23	DISCH OF CHARGE		*** COMPLETELY DELETED *** SULAMICH FINANCIAL LIMITED		
REMARKS: RE: AT1442095						
AT1970076	2008/12/09	CHARGE		*** COMPLETELY DELETED *** CARREIRO, CARLOS CARREIRO, COLETTE	SULAMICH FINANCIAL LIMITED	
AT1971197	2008/12/11	DISCH OF CHARGE		*** COMPLETELY DELETED *** SHUTER, DIANA		
REMARKS: RE: AT1605292						
AT2129661	2009/07/24	CHARGE		*** COMPLETELY DELETED *** CARREIRO, CARLOS CARREIRO, COLETTE	DA COSTA, ADAO	
AT2170365	2009/09/08	DISCH OF CHARGE		*** COMPLETELY DELETED *** DA COSTA, ADAO		
REMARKS: AT2129661.						
AT2172559	2009/09/10	CHARGE		*** COMPLETELY DELETED *** CARREIRO, CARLOS CARREIRO, COLETTE	368230 ONTARIO LIMITED	
AT2172560	2009/09/10	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** CARREIRO, CARLOS CARREIRO, COLETTE	368230 ONTARIO LIMITED	
REMARKS: AT2172559						
AT2173446	2009/09/11	DISCH OF CHARGE		*** COMPLETELY DELETED *** SULAMICH FINANCIAL LIMITED		
REMARKS: AT1970076.						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT2277822	2010/01/13	DISCH OF CHARGE		*** COMPLETELY DELETED *** FIRST NATIONAL FINANCIAL CORPORATION		
	REMARKS: AT727456.					
AT2959751	2012/03/05	DISCH OF CHARGE		*** COMPLETELY DELETED *** 368230 ONTARIO LIMITED		
	REMARKS: AT2172559.					
AT2959867	2012/03/05	TRANSFER	\$950,000	CARREIRO, CARLOS CARREIRO, COLETTE	JOE BERSANI INVESTMENTS LIMITED	C
AT2959868	2012/03/05	CHARGE	\$480,000	JOE BERSANI INVESTMENTS LIMITED	WESTDALE CONSTRUCTION CO. LIMITED	C
AT2959869	2012/03/05	NO ASSGN RENT GEN		JOE BERSANI INVESTMENTS LIMITED	WESTDALE CONSTRUCTION CO. LIMITED	C
AT3034489	2012/06/01	CHARGE	\$408,500	JOE BERSANI INVESTMENTS LIMITED	THE TORONTO-DOMINION BANK	C
AT3039261	2012/06/06	POSTPONEMENT		WESTDALE CONSTRUCTION CO. LIMITED	THE TORONTO-DOMINION BANK	C
	REMARKS: AT2959868 POSTPONED TO AT3034489					

**VI**

# WALTON ADVOCATES

BARRISTERS AND SOLICITORS/TRADE MARK AGENTS

Corporate Law \* Family Law \* Employment Law \* Estate Law \* Real Estate Development Law

---

30 HAZELTON AVENUE • TORONTO, ONTARIO • M5R 2E2  
(416) 489-3171 • Fax: (416) 489-9973 • E-mail: norma@waltonadvocates.com

August 11, 2009

BY FAX TO 416-920-4580

Mr. Seymour German  
Barrister & Solicitor  
45 St. Clair Ave. W., Suite 200  
Toronto, ON M4V 1K9

Dear Mr. German,

**Re: Carlos and Colette Carreiro proposed mortgage from 368230 Ontario Inc.  
221 Avenue Road, Toronto**

My husband Ron and I own 19 Tennis Crescent with Carlos and Colette Carreiro. Your lender holds the second mortgage on that property. Carlos is Director of Construction and Maintenance for The Rose and Thistle Group Ltd.

The Carreiros own a mixed use property at 221 Avenue Road just north of Davenport Road and south of St. Clair which has been appraised effective July 6, 2009 at \$825,000. The property consists of two retail tenants and three apartments in a 2,531 s.f. three storey building on a 1,700 s.f. site. The zoning is commercial-residential. Christine's Couture Clothing Boutique occupies the lower level; Fusca Hair Salon occupies the main floor retail area; there are two rental bachelor apartments on the second floor; and one rental one bedroom apartment on the third floor.

The property generates actual gross rental income of approximately \$76,464 and net income of approximately \$69,000. We'll provide a copy of the appraisal either via email or hard copy. In it, the appraiser has adjusted the gross rental income to assume only \$68,390 and the net income of only \$53,344. Based on that income and the comparables, the property has been appraised by McMahon & Associates at \$825,000 as of July 6, 2009.

The Carreiros are seeking a first mortgage of \$620,000, being just over 75% loan to value, at an interest rate of 7% for a two year term. Let me know if your client would be interested in providing the above-noted mortgage, and if so on what terms. As always, we enjoy our dealings with you, and look forward to your advice.

Yours truly,  
WALTON ADVOCATES

A handwritten signature in dark ink, appearing to be 'Norma Walton', written over a horizontal line.

Norma Walton

**VII**

Properties

PIN

21194 – 0250    LT

Interest/Estate

Fee Simple

Description

PT BLK A PL 124E TORONTO AS IN CA692854; T/W & S/T CA692854; CITY OF TORONTO.

Address

221 AVENUE RD  
TORONTO

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

CARREIRO, CARLOS

Address for Service

18 Sword Street  
Toronto, Ontario  
M5A 3N2

I am at least 18 years of age.

Colette Carreiro, and I are spouses of one another and are both parties to this document

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

Name

CARREIRO, COLETTE

Address for Service

18 Sword Street  
Toronto, Ontario  
M5A 3N2

I am at least 18 years of age.

Carlos Carreiro, and I are spouses of one another and are both parties to this document

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

Chargee(s)

Capacity

Share

Name

368230 ONTARIO LIMITED

Address for Service

60 Post Road  
Toronto, Ontario  
M3B 1H8

Provisions

Principal

\$620,000.00

Currency

CDN

Calculation Period

monthly, not in advance

Balance Due Date

2011/10/01

Interest Rate

7.25%

Payments

\$3,745.83

Interest Adjustment Date

2009 10 01

Payment Date

1st day of each month

First Payment Date

2009 11 01

Last Payment Date

2011 10 01

Standard Charge Terms

200033

Insurance Amount

See standard charge terms

Guarantor

Additional Provisions

See Schedules

Signed By

Romeo Finder

101-45 St. Clair Av. W.  
Toronto  
M4V 1K9

acting for Chargor    Signed    2009 09 10  
(s)

Tel        416-961-1177

Fax        4169611251

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

Submitted By

HORWITZ FINDER

101-45 St. Clair Av. W.  
Toronto  
M4V 1K9

2009 09 10

Tel        416-961-1177

Fax        4169611251

Fees/Taxes/Payment

Statutory Registration Fee

\$60.00

Total Paid

\$60.00

File Number

Chargor Client File Number :

210-09

VIII

September 3, 2009

Jackie McKinlay  
Walton Advocates  
30 Hazelton Ave  
Toronto, Ontario  
MSR 2F2

## MORTGAGE DISCHARGE STATEMENT

**Mortgage No:** 507369  
**Mortgagor(s):** Carlos Carreiro and Colette Carreiro  
**Property Address:** 221 Avenue Road  
Toronto ON  
**Closing Date:** September 9, 2009

Interest Rate	6.80%	Principal & Interest	2,365.00
Payment Frequency	Monthly	Property Tax	721.19
Maturity Date	February 1, 2010	Escrow	0.00
Next Payment Date	October 1, 2009	<b>TOTAL PAYMENT</b>	<b>3,086.19</b>

Principal Balance	\$ 272,109.37
Accrued Interest to <b>September 9, 2009</b>	405.48
Late Interest	0.00
Tax Account Balance - DEBIT (CREDIT)	620.27
Prepayment Penalty	7,368.72
Administration Fee	550.00
Escrow Balance -- DEBIT (CREDIT)	0.00
Outstanding Fees	0.00
Suspense	0.00
<b>Total Amount Required in Certified Funds by 1:00 p.m. on September 9, 2009</b>	<b>\$ 281,053.84</b>

### CONDITIONS


This statement is correct only if all payments up to and including **September 9, 2009** have been made and honoured and is subject to the correction of any errors or omissions. Should this transaction not close prior to the next payment due date then this statement will be void and First National Financial LP will require the **October 1, 2009** payment made and a new statement requested.

Should the mortgage be in arrears, the "Principal Balance" will be as at the due date of the last paid installment. All taxes and other charges paid by us from the time of preparation to the closing date and not indicated on this statement, are the responsibility of the mortgagor.

Funds received after 1 p.m. of the proposed discharge date will be subject to an additional daily interest charge of \$ **50.69** until paid. If the proposed discharge date is on Friday, funds received after 1:00 p.m. will be subject to additional interest until the next business day. **Please note the funds must be forwarded to the Toronto office.**

**It is the responsibility of your office to ensure that the appropriate discharge documents are prepared and forwarded to First National Financial LP for execution by the requested security holder. This includes any applicable PPSA discharge documentation.**

This statement is valid up to 5 days from the expected payout date. Should the Rate change prior to payout, then this statement will be void and a new statement issued to reflect the change in the interest rate.



First National Financial LP  
Commercial Mortgage Administration  
commercial@firstnational.ca

**E. & O. E.**

**IX**

110 Lombard Closing

110 Lombard Sale Receipt:	\$3,491,479.45
---------------------------	----------------

Disbursements from sale proceeds:

To Bernstein for first mortgage:	\$2,271,685.07
To Kevin Gillen for 50% of commission:	\$79,100.00
To Brent Jorgens for 50% commission:	\$79,100.00
To Gilda's Club for deposit reimbursement:	\$135,000.00
To hold back related to basement leak and asphalt:	\$50,000.00
To property tax owing:	\$8,000.00
	<hr/>

Total Disbursements paid from sale proceeds:	\$2,622,885.07
--	----------------

Net proceeds of sale of 110 Lombard:	\$868,594.38
--------------------------------------	--------------

To Carlos - 40% entitlement:	\$372,182.90
Less money applied to purchase 346C Jarvis:	-\$106,718.00
Less money applied to put a deposit down on 24 Cecil Street:	-\$60,000.00

Balance applied to purchase 24 Cecil Street for Carlos' 50% interest:	\$205,464.90
---	--------------

Net proceeds of sale  
Jarvis payment  
Cecil Street deposit - 50%

**X**

September 24, 2014

Our File No.: 140074

Lenard Kotylo  
Barrister, Solicitor & Notary  
66 Gerrard Street East, Suite 300  
Toronto, ON  
M5B 1G3

Dear Mr. Kotylo:

**Re: Carreiro Ownership of 346 Jarvis Street, Unit C, Toronto, and DBDC Spadina Ltd.**

I am in receipt of your letter to Mr. Schonfeld dated September 16, 2014, which was forwarded to me for response.

As you know, Justice Brown's August 12, 2014 Order (the "**Order**") appointed our client manager/receiver over the property at 346C Jarvis Street, Unit C, Toronto (the "**Property**"). The Order provided that the Property could be released from the receivership if Mr. and Mrs. Carreiro provided evidence that they had paid fair market value for the Property and that the Waltons no longer have any kind of interest in the Property. For ease of reference, I have reproduced the relevant portion of Justice Brown's Reasons for Decision below:

I direct the Manager to give notice of this Order to the registered owners of those three properties within 15 days of the date of this Order. If, within 60 days of the date of this Order, the registered owner of a property provides the Manager with evidence that it acquired the properties from the Waltons for fair market value and that the Waltons no longer have any kind of interest in the property, then the property shall be released from the operation of this Order.

The documents appended to your September 16, 2014 letter do not establish that your clients paid anything for the Property, let alone fair market value. More specifically, you have attached a mortgage application and an unsigned mortgage commitment letter. There is no evidence that the mortgage was granted or that funds were advanced. There is also no evidence attached to your letter to support the assertion that your clients received sale proceeds from the sale of 110 Lombard Street, Toronto, Ontario or that these funds were used to purchase the Property.

Please provide the evidence required by the August 12 Order as soon as possible and, in any event, before October 11, 2014 (the date that is 60 days from the date of the August 12 Order).

Lastly, and most importantly, our client has learned that your clients sold the Property with a closing at the end of October 2014. Unless and until the Property is released from the Court-ordered receivership, your clients have no right whatsoever to sell it. To be clear, if your client makes any attempt to sell the Property without first providing satisfactory evidence to support its release from the operation of the August 12 Order, we expect instructions to enjoin the sale and bring contempt proceedings. Please confirm immediately that no sale will occur.

Yours very truly,

**Goodmans LLP**



Mark Dunn  
MSD

**XI**

# LENARD KOTYLO

BARRISTER, SOLICITOR & NOTARY

66 GERRARD STREET EAST, SUITE 300  
TORONTO, ONTARIO, M5B 1G3

TELEPHONE: (416) 585-9373

FAX: (416) 585-9376

September 16, 2014

Harlan Schonfeld  
Schonfeld Inc.  
77 King Street West, Suite 3000  
P.O. Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

Personal Delivery

Dear Sir,

Re: **Carreiro Ownership of 346 Jarvis Street, Unit C, Toronto, and  
DBDC Spadina LtdD**

I am the Solicitor for Carlos Carreiro and Colette Carreiro, the registered owners of 346 Jarvis Street, Unit C, Toronto.

I enclose the documents that my clients have been able to find regarding their purchase of the above property.

The purchase monies were paid from a mortgage of \$559,872 given by my clients to the mortgagee, Equitable Trust Company. (I enclose the Mortgage Commitment Statement and the Statement of Disclosure, dated October 27, 2010), and from monies Carlos Carreiro received as an investor from the sale of the property municipally known as 110 Lombard Street, Toronto, also referred to as the Old Firehall building.

The proceeds of sale that Carlos Carreiro used for the purchase was about \$106,718. (I enclose a copy of an e-mail from Norma Walton.)

I enclose copies of e-mail correspondence of September and October 2010 from Carlos and Colette Carreiro with the mortgage broker, Debra McKeon of The Mortgage Centre to confirm that my clients were applying for the mortgage in their own capacity. They were not acting on behalf of the Waltons in any way.

I hope this establishes that Carlos Carreiro and Colette Carreiro are the independent owners of 346 Jarvis Street, Unit C, Toronto, and that the Waltons do not have any interest in the property.

Please note that Norma Walton was the Solicitor who acted for my clients on the purchase.

cc: Brian Empey, Goodman's LLP

Yours truly,

A handwritten signature in cursive script, appearing to read "Lenard Kotylo", written in black ink.

Lenard Kotylo

LK/yc  
Encls.



## Mortgage Commitment

October 27, 2010

Carlos Carreiro  
346 Jarvis Street  
Suite 2  
Toronto, ON  
M4Y 2G6

**Attention:** Get A Better Mortgage Inc.

### FIRST MORTGAGE COMMITMENT

The Equitable Trust Company ('Equitable Trust') is pleased to approve the following loan to be secured by a FIRST mortgage on the property hereinafter referred to, conditional on all information provided to Equitable Trust or provided in a mortgage application is correct and any terms and conditions are satisfied. This Commitment is not transferable and the benefit may not be assigned. Please note the interest rate quoted below is calculated semi-annually, not in advance.

Loan/App. Number:	111779
Applicant/Borrower:	Carlos Carreiro
Co-Applicant(s):	Colette Carreiro
Guarantor(s):	
Property:	346 Jarvis Street Suite #2 Toronto, ON
Principal:	\$559,872.00
Interest Rate:	03.450%
Principal and Interest:	\$2,490.84
Payment Frequency:	Monthly
Term:	24 months
Closing Date:	10/29/10
Amortization(months):	360
Prepayment Privileges:	20% once each calendar year
Commitment Expires:	11/03/10

Equitable Trust requires a current appraisal report confirming a market value of not less than \$699,940.00. The appraisal must be acceptable to Equitable Trust in its sole discretion, and the property must also be acceptable to Equitable Trust as security for the mortgage requested. All appraisal fees, legal and other expenses incurred with respect to the loan are the borrower's responsibility. The appraisal report is to be completed by Cross-Town Appraisals (416-652-3456). We must receive an original appraisal a minimum of three (3) business days prior to the closing date. Equitable Trust reserves the right to obtain an updated appraisal at any time prior to closing and retains the right to reduce the mortgage amount or cancel the Commitment if market value is deemed to be unacceptable.

The contact information for the Borrower's legal representative in this matter is: (to be completed when left blank)

---

---

---

---

The Commitment is conditional on and subject to all information provided and representations made in connection with the application for this mortgage being accurate. No terms or conditions of this Commitment may be waived or varied, orally or by any course of conduct of any officer, employee, or agent of the lender. Any amendments to this Commitment shall be in writing and signed by a duly authorized officer of Equitable Trust and the Borrower.

**Payments:** All mortgage payments shall be made by pre-authorized cheque.

**Interest Adjustment Date:** Interest shall accrue from the date the first advance is made. Interest due to the Interest Adjustment Date (IAD) will be deducted from the advance of funds.

**Insurance(s):** Equitable Trust will obtain title insurance, at the Borrower(s) expense, the title insurance premium together with our 'Closing Service Fee' will be deducted from the initial advance. We also require evidence of fire insurance coverage acceptable to Equitable Trust for the full replacement value of the property with an insurer acceptable to us. Such policy must contain a standard mortgage clause and must indicate Equitable Trust's interest as first mortgagee and must denote Equitable Trust as additional loss payee. A copy of the insurance binder is required.

**Survey Requirements and Zoning:** An up-to-date survey/real property report certified under seal by a qualified land surveyor is required (unless waived in writing by Equitable Trust) together with a certificate of compliance endorsed thereon to ensure that the buildings and setbacks comply with all governmental requirements and to confirm that there are no encroachments by or against the property. Equitable Trust requires confirmation that the property secured, and all improvements thereon, and uses thereof complies with all applicable governmental requirements and that there are no outstanding work or violations and there are no letters or notices or advice indicating building deficiencies and/or requiring work to be done, that no demolition order has been made respecting same and that there is access and egress to public thoroughfares. If a condominium unit is secured the condominium structure must so comply.

**Prior Encumbrances:** The Borrower(s) shall provide statements from prior encumbrances confirming good standing, balances and terms.

**U.F.F.I.:** The Borrower(s) hereby warrant that the property does not contain and has never contained Urea Formaldehyde Foam Insulation (U.F.F.I.) and confirm that should it be discovered that the property did or does contain U.F.F.I., the loan will immediately become due and payable at Equitable Trust's option.

**Common Expenses and Estoppel Certificates:** By accepting the terms hereof the Borrowers authorize Equitable Trust's solicitor to obtain a status certificate, at the Borrower's expense but in favour of Equitable Trust, from the Condominium Corporation to confirm common expenses are in good standing and contain such other detail as the Equitable Trust or its solicitor deems necessary.

**Survival of Terms:** The terms and conditions of this Commitment shall not merge and shall remain binding and effective on the parties hereto.

**Construction Lien Act:** The Borrower(s) covenant that the loan to be made is not intended for the financing of an *improvement* as defined in the *Construction Lien Act*, nor is it taken for the purpose of repaying a mortgage which is currently securing or is intended to secure the financing of such an improvement.

A listing of the fees applicable to this loan is included in **Schedule A**.

The Borrower(s) hereby agree that Equitable Trust will not be responsible for any failure to comply with any term or condition of this Commitment, including the failure to advance funds on the Closing Date, if such failure is directly or indirectly caused by events beyond the reasonable control of Equitable Trust, including without limitation, fire, flood, earthquake, accident, civil disturbance, war, strikes or labour problems, failure in telecommunication facilities, declaration of health emergency by the World Health Organization or similar acts of God.

**If you have provided Equitable Trust with your social insurance number, you agree that Equitable Trust may use it for tax related purposes if you hold a product generating income and share it with the appropriate government agencies, and may also share it with credit reporting agencies as an aid to identify you.**

**Credit Bureau:** You agree that Equitable Trust may obtain a credit report on you (for the purposes aforesaid, in connection with any application, and on an annual basis or as frequently as Equitable Trust deems necessary) from Equifax Canada or Trans Union of Canada Inc., or any other credit reporting agency. If you wish to review your credit bureau file, contact Equifax Canada, Consumer Relations Department, P.O. Box 190, Station Jean Talon, Montreal, Quebec, H1S 2Z2, 1-800-465-7166 and/or Trans Union of Canada Inc., consumer Relations Centre, P.O. Box 338 LCD1, Hamilton, Ontario L8L 7W2, 1-877-713-3393 (Quebec) or 1-800-663-9980 (all other provinces).

Equitable Trust is required by law to provide you with disclosure of your cost of borrowing for this Mortgage at least two (2) business days before the advance of the funds. By signing this Commitment you consent to waiving the requirement of two (2) business days notice for cost of borrowing disclosure as required under the *Trust and Loan Companies Act*.

Please find attached our Statement(s) of Disclosure addressed to each of you as Borrower(s) showing the "Total Cost of Borrowing" and the "Annual Percentage Rate". I/We consent to being provided with the Statement(s) of Disclosure at the same time as receiving this Commitment and acknowledge that I/we have received, in writing, a copy of the Statement(s) of Disclosure.

This Commitment shall expire unless funds are advanced by October 29, 2010. Equitable Trust may, in its sole discretion, extend in writing this closing date.

By signing this Commitment, I / We hereby certify that the information provided and representations made in connection with the application for this mortgage are completely true and accurate in all respects.

By signing this Commitment, Borrower(s) agree to the terms of The Equitable Trust Company Privacy Agreement, a copy of which has been or will be provided to Borrower(s) and can be obtained at any office of The Equitable Trust Company and on the website at <http://www.equitabletrust.com>, and agree that The Equitable Trust Company may collect, use and disclose their information in accordance with federal and/or provincial privacy legislation, including providing information to third parties.

All mortgage documentation will be registered using a monthly repayment amount. This mortgage will be repaid monthly unless another payment frequency is indicated below. Such payment frequency is subject to authorization by Equitable Trust and may be changed at the discretion of Equitable Trust.

Your payment frequency will be confirmed to you in writing upon funding of the mortgage. PLEASE INDICATE THE MORTGAGE PAYMENT FREQUENCY BY INITIALLING BELOW:

\_\_\_\_\_ Monthly (12 payments per year)  
\_\_\_\_\_ Semi-monthly (24 payments per year; 1st and 15th of the month only)  
\_\_\_\_\_ Bi-weekly (26 payments per year; 1st payment date will be 14 days after the date of advance)

If you have chosen the bi-weekly payment frequency you have the option to change your payment day by calling Payment Administration at 416-515-7000 no sooner than 30 days after the date of advance of your mortgage.

The Equitable Trust Company

Per

Anne Jones

*The undersigned hereby consent to The Equitable Trust Company obtaining a credit information report on the undersigned from a consumer reporting agency. Note: In British Columbia this consent allows information on a spouse to be included in any report.*

The terms and conditions as set out herein are accepted and agreed to this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ by:

Applicant:

\_\_\_\_\_  
Carlos Carreiro

Co-Applicant:

\_\_\_\_\_  
Colette Carreiro

## Schedule A

THE AMOUNTS SET FORTH HEREIN SUPERSEDE ANY AMOUNTS THAT MAY BE CONTAINED IN THE CHARGE OR STANDARD CHARGE TERMS. NOTWITHSTANDING anything to the contrary contained in the Standard Charge Terms (and in the event of any contradiction, the following provisions shall prevail), the Borrower(s) covenants and agrees with Equitable Trust as follows:

To pay to The Equitable Trust Company (**Equitable Trust**) its servicing fees for the following matters, in the amounts set forth:

Missed Payment Fee	\$200 payable for each missed or late installment and for processing each <b>NSF</b> cheque or other returned payment. If any cheque is returned NSF, any replacement cheque must be certified and Equitable Trust shall be entitled to have it certified, and to add all the costs of certification (including courier charges to and from the Borrower(s)'s Bank) to the amount owing on the Mortgage.
Insurance	\$200 payable for dealing with each cancellation, premium payment or other non-compliance with insurance requirements.
Tax Administration	\$200 for tax status inquiry plus costs of municipal tax certificate.
Default Proceedings	\$750 payable for each demand letter, action or proceeding instituted.
Amortization Schedule	\$25 preparation of the Schedule.
Amortization Adjustment	\$100 fee payable for any increase or decrease in the amortization period outside the maturity date of the mortgage.
Mortgage Statements	\$100 for preparation of each Statement.
Discharge Administration	\$250 fee.
Default Payment	On default payment of an amount equal to three month's interest on the principal balance outstanding.
Assumption/Transfer Fee	\$500 (minimum for processing each application for assumption, whether or not approved or completed.)
PPSA Registration	\$100 fee including, but not limited to, registration of renewal, discharge, name change, etc.
Deferral Fee	\$50 for each deferment given to the Borrower(s) permitting a delay in payment to a date other than the due date of such payment.
Payment Change Fee	\$50 fee payable for each payment frequency change (ie. bi-weekly/monthly) and each payment date change during the term of the mortgage.
Inspection Fee	Fee for the Equitable Trust's out of pocket costs for each inspection conducted after default, or to preserve the security herein charged.
Mortgage Verification Fee	Fee for Equitable Trust's out of pocket costs for verifying details of the Mortgage, including, but not limited to, title searches.
Any administration and/or servicing fees owing by the Borrower(s) to Equitable Trust which is not paid shall be added to the mortgage indebtedness and shall bear interest at the rate herein set forth.	

The fees contained herein are effective as of time of printing on October 27, 2010

**The above fee amounts are subject to change at any time.**



EQUITABLE TRUST

## **SELF-DECLARATION**

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

I \_\_\_\_\_, confirm that I have been self-employed

for \_\_\_\_\_ years, as a \_\_\_\_\_ under the business

name: \_\_\_\_\_. The nature of my business

is \_\_\_\_\_. Operations are conducted out of

the following address: \_\_\_\_\_

and phone number: (\_\_\_\_) \_\_\_\_\_. Please find attached a copy of my

business card/license (if available). The website address (if available)

is: \_\_\_\_\_.

My income for the year 20\_\_\_\_, from all sources, will be \$\_\_\_\_\_.

Signed: \_\_\_\_\_  
(insert borrower's name)

If you are self-employed, additional supporting documentation is required.



## STATEMENT OF DISCLOSURE

**Loan No:** 111779  
**Borrower:** Carlos Carreiro  
**Property Address:** 346 Jarvis Street Suite #2 Toronto, ON

October 27, 2010

<b>Principal Loan Amount</b>	<b>\$559,872.00</b>
<b>Term (months)</b>	<b>24</b> The term of this loan is closed, which means you can not repay more than your Prepayment Privilege without also paying the Mortgage Prepayment Amount expressed below.
<b>Amortization Period (months)</b>	<b>360</b> (based on your current terms and conditions, your mortgage will take this long to pay in full)
<b>Annual Interest Rate</b>	<b>3.45000 %</b> (fixed interest rate per year)
<b>Determination of Interest</b>	The Annual Interest Rate is fixed and will not change during the term of this loan.
<b>Interest Compound Frequency</b>	<b>Semi-Annual</b> (the interest for this mortgage will be charged in the same manner as your Regular Payment Frequency)
<b>Annual Percentage Rate (APR)</b>	<b>3.531%</b> The APR represents the interest rate for a whole year (annualized), including applicable fees such as service charges or administration fees when applicable.
<b>Date of Advance</b>	<b>October 29, 2010</b> Interest shall accrue from the date the first advance is made. Interest due to the Interest Adjustment Date will be deducted from the advance of the funds.
<b>Regular Payment Amount (Principal + Interest)</b>	<b>\$2,490.84</b>
<b>Regular Payment Frequency</b>	<b>Monthly</b>
<b>Prepayment Privilege</b>	<b>20% once each calendar year</b> (annual amount you may prepay once each year without incurring penalty charges) You can not repay your mortgage more than this Prepayment Privilege unless you also pay the Mortgage Prepayment Amount described below.
<b>Mortgage Prepayment Amount</b> (the additional amount you must pay if you pay all or part of your mortgage in excess of your Prepayment Privilege before the end of the term)	The <b>GREATER</b> of: (i) three (3) months' interest at the Annual Interest Rate; or (ii) the amount by which the present value of your future payments until maturity discounted at the <i>Government of Canada Yield</i> , calculated semi-annually, not in advance, <i>exceeds</i> the outstanding principal of the prepayment amount as determined by The Equitable Trust Company.  For the purposes of your Mortgage Prepayment Amount, the <i>Government of Canada Yield</i> means the yield to maturity, calculated semi-annually, which an assumed new issue of non-callable Government of Canada bonds, denominated in Canadian dollars, would carry if issued at par for a term to maturity as close to possible to, but not shorter than, the remaining term of your mortgage from and after the payment date.



**Additional Loan Particulars:**

<b>Interest Adjustment Date</b>	<b>November 1, 2010</b>
<b>First Payment Date</b>	<b>December 1, 2010</b>
<b>Total Interest</b>	<b>\$37,792.82</b> (including interest accrued to the Interest Adjustment Date)
<b>Total Commitment Fee Amount</b>	<b>\$750.00</b>
<b>Cost of Borrowing</b>	<b>\$38,801.82</b>
<b>Maturity Date</b>	<b>November 1, 2012</b>
<b>Other Fees</b>	<ul style="list-style-type: none"> <li>○ Discharge Administration Fee: <b>\$250.00</b></li> <li>○ Default Proceedings: <b>\$750.00</b> (for each demand letter, action or proceeding instituted)</li> <li>○ Returned or refused payment due to insufficient funds (NSF): <b>\$200.00</b></li> <li>○ Tax Account Status Inquiry: <b>\$200.00</b> (plus cost of municipal tax certificate)</li> <li>○ PPSA Registration: <b>\$100.00</b> (for each registration, renewal, discharge, name change, etc.)</li> <li>○ Lender Title Insurance and Closing Service Fee: <b>\$259.00</b> (plus applicable taxes)</li> </ul>

**Additional Notes:**

1. Each regular payment is applied first to the accumulated cost of borrowing and then to the outstanding principal.
2. The amount of monies advanced to you on the Date of Advance will be the Principal Loan Amount less certain reductions as a result of fees, holdbacks and/or any applicable taxes.
3. You shall also be liable for all amounts incurred by The Equitable Trust Company because of the failure to make the necessary payments or repayments either on a regular payment date or at maturity, including but not limited to, legal fees, realizing on or protecting any security interest and processing dishonoured payments.
4. A complete listing of all fees that are applicable to this mortgage are set out in the 'Schedule A' to the Commitment Letter already provided to you.



# STATEMENT OF DISCLOSURE

Loan No: 111779  
 Borrower: Colette Carreiro  
 Property Address: 346 Jarvis Street Suite #2 Toronto, ON

October 27, 2010

Principal Loan Amount	\$559,872.00
Term (months)	24 The term of this loan is closed, which means you can not repay more than your Prepayment Privilege without also paying the Mortgage Prepayment Amount expressed below.
Amortization Period (months)	360 (based on your current terms and conditions, your mortgage will take this long to pay in full)
Annual Interest Rate	3.45000 % (fixed interest rate per year)
Determination of Interest	The Annual Interest Rate is fixed and will not change during the term of this loan.
Interest Compound Frequency	Semi-Annual (the interest for this mortgage will be charged in the same manner as your Regular Payment Frequency)
Annual Percentage Rate (APR)	3.531% The APR represents the interest rate for a whole year (annualized), including applicable fees such as service charges or administration fees when applicable.
Date of Advance	October 29, 2010 Interest shall accrue from the date the first advance is made. Interest due to the Interest Adjustment Date will be deducted from the advance of the funds.
Regular Payment Amount (Principal + Interest)	\$2,490.84
Regular Payment Frequency	Monthly
Prepayment Privilege	20% once each calendar year (annual amount you may prepay once each year without incurring penalty charges) You can not repay your mortgage more than this Prepayment Privilege unless you also pay the Mortgage Prepayment Amount described below.
Mortgage Prepayment Amount (the additional amount you must pay if you pay all or part of your mortgage in excess of your Prepayment Privilege before the end of the term)	The GREATER of: (i) three (3) months' interest at the Annual Interest Rate; or (ii) the amount by which the present value of your future payments until maturity discounted at the <i>Government of Canada Yield</i> , calculated semi-annually, not in advance, exceeds the outstanding principal of the prepayment amount as determined by The Equitable Trust Company.  For the purposes of your Mortgage Prepayment Amount, the <i>Government of Canada Yield</i> means the yield to maturity, calculated semi-annually, which an assumed new issue of non-callable Government of Canada bonds, denominated in Canadian dollars, would carry if issued at par for a term to maturity as close to possible to, but not shorter than, the remaining term of your mortgage from and after the payment date.



**Additional Loan Particulars:**

<b>Interest Adjustment Date</b>	<b>November 1, 2010</b>
<b>First Payment Date</b>	<b>December 1, 2010</b>
<b>Total Interest</b>	<b>\$37,792.82</b> (including interest accrued to the Interest Adjustment Date)
<b>Total Commitment Fee Amount</b>	<b>\$750.00</b>
<b>Cost of Borrowing</b>	<b>\$38,801.82</b>
<b>Maturity Date</b>	<b>November 1, 2012</b>
<b>Other Fees</b>	<ul style="list-style-type: none"> <li>○ Discharge Administration Fee: <b>\$250.00</b></li> <li>○ Default Proceedings: <b>\$750.00</b> (for each demand letter, action or proceeding instituted)</li> <li>○ Returned or refused payment due to insufficient funds (NSF): <b>\$200.00</b></li> <li>○ Tax Account Status Inquiry: <b>\$200.00</b> (plus cost of municipal tax certificate)</li> <li>○ PPSA Registration: <b>\$100.00</b> (for each registration, renewal, discharge, name change, etc.)</li> <li>○ Lender Title Insurance and Closing Service Fee: <b>\$259.00</b> (plus applicable taxes)</li> </ul>

**Additional Notes:**

1. Each regular payment is applied first to the accumulated cost of borrowing and then to the outstanding principal.
2. The amount of monies advanced to you on the Date of Advance will be the Principal Loan Amount less certain reductions as a result of fees, holdbacks and/or any applicable taxes.
3. You shall also be liable for all amounts incurred by The Equitable Trust Company because of the failure to make the necessary payments or repayments either on a regular payment date or at maturity, including but not limited to, legal fees, realizing on or protecting any security interest and processing dishonoured payments.
4. A complete listing of all fees that are applicable to this mortgage are set out in the 'Schedule A' to the Commitment Letter already provided to you.

**Subject:** FW: Jarvis  
**From:** Carlos Carreiro (cancarr58@sympatico.ca)  
**To:** lkotylo@yahoo.com;  
**Date:** Thursday, August 14, 2014 11:11:18 AM

Hi Lenard,

Please see attached email, I will need your help with our property at 346 C Jarvis St.

Our property has been flagged by the courts because of Norma Walton's current litigation and that she was the original owner of this property.

I will follow up with a phone call

Thanks

Carlos

---

**From:** Norma Walton <nwalton@roseandthistle.ca>

**Date:** Thursday, August 14, 2014 at 9:38 AM

**To:** Carlos Carreiro <cancarr58@sympatico.ca>

**Subject:** RE: Jarvis

Good morning!

P

I am attaching what I previously provided to the Inspector to show you paid for your Jarvis townhouse.

O

I don't have your mortgage information so Lenard should also attach that information showing the mortgage you arranged to purchase.

C

I am also copying over my notes about proceeds from 110 Lombard and how \$106,718 was applied to Jarvis:

F

D: 110 Lombard Closing

T

S: Receipts: \$3,491,479.45

Disbursements:

M To Bernstein: \$2,271,685.07

P To Kevin Gillen: \$79,100.00

I To Brent Jorgens: \$79,100.00

O To Gilda's Club: \$135,000.00

O To hold back: \$50,000.00

I To property tax: \$8,000.00

---

\$2,622,885.07

Net proceeds: \$868,594.38

To Carlos: \$372,182.90 Net proceeds of sale

8/14/2014

Print

-\$106,718.00	Jarvis payment
	Cecil Street deposit -
-\$60,000.00	50%
\$205,464.90	

Let me know if you need anything further.

Thanks,  
Norma

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

From: [cancarr58@sympatico.ca](mailto:cancarr58@sympatico.ca) [mailto:[cancarr58@sympatico.ca](mailto:cancarr58@sympatico.ca)]

Sent: Thursday, August 14, 2014 9:17 AM

To: Norma Walton

Subject: Jarvis

Hi Norma,

When you have the time will you send me the Jarvis particulars.

Thanks

Carlos

Sent from my "contract free" BlackBerry® smartphone on the WIND network.

**Subject:** Fwd: "URGENT" New deal - Carreiro2-346 Jarvis St  
**From:** Carlos Carreiro (cancarr58@sympatico.ca)  
**To:** lkotylo@yahoo.com;  
**Date:** Thursday, August 14, 2014 4:59:19 PM

Begin forwarded message:

**From:** Debi McKeon <mortgagelady@rogers.com>  
**Subject:** FW: "URGENT" New deal - Carreiro2-346 Jarvis St  
**Date:** October 27, 2010 at 9:32:16 AM EDT  
**To:** Carlos Carreiro <cancarr58@sympatico.ca>, <carreiroc@csdco.on.ca>  
**Cc:** Norma Walton <nwalton@roseandthistle.ca>, Norma walton <norma@waltonadvocates.com>, Jackie McKinlay <Jackie@waltonadvocates.com>

Dear Carlos and Colette,

Attached is your Mortgage Commitment and Self-Declared Letter of Income for you Carlos.  
Could you please call me as soon as possible to discuss as I need to have this signed and sent back to the Lender today if possible.

Many thanks, Debi.

Debra McKeon, Accredited Mortgage Professional  
The Mortgage Centre - Get a Better Mortgage Inc.  
C: 647-292-1578 F: 416-264-3324 E: [mortgagelady@rogers.com](mailto:mortgagelady@rogers.com)  
Broker Lic.#M09000948 Franchise Lic.#10874

----- Forwarded Message

**From:** Anne Jones <ajones@equitabletrust.com>  
**Date:** Wed, 27 Oct 2010 09:20:46 -0400  
**To:** Debi McKeon <mortgagelady@rogers.com>  
**Subject:** RE: "URGENT" New deal - Carreiro2-346 Jarvis St

Thanks so much Debi, Attached is your commitment. Please let me know if there are any questions or concerns.

Please send the sign-back as soon as possible with the lawyer information so we can begin working on the file and get it instructed. We will do our best to accommodate the closing.

Thanks,

**Anne Q. Jones**

Team Leader, Residential Mortgage Underwriting  
The Equitable Trust Company  
30 St. Clair Avenue West, Suite 700  
Toronto, Ontario  
M4V 3A1

Tel: (416) 515-3479

Fax (416) 515-7001

e-mail: [ajones@equitabletrust.com](mailto:ajones@equitabletrust.com) <<mailto:ajones@equitabletrust.com>>

**This e-mail, including any attachments, may be privileged and may contain confidential or proprietary information intended only for the addressee(s). Any other distribution, copying, use, or disclosure is unauthorized and strictly prohibited. If you have received this message in error, please notify the sender immediately by reply e-mail and permanently delete the message, including any attachments, without making a copy. Thank you.**

**From:** Debi McKeon [<mailto:mortgagelady@rogers.com>]

**Sent:** Tuesday, October 26, 2010 6:00 PM

**To:** Anne Jones

**Subject:** Re: "URGENT" New deal - Carreiro2-346 Jarvis St

Hi Anne,

I have answered your questions as best I can. If you need further clarification, let me know and I will have the Lawyer respond.

Kindest regards, Debi.

Debra McKeon, Accredited Mortgage Professional  
The Mortgage Centre - Get a Better Mortgage Inc.  
C: 647-292-1578 F: 416-264-3324 E: [mortgagelady@rogers.com](mailto:mortgagelady@rogers.com)  
Broker Lic.#M09000948 Franchise Lic.#10874

On 26/10/10 2:44 PM, "Anne Jones" <[ajones@equitabletrust.com](mailto:ajones@equitabletrust.com)> wrote:

Hi Debi,

That is fine. Management has a few other questions on your deal and I thought email would be the best to get these answered.

1) How did the client find out about the sale of the property? Client's know the area very well and were interested in the townhomes since they broke ground. They have been in their current home for 9 years which is 5 minutes away. Is he affiliated at all with the company selling the property? He has advised me that he is not.

2) Why is this a rush closing? He was going private for his financing but was referred to me in hopes of getting a much better rate. The deal was originally submitted and approved by Street Capital and held up for over a week going back and forth with the insurer. Why did it not close on time? Original closing was delayed because the house was not finished.

3) Has an appraisal already been completed for the property? If so, who completed it? Cross-

Town Appraisals will be completing the report. They should have it to you tomorrow or Thursday at the latest.

4) Is the client still affiliated in business with Norma Walton? I see ownership of Carcol Ltd has been transferred from her. But also she is the solicitor handling the deal? Is she involved with the sale of the subject property at all? Norm Walton is his Lawyer. She originally incorporated the company on his behalf January 9, 2003 and then resigned as director of the Corporation on the same day. They were never affiliated in this business. Carlos Carreiro is the Sole Owner of the company. Norma Walton's only involvement in the Sale of the subject property is in the capacity of the Client's Real Estate Lawyer.

5) Who is Old Fire Hall Inc? They are listed as the vendor on the Lombard Street property. This was the company who owned the commercial building which was originally an old fire hall and home to Second City Comedy Club. It was converted to office space in 2007 and recently sold. Carlos Carreiro was an investor in the project and did the renovations.

Thank you,

**Anne Q. Jones**

Team Leader, Residential Mortgage Underwriting  
The Equitable Trust Company  
30 St. Clair Avenue West, Suite 700  
Toronto, Ontario  
M4V 3A1

Tel: (416) 515-3479

Fax (416) 515-7001

e-mail: [ajones@equitabletrust.com](mailto:ajones@equitabletrust.com) <<mailto:ajones@equitabletrust.com>>

**This e-mail, including any attachments, may be privileged and may contain confidential or proprietary information intended only for the addressee(s). Any other distribution, copying, use, or disclosure is unauthorized and strictly prohibited. If you have received this message in error, please notify the sender immediately by reply e-mail and permanently delete the message, including any attachments, without making a copy. Thank you.**

**From:** Debi McKeon [<mailto:mortgagelady@rogers.com>]  
**Sent:** Tuesday, October 26, 2010 10:57 AM  
**To:** Anne Jones  
**Subject:** Re: "URGENT" New deal - Carreiro2-346 Jarvis St

Hi Anne,

Sorry I wasn't specific. I was driving and my husband was replying but didn't answer your question. Could you please do the 2 year at 3.45% with a 30 year amortization unless you offer a variable. Please advise asap.

Many thanks, Debi

Debra McKeon, Accredited Mortgage Professional  
The Mortgage Centre - Get a Better Mortgage Inc.

C: 647-292-1578 F: 416-264-3324 E: [mortgagelady@rogers.com](mailto:mortgagelady@rogers.com)  
Broker Lic.#M09000948 Franchise Lic.#10874

On 26/10/10 9:58 AM, "Anne Jones" <[ajones@equitabletrust.com](mailto:ajones@equitabletrust.com)> wrote:  
Hi Debi,

Yes, I did receive the whole deal now. For pricing, I can try for the 2-year at 3.45% if the client is willing to take a 30-year amortization. If they want to stay at 35-year amortization, we would be looking at 3.7%. Can you confirm how you would like to proceed?

Thanks,

**Anne Q. Jones**

Team Leader, Residential Mortgage Underwriting  
The Equitable Trust Company  
30 St. Clair Avenue West, Suite 700  
Toronto, Ontario  
M4V 3A1

Tel: (416) 515-3479

Fax (416) 515-7001

e-mail: [ajones@equitabletrust.com](mailto:ajones@equitabletrust.com) <<mailto:ajones@equitabletrust.com>>

**This e-mail, including any attachments, may be privileged and may contain confidential or proprietary information intended only for the addressee(s). Any other distribution, copying, use, or disclosure is unauthorized and strictly prohibited. If you have received this message in error, please notify the sender immediately by reply e-mail and permanently delete the message, including any attachments, without making a copy. Thank you.**

**From:** Debi McKeon [<mailto:mortgagelady@rogers.com>]  
**Sent:** Monday, October 25, 2010 4:01 PM  
**To:** Anne Jones  
**Subject:** Re: "URGENT" New deal - Carreiro2-346 Jarvis St

Hi Anne,

I faxed the documents to your attention at 416-515-7001. Have you received anything yet? Let me know if this is the correct fax number as I will re-fax the package to you.

Yes, the subject property is going to be owner-occupied. The application shows the nature of his business as a Builder/Developer. Carlos Carreiro is a certified Tarion Builder, Interior Designer and Architect.

Please email or call me if you need anything further.

Many thanks, Debi.

Debra McKeon, Accredited Mortgage Professional  
The Mortgage Centre - Get a Better Mortgage Inc.  
C: 647-292-1578 F: 416-264-3324 E: [mortgagelady@rogers.com](mailto:mortgagelady@rogers.com)

Broker Lic.#M09000948 Franchise Lic.#10874

On 25/10/10 3:44 PM, "Anne Jones" <ajones@equitabletrust.com> wrote:  
Hi Debi,

Thanks for the deal. I have not yet received your fax. Did you put my name on the title page?

Also, is the subject going to be owner-occupied? And what is the nature of the applicant's business? Let me know when you get a chance. And if you don't mind, please re-fax the purchase agreement to my attention.

Thanks so much,

**Anne Q. Jones**

Team Leader, Residential Mortgage Underwriting  
The Equitable Trust Company  
30 St. Clair Avenue West, Suite 700  
Toronto, Ontario  
M4V 3A1

Tel: (416) 515-3479

Fax (416) 515-7001

e-mail: ajones@equitabletrust.com <mailto:ajones@equitabletrust.com> Hi Anne

**This e-mail, including any attachments, may be privileged and may contain confidential or proprietary information intended only for the addressee(s). Any other distribution, copying, use, or disclosure is unauthorized and strictly prohibited. If you have received this message in error, please notify the sender immediately by reply e-mail and permanently delete the message, including any attachments, without making a copy. Thank you.**

**From:** Debi McKeon [mailto:mortgagelady@rogers.com]

**Sent:** Monday, October 25, 2010 2:33 PM

**To:** Anne Jones

**Subject:** "URGENT" New deal - Carreiro2-346 Jarvis St

Dear Anne,

Hope you are doing well. I was speaking with Helen earlier and have submitted this rush deal to you. I have just faxed you the following documentation, 33 pages in total:

1. Listing
2. Offer
3. Articles of Incorporation for Carlos Carreiro
4. Salary Letter and paystub for Colette Carreiro
5. Firm Sale of Investment Property 110 Lombard Street and Lawyer's Trust Ledger for confirmation of Downpayment/Closing Costs

Could you please review asap as this is a Purchase scheduled to close October 29th. Appraisal

has been ordered and will be emailed to you Wednesday. Also, I have submitted based on the 2 year rate of 3.55% but would appreciate it if you could advise me what my discount is on the VRM, 3 and 5 year products.

I can be reached via email or at 416-266-1578 if you have any questions or concerns.

Many thanks, Debi.

Debra McKeon, Accredited Mortgage Professional  
The Mortgage Centre - Get a Better Mortgage Inc.  
C: 647-292-1578 F: 416-264-3324 E: [mortgagelady@rogers.com](mailto:mortgagelady@rogers.com)  
Broker Lic.#M09000948 Franchise Lic.#10874

----- End of Forwarded Message

**Subject:** Fwd: Your mortgage 346C Jarvis  
**From:** Carlos Carreiro (cancarr58@sympatico.ca)  
**To:** lkotylo@yahoo.com;  
**Date:** Thursday, August 14, 2014 4:57:05 PM

Begin forwarded message:

**From:** Debi McKeon <mortgagelady@rogers.com>  
**Subject:** FW: Your mortgage  
**Date:** October 22, 2010 at 7:19:44 AM EDT  
**To:** c carreiro <cancarr58@sympatico.ca>, <carreiroc@csdco.on.ca>  
**Cc:** Norma Walton <nwalton@roseandthistle.ca>, Norma walton <norma@waltonadvocates.com>

Dear Carlos & Colette,

Just to let you know that I received the Offer and Trust Ledger from Norma for Lombard. Could you please get the other documents to me by Monday. Please confirm that you have received this email. If you have any questions or concerns, I can be reached today or over the weekend via email, at home 416-266-1578 or on my cell 647-292-1578.

Many thanks, Debi.

Debra McKeon, Accredited Mortgage Professional  
The Mortgage Centre - Get a Better Mortgage Inc.  
C: 647-292-1578 F: 416-264-3324 E: [mortgagelady@rogers.com](mailto:mortgagelady@rogers.com)  
Broker Lic.#M09000948 Franchise Lic.#10874

----- Forwarded Message

**From:** Debi McKeon <mortgagelady@rogers.com>  
**Date:** Thu, 21 Oct 2010 08:13:17 -0400  
**To:** c carreiro <cancarr58@sympatico.ca>  
**Conversation:** Your mortgage  
**Subject:** Your mortgage

Hi Carlos,

Can you please email or fax me the following documentation asap so that I can complete your file with the Lender:

1. Rental/Lease Agreement, mortgage statement and property tax bill for 221 Avenue Road

2. NOA for 2009
3. Property tax bill for 18 Sword
4. Rental/Lease Agreement showing \$4,000 per month for Jarvis
5. Bank Statements showing deposit of money received from the sale of Lombard
6. Lawyer's Trust Ledger or Statement of Account and Firm Offer for Lombard – I will get this from Norma

As you are closing next Friday, if you could get the above to me by tomorrow or Monday at the latest that would be great. Please email or call me if you have any questions or concerns. I should have the commitment to you later today.

Many thanks, Debi.

Debra McKeon, Accredited Mortgage Professional  
The Mortgage Centre - Get a Better Mortgage Inc.  
C: 647-292-1578 F: 416-264-3324 E: [mortgagelady@rogers.com](mailto:mortgagelady@rogers.com)  
Broker Lic.#M09000948 Franchise Lic.#10874  
----- End of Forwarded Message

**Subject:** Fwd: 346 C Jarvis  
**From:** Carlos Carreiro (cancarr58@sympatico.ca)  
**To:** lkotylo@yahoo.com;  
**Date:** Thursday, August 14, 2014 4:51:58 PM

Hi Lenard,

I am starting to forward to you all emails with the mortgage broker pertaining to the purchase of \$346C Jarvis.

Thanks

Carlos

Begin forwarded message:

**From:** Debi McKeon <mortgagelady@rogers.com>  
**Subject:** 346 Jarvis  
**Date:** September 27, 2010 at 3:01:01 PM EDT  
**To:** <cancarr58@sympatico.ca>  
**Cc:** Norma Walton <nwalton@roseandthistle.ca>

Hi Carlos,

Could you please provide me with the following:

1. Colette's employer's information ie. Name, address, phone, annual income, position and tenure.
2. Salary letter and paystub for Colette
3. NOA's 2009 and 2008 for Carlos showing no taxes owing

I have had to resubmit your purchase because of 19 Tennis. I emailed Norma to see if the closing date could be moved to the end of next week as the Lender wants all documentation upfront. I am just waiting on the Lender's approved list of Appraisers.

Many thanks, Debi.

DBDC SPADINA LTD., et al  
Applicants

NORMA WALTON, et al  
Respondents

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**Commercial List**

Proceeding commenced at Toronto

**MOTION RECORD OF THE MANAGER,  
SCHONFELD INC.**

(Motion for an Order releasing 19 Tennis  
Crescent, 646 Broadview Avenue and 346 Jarvis  
Street, Unit C from the operation of the Judgment  
and Order of Justice Brown dated August 12,  
2014)

**GOODMANS LLP**  
**Barristers & Solicitors**  
**Bay Adelaide Centre**  
**333 Bay Street, Suite 3400**  
**Toronto, Canada M5H 2S7**

Brian Empey LSUC#: 30640G  
Mark S. Dunn LSUC#: 55510L  
Tel: (416) 979-2211  
Fax: (416) 979-1234

Lawyers for The Manager

**File No. 14-0074**