

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial List**

BETWEEN:

DBDC SPADINA LTD.,  
and THOSE CORPORATIONS LISTED ON SCHEDULE "A" HERETO

Applicants

- and -

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

Respondents

- and -

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

**MOTION RECORD OF THE MANAGER, SCHONFELD INC.**  
(Motion for Approval and Vesting Orders re: 115 Skyway and 1 Cityview,  
returnable August 20, 2014)

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**ONTARIO**  
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## INDEX

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  - 3. Payout statement with respect to Skyway Mortgage
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A

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

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THOSE CORPORATIONS LISTED IN SCHEDULE “B” HERETO, TO BE  
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**NOTICE OF MOTION**  
**(Motion for approval and vesting orders with respect to**  
**115-119 Skyway Avenue and 1 City View Drive, returnable August 20, 2014)**

Schonfeld Inc., in its capacity as manager (the “**Manager**”) of certain companies listed in Schedule “B” to the Order of Justice Newbould dated November 5, 2013 (the “**Companies**”) together with the real estate properties owned by the Companies (the “**Properties**”), as amended by Order of Justice Newbould dated January 16, 2014, will make a motion to a judge presiding on the Commercial List on August 20, 2014 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto.

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

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**THE MOTION IS FOR:**

1. an Order:
  - (a) abridging the time for service of the Notice of Motion and the materials filed in support of the Motion and dispensing with further service thereof;
2. an Order:
  - (a) approving the sale transaction (the “**Skyway Transaction**”) contemplated by an agreement of purchase and sale dated May 27, 2014 (the “**Skyway Agreement**”) between 2395089 Ontario Ltd. (“**239 Ontario**”) and the Manager in respect of the property known municipally as 115-119 Skyway Avenue in Toronto, Ontario (the “**Skyway Property**”);
  - (b) approving the Manager’s execution of the Skyway Agreement and authorizing it to enter into and complete the Skyway Transaction in accordance with terms of the Skyway Agreement;
  - (c) vesting in 239 Ontario all of Skyway Holdings Ltd.’s right, title and interest in and to the Skyway Property;
  - (d) directing that proceeds received by the Manager in connection with the Skyway Transaction, net of closing costs and amounts due pursuant to any mortgage validly registered against the Skyway Property, be held in trust by the Manager pending further Order of this Court;
  - (e) sealing the confidential appendices relating to the Skyway Transaction (the “**Skyway Confidential Appendices**”) to the Fifteenth Report of the Manager dated August 18, 2014 (the “**Fifteenth Report**”); and
  - (f) granting all ancillary and necessary relief, all as set out in the Order, and such further and other relief as the Court may deem just; and

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3. an Order:

- (a) approving the sale transaction (the “**Cityview Transaction**”) contemplated by an agreement of purchase and sale accepted on May 29, 2014, as amended by an agreement dated June 13, 2014, revived and amended by an agreement dated June 23, 2014 and further revived and amended by an agreement dated as of July 14, 2014 (collectively, the “**Cityview Agreement**”) between Cyclone Creative Inc. (“**Cyclone**”) and the Manager in respect of the property known municipally as 1 City View Drive in Toronto, Ontario (the “**1 Cityview Property**”);
- (b) approving the Manager’s execution of the Cityview Agreement and authorizing it to enter into and complete the Cityview Transaction in accordance with terms of the Cityview Agreement;
- (c) vesting in Cyclone all of Cityview Industrial Ltd.’s right, title and interest in and to the 1 Cityview Property;
- (d) sealing the confidential appendices to the Fifteenth Report relating to the Cityview Transaction (the “**Cityview Confidential Appendices**”); and
- (e) granting all ancillary and necessary relief, all as set out in the Order, and such further and other relief as the Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**I. Background**

1. The 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 Ronald Walton and entities that they control (the “**Walton Group**”). Most of the Companies were incorporated to purchase and develop a particular Property.

2. 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,

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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.

3. Pursuant to the Order of Justice Newbould dated November 5, 2014, the Manager was appointed to provide independent management of the Companies and the Properties for the benefit of all stakeholders.

## **II. The Skyway Transaction**

### **A. Interested Parties**

4. The Skyway Property is owned by one of the Companies, Skyway Holdings Ltd. ("**Skyway**"). A mortgage in the amount of \$2,800,000 (the "**Skyway Mortgage**") and a Notice of Assignment of Rents each in favour of 368230 Ontario Limited (the "**Mortgagee**") are registered on title to the Skyway Property. The Mortgagee is controlled by the Applicants.

5. In addition, construction liens are registered on title to the Skyway Property as follows:

- (a) \$8,138.83 in favour of Macnaughton Hermesen Britton Clarks Planning Ltd.;
- (b) \$3,420.51 in favour of Laser Heating and Air Conditioning Inc. ("**Laser**"); and
- (c) \$846.94 also in favour of Laser.

6. By Order dated June 10, 2014 (the "**Meridian Order**") the sale of the Property known municipally as 30-34 Meridian Road in Toronto (the "**Meridian Property**") was approved. The Meridian Property is adjacent to the Skyway Property. The Skyway Mortgage and the construction liens noted above were originally registered against both the Meridian Property and the Skyway Property. The Meridian Order provided for the amount of \$15,508.75 (the "**Meridian Lien Holdback**") to be held back from the proceeds of the sale of the Meridian Property and held in trust by the Manager pending further Order of the court after the Manager has conducted a claims process.

### **B. The Marketing Process**

7. The Skyway Property, which was renovated extensively by the previous tenant for use in specialized pharmaceutical manufacturing, was the subject of an extensive marketing process

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conducted by CBRE Limited (“CBRE”). This campaign included e-mails to CBRE’s private database, a listing of the Skyway Property on CBRE’s website and twitter account, listing on MLS, features in The Globe and Mail on two occasions, and marketing mailings sent directly to potential pharmaceutical users.

8. The marketing brochure and confidentiality agreement were sent to 846 potentially interested parties. A total of 23 potential purchasers requested further information about the Skyway Property.

9. CBRE conducted nine tours of the Skyway Property. The prospective purchasers and agents that toured the Skyway Property were generally experienced participants in the Toronto commercial real estate market.

10. The Manager received three offers for the Skyway Property. The highest initial offer was submitted by 239 Ontario. After receiving 239 Ontario’s initial offer, CBRE negotiated with 239 Ontario in order to achieve a higher purchase price and acceptable terms.

#### **C. Timing of the Skyway Transaction**

11. The Skyway Transaction is scheduled to close on August 20, 2014.

12. The Applicants and the Respondents have been provided with copies of the Skyway Agreement and have been kept informed of the Manager’s efforts to market and sell the Skyway Property and to complete the Skyway Transaction. Neither the Applicants, the Mortgagee, which is controlled by the Applicants, nor the Respondents have raised any objections to the Skyway Transaction.

#### **D. Sale Proceeds**

13. The Skyway Mortgage is validly registered. The Manager recommends that the proceeds of the Skyway Transaction, net of closing costs, be used to satisfy the remaining unpaid balance of the Skyway Mortgage. The Manager anticipates that the net proceeds available on closing will be sufficient to pay out the remaining amount owed pursuant to the Skyway Mortgage. The Manager recommends that any excess proceeds be held in trust by the Manager pending further Order of the Court after the Manager has conducted a claims process to identify creditors entitled to payment by Skyway.

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14. The Manager has not assessed the validity of these liens, the priority of the construction liens registered against the Skyway Property (if valid) relative to the Skyway Mortgage, or the lien claimants' entitlement to the amounts claimed. The Meridian Lien Holdback is currently being held in trust by the Manager. Retention of the Meridian Lien Holdback by the Manager pending further Order of the Court will protect the lien claimants' interests. Therefore, closing of the Skyway Transaction will not affect the lien claimants.

### **III. The Cityview Transaction**

#### **A. Interested Parties**

15. The property known municipally as 1-9/11 City View Drive in Toronto (the "**Cityview Property**") is owned by one of the Companies, Cityview Industrial Ltd. ("**Cityview**").

16. A first mortgage in the amount of \$4,000,000, a second mortgage in the amount of \$650,000 (collectively, the "**Cityview Mortgages**"), and notices of assignment of rents each in favour of the Mortgagee are registered on title to the Cityview Property. The outstanding balance on the Cityview Mortgages is \$3,200,876.51.

17. In addition, construction liens are registered against the Cityview Property as follows:

- (a) \$138,586 in favour of Gemtec Wall & Ceiling Systems Ltd. ("**Gemtec**");
- (b) \$721,375 in favour of Fox Contracting Limited ("**Fox**");<sup>1</sup>
- (c) \$4,876.41 in favour of Macnaughton Hermsen Britton Clarkson Planning Limited; and
- (d) \$153,691 in favour of Laser.

#### **B. The Part 2 Lands**

18. By Order dated February 21, 2014 (the "**February 21 Order**"), Justice Spence approved the sale of the property known municipally as 9-11 Cityview Drive in Toronto, being part 2 on

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<sup>1</sup> The Manager understands that Gemtec is a subcontractor of Fox and that most or all of Gemtec's claim is included within Fox's claim.

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Plan 66R-26674 (the “**Part 2 Lands**”). The remaining portion of the Cityview Property, the 1 Cityview Property, was retained by Cityview for sale at a later date.

19. The February 21 Order provided for the amount of \$969,583.99 (the “**Cityview Lien Holdback**”) to be held in trust by the Manager pending further Order of the Court after the Manager has conducted a claims process.

### **C. The Marketing Process**

20. The Cityview Property is presently leased to the Newton Grove School (the “**School**”). The terms of this lease were a significant obstacle to the Manager’s efforts to sell the Cityview Property.

21. The School’s lease of the 1 Cityview Property was intended to be temporary. More specifically, the School entered into a lease with another one of the Companies pursuant to which a new school was to be built on the Property located at 140 Queen’s Plate Drive (“**140 Queen’s Plate**”). However, no construction occurred at 140 Queen’s Plate and funds advanced by the Applicants to fund such construction were diverted to other of the Companies and companies controlled by the Waltons. The pattern of funds transferred is described in Justice Brown’s August 12, 2014 decision. When the Manager was appointed, the Company that owned 140 Queen’s Plate was unable to fund any construction and that Property was ultimately sold pursuant to a power of sale proceeding.

22. The School’s lease with Cityview is to terminate when construction of a new facility for the School at 140 Queen’s Plate is complete. For the reasons set out above, this will not occur. As a result, the length of the School’s lease is uncertain. This uncertainty exerted significant downward pressure on the price of the 1 Cityview Property. In addition, a broad marketing campaign in respect of the 1 Cityview Property would have been impeded by the School’s ongoing operations, which limited the Manager’s ability to show the 1 Cityview Property.

23. After it became apparent that the School could not move to 140 Queen’s Plate, the Manager discussed the possible sale of the 1 Cityview Property to a party related to the School. While these negotiations were ongoing, the Manager received the offer that ultimately culminated in the Cityview Agreement.



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24. In the Manager's view, the Cityview Agreement represents the best available option to realize on the 1 Cityview Property and the Manager recommends completion of the Cityview Agreement in accordance with its terms

**D. Timing of the Cityview Transaction**

25. The Cityview Transaction is expected to close on August 29, 2014.

26. The Applicants and the Respondents have been provided with copies of the Cityview Agreement and have been kept informed of the Manager's efforts to sell the 1 Cityview Property and to complete the Cityview Transaction. Neither the Applicants, the Mortgagee, which is controlled by the Applicants, nor the Respondents have raised any objections to the Cityview Transaction.

**E. Sale Proceeds**

27. The Cityview Mortgages are validly registered.

28. A The Manager has not assessed the validity of the construction liens registered against the Cityview Property, the priority of the liens (if valid) relative to the Cityview Mortgages or the lien claimants' entitlement to the amounts claimed. As noted above, the Cityview Lien Holdback is currently being held in trust by the Manager. Retention of the Cityview Lien Holdback by the Manager pending further Order of the Court will protect the lien claimants' interests. Therefore, closing of the Cityview Transaction will not affect the lien claimants.

29. The Manager recommends that the proceeds of the Cityview Transaction, net of closing costs, be used to satisfy the Cityview Mortgages. The net proceeds available on closing will not be sufficient to pay out the remaining amount owed pursuant to the Cityview Mortgages.

**IV. Confidential Appendices**

30. Disclosure of the information contained in the Confidential Appendices to the Fifteenth Report included in confidential appendix briefs would negatively impact the Manager's ability to carry out its mandate by, among other things, interfering with the integrity of any subsequent sales process in respect of the Skyway Property and the 1 Cityview Property if the Skyway Transaction and the Cityview Transaction are not completed, including by impairing the

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Manager's ability to maximize realization of the Skyway Property and the 1 Cityview Property were any information to be made public concerning any discussions of sales processes or values of the Skyway Property or the 1 Cityview Property among the Manager, the parties or any of their advisors and/or any possible bidders for the Skyway Property or the 1 Cityview Property or any of the Properties.

**B. Miscellaneous**

31. Rules 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
32. 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 Fifteenth Report of the Manager dated August 18, 2014; and
2. Such further and other material as counsel may advise and this Honourable Court may permit.

Date: August 18, 2014

**GOODMANS LLP**

333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

Brian Empey LSUC#: 30640G  
Mark Dunn LSUC#: 55510L

Tel: (416) 979-2211  
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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.
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19. Global Mills Inc.
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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 approval and vesting orders with respect**  
**to 115-119 Skyway Avenue and 1 City View Drive,**  
**returnable August 20, 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

B

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

**FIFTEENTH REPORT OF THE MANAGER, SCHONFELD INC.**



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## **I. Introduction**

1. This is the Fifteenth Report of Schonfeld Inc. (the “**Manager**”) in its capacity as Manager of certain companies listed at Schedule “B” to the Order of Justice Newbould dated November 5, 2013 (the “**Companies**”),<sup>1</sup> together with the real estate properties owned by the Companies (the “**Properties**”).

### **A. Purpose of this Report**

2. This Manager has brought a motion for, among other things:
- (a) an approval and vesting order in respect of the sale transaction (the “**Skyway Transaction**”) contemplated by the Agreement of Purchase and Sale dated May 27, 2014 (the “**Skyway Agreement**”) between 2395089 Ontario Ltd. (“**239 Ontario**”) and the Manager in respect of the property known municipally as 115-119 Skyway Avenue in Toronto, Ontario (the “**Skyway Property**”). The Skyway Agreement is attached as Skyway Confidential Appendix “A”;
  - (b) an Order permitting the Confidential Appendices to this Report in respect of the Skyway Transaction (the “**Skyway Confidential Appendix Brief**”) to be filed under seal without being served on the Service List;
  - (c) an approval and vesting order in respect of the sale transaction (the “**Cityview Transaction**”) contemplated by the Agreement of Purchase and Sale accepted on May 29, 2014, as amended by an agreement dated June 13, 2014, revived and amended by an agreement dated June 23, 2014 and further revived and amended by an agreement dated as of July 14, 2014 (collectively, the “**Cityview Agreement**”) between Cyclone Creative Inc. (“**Cyclone**”) and Cityview Industrial Ltd. in respect of the property known municipally as 1 City View Drive in Toronto, Ontario (the “**1 Cityview Property**”). The Cityview Agreement is attached as Cityview Confidential Appendix “A”; and

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

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- (d) an Order permitting the Confidential Appendices to this Report in respect of the Cityview Transaction (the “**Cityview Confidential Appendix Brief**”) to be filed under seal without being served on the Service List;

3. This Report provides a summary of the Skyway Transaction and the Cityview Transaction (collectively, the “**Transactions**”) and a recommendation that this Honourable Court grant the relief described in the Manager’s Notice of Motion.

#### **B. Terms of reference**

4. 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 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. Confidentiality**

5. In the Manager’s judgment, disclosure of some of the documents appended to this Report would negatively impact the Manager’s ability to carry out its mandate by, among other things, interfering with the integrity of any subsequent sales process in respect of the Skyway Property and the 1 Cityview Property if either or both of the Transactions are not completed. In particular, and without limiting the generality of the foregoing, it is the Manager’s judgment that it would impair the Manager’s ability to maximize realization of the Skyway Property and the 1 Cityview Property were any information to be made public concerning any discussions of sale processes or values of the Skyway Property or the 1 Cityview Property among the Manager, the parties or any of their advisers and/or any possible bidders for the Skyway Property or the 1 Cityview Property or any of the Properties. Accordingly, a number of Appendices to this Report have been identified as Confidential Appendices and will be filed in separate Confidential Appendix Briefs. The Manager respectfully requests an Order authorizing it to file the Confidential Appendices under seal without serving the Skyway Confidential Appendix Brief or the Cityview Confidential Appendix Brief on the Service List.

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## **D. Background**

6. The 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 Companies were incorporated to purchase and develop a particular Property.

7. 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, which is attached as Appendix “1”.

8. Pursuant to the Order of Justice Newbould dated November 5, 2013, which is attached as Appendix “2”, the Manager was appointed to provide independent management of the Companies and the Properties for the benefit of all stakeholders.

9. The Manager’s mandate was further expanded to include all of the real estate properties owned by the Walton Group pursuant to the Reasons of Justice Brown dated August 12, 2014. The Manager was also appointed receiver of the individual Respondents, Norma and Ronauld Walton on an interim basis pending appointment of a permanent receiver.

## **II. The Skyway Transaction**

### **A. Interested Parties**

10. The Skyway Property is owned by one of the Companies, Skyway Holdings Ltd. (“**Skyway**”). A mortgage in the amount of \$2,800,000 (the “**Skyway Mortgage**”) and a Notice of Assignment of Rents each in favour of 368230 Ontario Limited (the “**Mortgagee**”), a company controlled by the Applicants, are registered on title to the Skyway Property.

11. In addition, construction liens are registered on title to the Skyway Property as follows:

- (a) \$8,138.83 in favour of Macnaughton Hermesen Britton Clarks Planning Ltd.;

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- (b) \$3,420.51 in favour of Laser Heating and Air Conditioning Inc. (“**Laser**”); and
- (c) \$846.94 also in favour of Laser.<sup>2</sup>

12. By Order dated June 10, 2014 (the “**Meridian Order**”) the sale of the Property known municipally as 30-34 Meridian Road in Toronto (the “**Meridian Property**”) was approved. The Meridian Property is adjacent to the Skyway Property and the Skyway Mortgage and the construction liens noted above were originally registered against both the Meridian Property and the Skyway Property. The Meridian Order provided for the amount of \$15,508.75 (the “**Meridian Lien Holdback**”) to be held back from the proceeds of the sale of the Meridian Property and held in trust by the Manager pending further Order of the court after the Manager has conducted a claims process.

#### **B. The Marketing Process**

13. The Skyway Property, which was renovated extensively by the previous tenant for use in specialized pharmaceutical manufacturing, was the subject of an extensive marketing process. CBRE Limited (“**CBRE**”) conducted a formal marketing campaign for the Skyway Property. This campaign included e-mails to CBRE’s private database, a listing of the Skyway Property on CBRE’s website and twitter account, listing on MLS, features in The Globe and Mail on two occasions, and marketing mailings sent directly to potential pharmaceutical users.

14. The marketing brochure and confidentiality agreement were sent to 846 potentially interested parties. A total of 23 potential purchasers requested further information about the Skyway Property.

15. CBRE conducted nine tours of the Skyway Property. The prospective purchasers and agents that toured the Skyway Property were generally experienced participants in the Toronto commercial real estate market. These parties are listed in CBRE’s marketing report, which is attached as Skyway Confidential Appendix “B”.

16. Each prospective purchaser that toured the Skyway Property provided similar feedback: given that the interior of the building was built out for a specific use, the lack of parking and

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<sup>2</sup> The Manager paid the amounts outstanding listed in (b) and (c) above and these liens will be, discharged.

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shipping space, and the age of the equipment, the costs of renovating the Skyway Property to create a useable premise placed significant downward pressure on the purchase price.

17. The Manager received three offers for the Skyway Property. The highest initial offer was submitted by 239 Ontario. After receiving 239 Ontario's initial offer, CBRE negotiated with 239 Ontario in order to achieve a higher purchase price and acceptable terms.

18. On May 27, 2014, the Manager and 239 Ontario executed the Skyway Agreement.

### **C. Timing of the Skyway Transaction**

19. The Skyway Transaction is scheduled to close on August 20, 2014.

### **D. Stakeholder Approval**

20. The Applicants and the Respondents have been provided with copies of the Skyway Agreement and have been kept informed of the Manager's efforts to market and sell the Skyway Property and to complete the Skyway Transaction. Neither the Applicants, the Mortgagee, which is controlled by the Applicants, nor the Respondents have raised any objections to the Skyway Transaction.

### **E. Proposed Distribution of Sale Proceeds**

21. The Manager instructed its counsel, Goodmans LLP ("**Goodmans**"), to conduct a review of the Skyway Mortgage. Goodmans has advised the Manager that the Skyway Mortgage is validly registered against the Skyway Property.

22. The Manager recommends that the proceeds of the Skyway Transaction, net of closing costs, be used to satisfy the remaining unpaid balance of the Skyway Mortgage. A payout statement with respect to the Skyway Mortgage is attached as Appendix "3". The Manager anticipates that the net proceeds available on closing will be sufficient to pay out the remaining amount owed pursuant to the Skyway Mortgage. The Manager recommends that any excess proceeds be held in trust by the Manager pending further Order of the Court after the Manager has conducted a claims process to identify creditors entitled to payment by Skyway.

23. As noted above, three construction liens are registered against the Skyway Property. The Manager has not assessed the validity of these liens, the priority of the liens (if valid) relative to

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the Skyway Mortgage or the lien claimants' entitlement to the amounts claimed. The Meridian Lien Holdback is currently being held in trust by the Manager. Retention of the Meridian Lien Holdback by the Manager pending further Order of the Court will protect the lien claimants' interests. Therefore, closing of the Skyway Transaction will not affect the lien claimants.

### **III. The Cityview Transaction**

#### **A. Interested Parties**

24. Cityview Industrial Ltd. ("**Cityview**") is one of the Companies and owns a Property known municipally as 1-9/11 City View Drive in Toronto (the "**Cityview Property**"). Two mortgages are registered against the Cityview Property: a first mortgage in the amount of \$4,000,000 and a second mortgage in the amount of \$650,000 (collectively, the "**Cityview Mortgages**"), and notices of assignment of rents both in favor of the Mortgagee.

25. According to the payout statements provided by the Mortgagee, the outstanding balance on the Cityview Mortgages is \$3,200,876.51. These payout statements are attached as Appendix "4".

26. In addition, construction liens are registered against the Cityview Property as follows:

- (a) \$138,586 in favour of Gemtec Wall & Ceiling Systems Ltd. ("**Gemtec**");
- (b) \$721,375 in favour of Fox Contracting Limited ("**Fox**");<sup>3</sup>
- (c) \$4,876.41 in favour of Macnaughton Hermesen Britton Clarkson Planning Limited; and
- (d) \$153,691 in favour of Laser.

#### **B. The Part 2 Lands**

27. By an agreement of purchase and sale dated March 26, 2013, as amended (the "**Part 2 Agreement**"), Cityview agreed to sell the property known municipally as 9-11 City View Drive in Toronto, being Part 2 on Plan 66R-26674 (the "**Part 2 Lands**"), to Red Finch Developments

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<sup>3</sup> The Manager understands that Gemtec is a subcontractor of Fox and that most or all of Gemtec's claim is included within Fox's claim.

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Limited. By Order dated February 21, 2014, which is attached as Appendix “5”, Justice Spence approved the sale of the Part 2 Lands (the “**February 21 Order**”). The balance of the Cityview Property, the 1 Cityview Property, was retained by Cityview for sale at a later date. The Manager’s activities relating to the sale of the Part 2 Lands were reported in the Third Report of the Manager dated February 19, 2014 (the “**Third Report**”). The Third Report is attached as Appendix “6”.

28. The February 21 Order provided for the amount of \$969,583.99 (the “**Cityview Lien Holdback**”) to be held in trust by the Manager pending further Order of the Court after the Manager has conducted a claims process.

### **C. The Marketing Process**

29. The 1 Cityview Property is presently leased to the Newton Grove School (the “**School**”). The terms of this lease, which are described below, were a significant obstacle to the Manager’s efforts to sell the 1 Cityview Property.

30. The School’s lease of the 1 Cityview Property was intended to be temporary. More specifically, the School entered into a lease with another one of the Companies pursuant to which a new school was to be built on the Property located at 140 Queen’s Plate Drive (“**140 Queen’s Plate**”). However, no construction occurred at 140 Queen’s Plate and funds advanced by the Applicants to fund such construction were diverted to other of the Companies and companies controlled by the Waltons. The pattern of funds transferred is described in Justice Brown’s August 12, 2014 decision. When the Manager was appointed, the Company that owned 140 Queen’s Plate was unable to fund any construction and that Property was ultimately sold pursuant to a power of sale proceeding.

31. The School’s lease with Cityview, which is attached as appendix “7”, is to terminate when construction of a new facility for the School at 140 Queen’s Plate is complete. For the reasons set out above, this will not occur. As a result, the length of the School’s lease is uncertain. This uncertainty exerted significant downward pressure on the price of the 1 Cityview Property. In addition, a broad marketing campaign in respect of the 1 Cityview Property would have been impeded by the School’s ongoing operations, which limited the Manager’s ability to show the 1 Cityview Property.



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32. After it became apparent that the School could not move to 140 Queen's Plate, the Manager discussed the possible sale of the 1 Cityview Property to a party related to the School. While these negotiations were ongoing, the Manager received the offer that ultimately culminated in the Cityview Agreement. As noted above, the Cityview Agreement, together with the amendments thereto, are attached as Cityview Confidential Appendix "A".

33. In the Manager's view, the Cityview Agreement represents the best available option to realize on the 1 Cityview Property. CBRE has issued a letter, which is attached as Cityview Confidential Appendix "B", in which it opines that the purchase price contemplated by the Cityview Agreement is reasonable in the circumstances. Accordingly, the Manager recommends completion of the Cityview Agreement in accordance with its terms

**D. Timing of the Cityview Transaction**

34. The Cityview Transaction is expected to close on August 29, 2014.

**E. Stakeholder Approval**

35. The Applicants and the Respondents have been provided with copies of the Cityview Agreement and have been kept informed of the Manager's efforts to sell the 1 Cityview Property and to complete the Cityview Transaction. Neither the Applicants, the Mortgagee, which is controlled by the Applicants, nor the Respondents have raised any objections to the Cityview Transaction.

**F. Proposed Distribution of Sale Proceeds**

36. The Manager instructed Goodmans to conduct a review of the Cityview Mortgages. Goodmans has advised the Manager that the Cityview Mortgages are validly registered against the 1 Cityview Property.

37. As noted above, four construction liens are registered against the Cityview Property. The Manager has not assessed the validity of these liens, the priority of the liens (if valid) relative to the Cityview Mortgages or the lien claimants' entitlement to the amounts claimed. As noted above, the Cityview Lien Holdback (being the amount of the lien claims, less the amounts included in more than one lien, plus an amount to secure any costs award) is currently being held in trust by the Manager. Retention of the Cityview Lien Holdback by the Manager pending

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further Order of the Court will protect the lien claimants' interests. Therefore, closing of the Cityview Transaction will not affect the lien claimants.

38. The Manager recommends that the proceeds of the Cityview Transaction, net of closing costs, be used to satisfy the Cityview Mortgages. The net proceeds available on closing will not be sufficient to pay out the remaining amount owed pursuant to the Cityview Mortgages.

**G. Conclusion and Recommendations**

39. As set out above, the Transactions are each the result of a transparent and competitive marketing process. The Applicants and the Mortgagee consent to the completion of the Transactions and no parties oppose the Transactions. Accordingly, for the reasons set out in the above report, the Manager respectfully recommends that this Honourable Court grant the relief sought in the Manager's notice of motion.

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All of which is respectfully submitted this 18<sup>th</sup> day of August, 2014.

**SCHONFELD INC.**

**In its capacity as Manager pursuant to the Order of Newbould, J. dated November 5, 2013**

**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.
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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.

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## **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.
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23. Weston Lands Ltd.
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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.

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32. Richmond Row Holdings Ltd.

33. El-Ad (1500 Don Mills) Limited

34. 165 Bathurst Inc.

1

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

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

**BETWEEN:**

DBDC SPADINA LTD. and THOSE CORPORATIONS  
LISTED ON SCHEDULE A HERETO,

Applicants

**AND:**

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

Respondents

**AND**

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

**BEFORE:** Newbould J.

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

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

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

**HEARD:** November 1, 2013

**ENDORSEMENT**

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



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

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

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

#### **Background**

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

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

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

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

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

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

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

#### **Concerns of the applicants**

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

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

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

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

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

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

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

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

(ii) **Tisdale Mews**

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

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

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

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

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

**(iii) Steps to impede a proper inspection**

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

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

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

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

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

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

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

**(iv) Improper use of bank accounts**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(vii) Other equity investors**

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

**Legal principles and analysis**

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

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

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

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

[...]

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

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

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

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

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

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

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

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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.

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

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

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

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



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

### Conclusion

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

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

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

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

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

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



Newbould J.

**Date:** November 5, 2013

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

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

JUSTICE NEWBOULD

) OF NOVEMBER, 2013

B E T W E E N:

DBDC SPADINA LTD.,  
and THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO

Applicants

and

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

Respondents

and

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

**ORDER**

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

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

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

### **SERVICE**

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

### **CONTINUING ORDERS**

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

### **APPOINTMENT**

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

### **MANAGER'S POWERS**

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

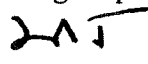
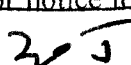
-3-

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

- (b) to open bank accounts at any banking institution acceptable to the Applicant to transfer funds from the current bank accounts of the Schedule "B" Companies, as necessary, ~~with prior notice to the Parties;~~ ✓ 245
- (c) to receive, preserve, and protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (d) to manage, operate, and carry on the business of the Schedule "B" Corporations, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business ~~upon prior notice to the Parties,~~ ✓ 25 or cease to perform any contracts of any of the Schedule "B" Corporations ~~upon prior notice to the Parties;~~ ✓ 25
- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this order including but not limited to a property manager, including but not limited to:
  - (i) DMS Properties;
  - (ii) Briarlane Property Rental Management Inc.; and

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(iii) Sterling Karamar;

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **CONTINUATION OF SERVICES**

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

### MANAGER TO HOLD FUNDS

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

### LIMITATION ON ENVIRONMENTAL LIABILITIES

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

### LIMITATION ON THE MANAGER'S LIABILITY

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

### MANAGER'S ACCOUNTS

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

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

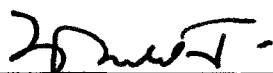
22. THIS COURT ORDERS that the Manager and its legal counsel, if any, shall pass their accounts from time to time, and for this purpose the accounts of the Manager and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
23. THIS COURT ORDERS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

#### FUNDING OF THE MANAGERSHIP

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

**GENERAL**

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



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

NOV 18 2013

NB

**SCHEDULE "A" COMPANIES**

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

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



**SCHEDULE "B" COMPANIES**

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

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

## SCHEDULE "C"

## MANAGER CERTIFICATE

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

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

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

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

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

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

Name:

Title:

DBDC SPADINA LTD., and those corporations listed on Schedule -and- NORMA WALTON et al.  
A hereto  
Plaintiffs

Defendants

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**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](mailto:pgriffin@litigate.com)

Shara N. Roy (49950H)

Tel: (416) 865-2942

Fax: (416) 865-3973

Email: [sroy@litigate.com](mailto:sroy@litigate.com)

Lawyers for the Plaintiffs

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**MORTGAGE DISCHARGE STATEMENT**

TO: Skyway Holdings Ltd.

RE: LENDER: 368230 ONTARIO LIMITED  
BORROWER: Skyway Holdings Ltd.  
PROPERTY: 34-34 Meridian Road & 115, 117 and 119 Skyway Ave., Toronto  
PRINCIPAL: \$2,800,000.00

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PRINCIPAL AND ACCRUED CAPITALIZED INTEREST TO August 5, 2014 \$2,932,593.50

Legal Fees (including HST) \$25,000.00

TOTAL AMOUNT OWING \$2,957,593.50

TOTAL PAID \$0.00

PRINCIPAL BALANCE OWING @ August 5, 2014 \$2,957,593.50

TOTAL AMOUNT OWING \$2,957,593.50

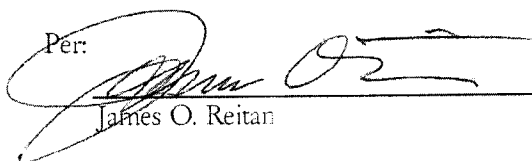
payable to 368230 Ontario Limited

Per diem interest after August 5, 2014 \$642.76

**EXECUTED** at Toronto, Ontario on the 13th day of August, 2014.

**368230 ONTARIO LIMITED**

Per:

  
James O. Reitan

I have authority to bind the Corporation

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**MORTGAGE DISCHARGE STATEMENT**

TO: Cityview Industrial Ltd.

RE: LENDER: 368230 ONTARIO LIMITED  
 BORROWER: Cityview Industrial Ltd.  
 PROPERTY: 1, 9-11 Cityview  
 ORIGINAL PRINCIPAL: \$4,000,000.00

PRINCIPAL AND ACCRUED CAPITALIZED INTEREST TO August 5, 2014 \$2,448,193.39

Legal Fees (including HST) \$47,000.00

PRINCIPAL BALANCE OWING @ August 5, 2014 \$2,495,193.39

TOTAL AMOUNT OWING \$2,495,193.39  
*payable to 368230 Ontario Limited*

Per diem interest after August 5, 2014 \$536.59

**EXECUTED** at Toronto, Ontario on the 13th day of August, 2014.

**368230 ONTARIO LIMITED**

Per:   
 James O. Reitan

I have authority to bind the Corporation



**MORTGAGE DISCHARGE STATEMENT**

TO: Cityview Industrial Ltd.

RE: LENDER: 368230 ONTARIO LIMITED  
BORROWER: Cityview Industrial Ltd.  
PROPERTY: 1, 9-11 Cityview  
ORIGINAL PRINCIPAL: \$650,000.00

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PRINCIPAL AND ACCRUED CAPITALIZED INTEREST TO August 5, 2014 \$692,683.12

Legal Fees (including HST) \$13,000.00

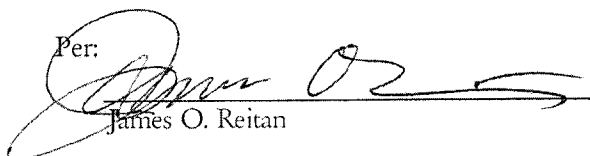
PRINCIPAL BALANCE OWING @ August 5, 2014 \$705,683.12

TOTAL AMOUNT OWING \$705,683.12  
*payable to 368230 Ontario Limited*

Per diem interest after August 5, 2014 \$151.82

**EXECUTED** at Toronto, Ontario on the 13th day of August, 2014.

**368230 ONTARIO LIMITED**

Per:   
James O. Reitan

I have authority to bind the Corporation

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE HONOURABLE  
JUSTICE SPENCE**

)  
)  
)

FRIDAY, THE 21<sup>ST</sup>  
DAY OF FEBRUARY, 2014

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

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

**APPROVAL AND VESTING ORDER**

(Cityview Industrial Ltd. – Road Widening Lands (as defined below))

THIS MOTION, made by Schonfeld Inc. in its capacity as the Court-appointed manager (the "Manager") without security, of all of the assets, undertakings and properties of Cityview Industrial Ltd. ("Cityview") for an order approving each of: (a) the vesting of all of Cityview's right, title and interest in and to the lands legally described as Part of Lot 22, Concession 2 Fronting the Humber, City of Toronto, designated as Parts 3, 4 and 5 on Plan 66R26674 (the

- 2 -

**"Road Widening Lands"**) in the City of Toronto in order to satisfy one (1) of the conditions imposed by the City of Toronto Committee of Adjustments pursuant to a Notice of Decision Consent dated July 18, 2013 (File #B27/13EYK) (the **"Road Widening Conveyance"**); and (b) the sale transaction (the **"Transaction"**) contemplated by an agreement of purchase and sale (the **"Sale Agreement"**) to for the lands and building legally described as Part of Lot 22, Concession 2 Fronting the Humber, City of Toronto, designated as Part 2 on Plan 66R26674 (the **"Part 2 Lands"**) between the Manager and Red Finch Developments Limited (the **"Purchaser"**) dated March 26, 2013 as amended by first amendment to agreement of purchase and sale made as of the 14<sup>th</sup> day of February, 2014 and appended to the Report of the Manager dated February 18<sup>th</sup>, 2014 (the **"Report"**), and vesting in the Purchaser Cityview's right, title and interest in and to the Part 2 Lands, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Manager, no one appearing for any other person on the service list:

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Manager is hereby authorized and approved, with such minor amendments as the Manager may deem necessary. The Manager is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Part 2 Lands to the Purchaser or whomever the Purchaser directs in writing.
3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Manager's certificate to the Purchaser substantially in the form attached as Schedule C hereto (the **"Part 2 Manager's Certificate"**) and the registration and/or recordation of this Order on title to the Part 2 Lands, all of Cityview's right, title and interest in and to the Part 2 Lands shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), purchase options, liens, executions, writs of seizure and sale, levies, charges, or other financial or monetary claims, whether or not they have attached or been



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perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the **"Part 2 Claims"**) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Newbould dated November 5, 2013; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those claims listed on Schedule B hereto (all of which items (i), (ii) and (iii) are collectively referred to as the **"Part 2 Encumbrances"**, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule C) and, for greater certainty, this Court orders that all of the Part 2 Encumbrances affecting or relating to the Part 2 Lands are hereby expunged and discharged as against the Part 2 Lands.

4. THIS COURT ORDERS that upon the registration and/or recordation in the Land Registry Office for the Land Titles Division of Toronto of an Application for Vesting Order with respect to the Part 2 Lands, in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Part 2 Lands in fee simple, and is hereby directed to delete and expunge from title to the Part 2 Lands all of the Part 2 Claims listed in Schedule B hereto.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of the Road Widening Claims and the Part 2 Claims (collectively, the **"Claims"**), the net proceeds from the sale of the Part 2 Lands shall stand in the place and stead of the Road Widening Lands and the Part 2 Lands, and that from and after the delivery of the Manager's Road Widening Certificate and the Manager's Part 2 Certificate (collectively, the **"Manager's Certificates"**) all Claims and Road Widening Encumbrances and Part 2 Encumbrances (collectively, the **"Encumbrances"**) shall attach to the net proceeds from the sale of the Part 2 Lands with the same priority as they had with respect to the Road Widening Lands and the Part 2 Lands immediately prior to the sale, as if the Road Widening Lands had not been conveyed to the City of Toronto and the Part 2 Lands had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the conveyance and sale, respectively.

6. THIS COURT ORDERS that the proceeds of the Transaction, net of closing costs, shall be distributed as follows:

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- (a) the amount of \$969,583.99 (the "Lien Holdback") shall be held in trust by the Manager pending further Order of this Court; and
- (b) the balance of the proceeds of the Transaction, net of closing costs, shall be paid to 368230 Ontario Limited (the "Mortgagee") in satisfaction of the first ranking charge registered as AT3123206 (the "First Mortgage").

7. THIS COURT ORDERS that a motion to determine the priority of the the Encumbrances, including the priority of the Mortgagee in respect of the First Mortgage and in respect of the charge registered as AT3271120 (the "Second Mortgage") and/or Gemtec Wall & Ceiling Systems Ltd., Fox Contracting Ltd., Laser Heating & Air Conditioning Inc., Macnaughton Hermesen Britton Clarkson Planning Limited (collectively the "Lien Claimants") in respect of the liens set out in Schedule D hereto, as that priority relates to the Lien Holdback shall be brought forthwith following the completion of the Transaction (the "Priority Motion"), The Priority Motion shall be brought before a Judge of the Commercial List in Toronto, or as such a Judge may direct.

8. THIS COURT ORDERS that following hearing of the Priority Motion, and if necessary, any party may bring a motion to challenge the validity of the Encumbrances registered by the Lien Claimants and the Lien Claimants entitlement to payment from Cityview and/or the Mortgagee and/or the Lien Claimants may bring a motion for a payment in respect of the Lien Holdback, on the following terms

- (i) the Mortgagee may seek payment of some or all of the Lien Holdback in satisfaction of the First Mortgage or Second Mortgage;
- (ii) each Lien Claimant may seek a payment of no more than the face amount of their lien as set out in Schedule "F" hereto from the Lien Holdback;
- (iii) each Lien Claimant may also seek a costs of the motion and such costs, if awarded, may be paid from the Lien Holdback. However, the maximum cost award to be paid to each Lien Claimant from the Lien Holdback is as follows:
  - (1) Fox Contracting Ltd. may be paid up to \$50,000;
  - (2) Gemtec Wall & Ceiling Systems Ltd may be paid up to \$10,000 plus any portion of the amount described in (1) above that is not paid to Fox;
  - (3) Laser Heating & Air Conditioning Inc. may be paid up to \$38,422.69; and



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- (4) Macnaughton Hermesen Britton Clarkson Planning Limited may be paid up to \$1,219.10 (the "Repayment Motion").

The Repayment Motion shall be brought before a Judge of the Commercial List in Toronto, or as such a Judge may direct.

9. THIS COURT ORDERS AND DIRECTS the Manager to file with this Court the Manager's Part 2 Certificate, forthwith after delivery thereof.

10. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Cityview and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Cityview;

the vesting of the Part 2 Lands in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Cityview and shall not be void or voidable by creditors of Cityview, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

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

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Court, as may be necessary or desirable to give effect to this Order or to assist the Manager and its agents in carrying out the terms of this Order.

13. THIS COURT ORDERS that no holder of any Part 2 Encumbrances shall take any steps or proceedings, or make any filings or claims in connection therewith, against the Part 2 Lands or against the Purchaser in connection with any of such Part 2 Encumbrances following delivery of the Part 2 Manager's Certificate in accordance with paragraph 3 hereof.

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



FEB 21 2014



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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

**THIRD REPORT OF THE MANAGER, SCHONFELD INC.**

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## **I. Introduction**

1. This is the Third Report of Schonfeld Inc. (the “**Manager**”) in its capacity as Manager of certain companies listed at Schedule “B” to the Order of Justice Newbould dated November 5, 2013 (the “**Companies**”),<sup>1</sup> together with the real estate properties owned by the Companies (the “**Properties**”). Cityview Industrial Ltd. (“**Cityview**”) is one of the Companies.

### **A. Purpose of this Report**

2. This Manager has brought a motion for, among other things:

- (a) the vesting of all of Cityview’s right, title and interest in and to the lands legally described as Part of Lot 22, Concession 2 Fronting the Humber, City of Toronto, designated as Parts 3, 4 and 5 on Plan 66R26674 (the “**Road Widening Lands**”) in the City of Toronto in order to satisfy one (1) of the conditions imposed by the City of Toronto Committee of Adjustments pursuant to a Notice of Decision dated July 18, 2013 (File #B27/13EYK) (the “**Road Widening Conveyance**”);
- (b) an approval and vesting order (the “**Approval and Vesting Order**”) in respect of the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) for the lands and building legally described as Part of Lot 22, Concession 2 Fronting the Humber, City of Toronto, designated as Part 2 on Plan 66R26674 (the “**Part 2 Lands**”) between Cityview and Red Finch Developments Limited (“**Red Finch**” or the “**Purchaser**”) dated March 26, 2013 as amended by first amendment to agreement of purchase and sale made between the Manager and Red Finch as of the 14<sup>th</sup> day of February, 2014 (the “**Amendment**”);
- (c) directing that proceeds received by the Manager in connection with the Transaction (the “**Cityview Proceeds**”) be dealt with as follows:

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

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- (i) the amount of \$969,583.99 to be held in trust pending either a final determination with respect to the quantum, validity and priority of construction liens registered against the Cityview Property;
- (ii) the balance of the Cityview Proceeds, net of closing costs, be paid to the Mortgagee (as defined below) in satisfaction of the First Mortgage (as defined below); and
- (d) an Order permitting the Confidential Appendices to this Report, as described below, to be filed under seal without being served on the Service List.

3. This Report provides a summary of the Transaction and a recommendation that this Honourable Court grant the relief described in the Manager's Notice of Motion.

**B. Terms of reference**

4. 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 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. Confidentiality**

5. In the Manager's judgment, disclosure of some of the documents appended to this Report would negatively impact the Manager's ability to carry out its mandate by, among other things, interfering with the integrity of any subsequent sales process in respect of the Cityview Property if the Transaction is not completed. In particular, and without limiting the generality of the foregoing, it is the Manager's judgment that it would impair the Manager's ability to maximize realization of the Cityview Property were any information to be made public concerning any discussions of sale process or values of the Cityview Property among the Manager, the parties or any of their advisers and/or any possible bidders for Cityview Property or any of them. Accordingly, a number of Appendices to this Report have been identified as Confidential Appendices and will be filed in a separate Confidential Appendix Brief. The Manager

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respectfully requests an Order authorizing it to file the Confidential Appendices under seal without serving the Confidential Appendix Brief on the Service List.

## II. The Transaction

### A. Interested Parties

6. Cityview owns a Property municipally known as 9 and 11 Cityview Drive, Toronto (the “**Cityview Property**”). The Cityview Property is subject to two mortgages (the “**Mortgages**”) in favour of 368230 Ontario Limited (the “**Mortgagee**”), a company controlled by Dr. Bernstein, as described below:

Instrument	Registered Amount	Date	Interest rate
Charge (AT3123206), Notice of Assignment of Rents General (AT3123219) (the “ <b>First Mortgage</b> ”)	\$4,000,000	September 7, 2012	8%
Charge (AT3271120), Notice of Assignment of Rents General (AT3271124)	\$650,000	April 5, 2013	11%

7. Payout statements from the Mortgagee are attached as Appendix 1.



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8. In addition, the following four companies have registered construction liens against the Cityview Property, in the amounts set out below:

<b>Instrument</b>	<b>Lien Amount</b>	<b>Party</b>
Construction Lien (AT3426580) Certificate of Action (AT3463563)	\$138,586	Gemtec Wall & Ceiling Systems Ltd.
Construction Lien (AT3426936) Certificate of Action (AT3461899)	\$721,375	Fox Contracting Ltd.
Construction Lien (AT3463067) Certificate of Action (AT3487262)	\$153,691	Laser Heating & Air Conditioning Inc.
Construction Lien (AT3472538) Notice of Change of Lawyer and Statement of Claim	\$4,876.41	Macnaughton Hermesen Britton Clarkson Planning Limited

9. The Manager understands that Gemtec Wall & Ceiling Systems Ltd. ("**Gemtec**") is a subcontractor of Fox Contracting Limited ("**Fox**") and that Gemtec's claims are subsumed in Fox's claim. In other words, Fox has included amounts owed to Gemtec in its own claim.

#### **B. The Sale Agreement**

10. Cityview entered into the Sale Agreement before the Manager was appointed. The Sale Agreement is attached as Confidential Appendix A. The Manager subsequently entered into the Amendment with Red Finch on February 14, 2014, which is attached as Confidential Appendix B. The Amendment requires that the Transaction close on or before February 28, 2014. The Manager does not expect that this deadline will be extended and, accordingly, time is of the essence.

11. The Sale Agreement contemplates that Cityview will sell the Part 2 Lands, which are a portion of the Cityview Property, to Red Finch. The balance of the Cityview Property will be retained by Cityview and marketed for sale at a later date.

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12. Since Cityview was already subject to the Sale Agreement when the Manager was appointed, the Manager could not expose the Cityview Property to the market without first disclaiming the Sale Agreement. In order to determine whether to disclaim the Sale Agreement, the Manager carefully considered the value of the Sale Agreement and discussed it with the Applicants and the Respondents. The Manager also obtained a comfort letter with respect to the sale price offered by Red Finch from Norman Height (a certified appraiser), which is attached as Confidential Appendix C. The Applicants, the Respondents and the Mortgagee have advised that they are satisfied with the purchase price set out in the Sale Agreement. Based on all of these factors, the Manager considers that it is commercially reasonable under the circumstances to complete the Transaction.

**C. The Road Widening**

13. In order to complete the Transaction, Cityview must sever the Part 2 Lands from the balance of the Cityview Property. As documented in the Notice of Decision dated July 18, 2013 and appended as Appendix 2, Cityview has obtained conditional consent to the necessary severance from the City of Toronto. All of the conditions have now been satisfied except for the conveyance of the Road Widening Lands (a two metre strip at the edge of the Cityview Property) to the City of Toronto free and clear of all encumbrances. The Manager and the City of Toronto have agreed to the form of vesting order, set out as Schedule "C" to the Notice of Motion, being proposed to convey the Road Widening Lands to the City of Toronto (the "**Road Widening Vesting Order**").

**D. Registered interests in the Cityview Property**

**a. Mortgages**

14. The Manager instructed its counsel, Goodmans LLP, to conduct a review of the Mortgages. Goodmans has advised the Manager that the Mortgages are validly registered against the Cityview Property.

**b. Construction liens**

15. As noted above, four construction liens are registered against the Cityview Property. The Manager has not assessed the validity of these liens, the priority of the liens (if valid) relative to the Mortgages or the lien claimants' entitlement to the amounts claimed. In order to allow the

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Transaction to close but protect the interests of the lien claimants, the Approval and Vesting Order provides that \$969,583 (being the amount of the lien claims, less the amounts included in more than one lien plus the amount of \$96,056 to secure any costs award)<sup>2</sup> is to be held in trust by the Manager pending further Order of the Court following a determination with respect to the validity and priority of the liens or a joint direction of the Mortgagee and the lien claimants.

**c. Proposed Use of Proceeds**

16. The Manager recommends that the proceeds of the Transaction, net of closing costs and the amount described in paragraph 15 above, be paid to partially satisfy the First Mortgage. After providing for the liens as set out above, the net proceeds available on closing will not be sufficient to pay out the First Mortgage. Accordingly, the Mortgages will remain registered against the portion of the Cityview Property being retained by Cityview and the amount outstanding will be reduced by the amount paid to the Mortgagee from the proceeds of the Transaction. The Manager is not at this time anticipating that there will be funds available to Cityview and therefore no other distribution of funds is being proposed in connection with the Transaction.

**E. Recommendations**

17. For reasons set out above, the Manager respectfully recommends that this Honourable Court grant the relief sought by the Manager in its Notice of Motion.

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<sup>2</sup> The amount for costs is based on the amount that would have to be paid to vacate the lien pursuant to the *Construction Lien Act*.

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All of which is respectfully submitted this 19th day of February, 2014.

**SCHONFELD INC.**

**In its capacity as Manager pursuant to the Order of Newbould, J. dated November 5, 2013**

**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.

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**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.

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

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THIS INDENTURE made as of the date set forth in "Basic Terms" IN PURSUANCE OF THE SHORT FORMS OF LEASE ACT:

BETWEEN:

**CITYVIEW INDUSTRIAL LTD.**  
(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

**PEEL EDUCATION AND TUTORIAL SERVICES LTD.**  
(herein referred to as the "Tenant")

OF THE SECOND PART

In consideration of the rents, mutual promises, covenants and obligations stipulated in this Lease, the Landlord and the Tenant hereby covenant and agree as follows:

**"BASIC TERMS"**

**Date:** April 23, 2013

**Tenant:** **PEEL EDUCATION AND TUTORIAL SERVICES LTD.**

**Landlord:** **CITYVIEW INDUSTRIAL LTD.**

**Lands, Building:** The lands and existing buildings, have a municipal address of 1-9-11 Cityview Drive, in the City of Etobicoke, in the Province of Ontario (the "Lands") as shown on Schedule "B" hereof which is described in Schedule "A" hereof. The Building, having a municipal address of 1 Cityview Drive, Etobicoke, Ontario, comprises approximately 25,850 sq. ft. of Rentable Area (the "Building").

**Premises:** Premises will consist of approximately 25,850 square feet of Rentable Area..

**Term:** Fourteen (14) months

**Commencement Date:** May 1, 2013

**Expiry Date:** June 30, 2014

**Early Occupancy:** The Tenant, along with the Landlord will fixture the premises during the months of May and June 2013 (the "Early Occupancy Period") to ready the premises for occupancy by the Tenant.

**Free Rent Period:** During the Early Occupancy Period the Tenant shall not be required to pay Rent or utilities.

**Base Rent:** The Tenant shall pay to the Landlord a monthly Base Rent as follows:  

July 1, 2013 - Aug. 31, 2013	Early Occupancy - no Rent payable
Sept. 1, 2013 - Dec. 31, 2013	\$47,500.00 per month
Jan. 1, 2014 - Jun 30, 2014	\$31,667.00 per month

**Deposit:** The Tenant shall not be required to pay a deposit as it relates to the Premises

**HST:** The Tenant shall not be responsible for the payment of HST on Semi-GrossRent. However should the Landlord be assessed for HST then the Landlord and Tenant shall mutually share on a 50/50% basis the total invoices of such assessment as they come due and payable.

**Realty Taxes and Operating Costs:** Throughout the Term of this Lease, the Landlord and not the Tenant will be responsible for paying the Property Taxes and Operating Costs, excluding Utilities which the Tenant shall be responsible for.

**Utilities:** In addition to the Base Rent the Tenant shall pay directly all utilities serving the Building, the Lands and Premises, including: hydro and gas, water, telephone, communications services and any other utilities required by the Tenant for its operation of its business in the Premises. The Tenant shall ensure all utilities have been transferred into its name prior to receiving access to the Premises and, in any event, not later than the Commencement Date. The Landlord shall not be responsible for any late fees or penalties as a result of the Tenant not having paid the utilities on time.

**Signs:** There shall be no signage installed on or about the Development and or the exterior of the Premises without the prior permission from the Landlord in writing. All signage shall be subject to City by-laws, rules and regulations and permits, the sign, maintenance, installation and repair shall be the responsibility of the Tenant, at the Tenant's sole expense.

**Use:** The Tenant is solely responsible to ensure the Premises are used solely for the purpose of a private educational facility and such use shall be in accordance with by-laws and zoning for the Development as further outlined herein.

<b>Dock Use:</b>	The Tenant shall not be responsible for maintaining any docks, dock levellers serving the Premises. Such shall be the responsibility of the Landlord, if such is in need of repair.
<b>Parking:</b>	<p>The Tenant shall be allowed the use of the parking area serving the Building.</p> <p>The Landlord shall have no liability as it relates to incidents, accidents or injury as a result of improper traffic control on the part of the Tenant.</p>
<b>Renewal:</b>	There shall be no renewal of this Lease unless agreed to between the parties three months prior to the Expiry Date.
<b>Insurance:</b>	The Tenant shall maintain insurance as further outlined herein as it relates to the Premises, contents, vehicles, etc. The Tenant shall maintain insurance as in accordance for all vehicles utilized by the Tenant, its employees or contracted services (such as bus transportation for the students) as required by the Ministry of Transportation, city bylaws and codes.
<b>Interior Maintenance:</b>	Tenant shall be responsible for its own in suite cleaning/janitorial services in the Premises at the Tenant's sole expense. Removal of garbage shall be placed by the Tenant in the garbage room at the rear of the first floor in the shipping area garbage room serving the Building. The Tenant shall ensure its garbage is separated into two bins – one for garbage and one for recycling.
<b>Schedules:</b>	The following Schedules form part of this Lease.
Schedule "A"	Legal Description
Schedule "B"	Aerial Showing location of Building
Schedule "B-1"	Initial Layout of Premises
Schedule "C"	Landlord's Work and Tenant's Work
Schedule "D"	Rules and Regulations
Schedule "E"	Special Provisions

**"DEFINED TERMS"**

In this Lease, unless there is something in the subject matter or context inconsistent therewith, the following words and terms, which may be used in the singular or the plural, have the respective meanings given them as follows:

- "Act" means the Commercial Tenancies Act (Ontario);
- "Additional Rent" means all sums of money or charges required to be paid by the Tenant under this Lease in addition to Base Rent whether or not designated "Additional Rent" and whether payable to the Landlord or to third parties;
- "Alterations" means any repairs, replacements, alterations, decorations or improvements to any part of the Premises, including, without limitation, any Tenant's Work;
- "Authorities" means all federal, provincial, municipal and other governmental authorities (including, without limitation, suppliers of public utilities), departments, boards and agencies having or claiming jurisdiction;
- "Base Rent" means the Base Rent payable by the Tenant under the Basic Terms;
- "Building" means the building located on the Lands, together with all fixtures (excluding tenant's trade fixtures), improvements, heating, ventilation, air conditioning, electrical, mechanical, sprinkler and plumbing systems and facilities located in, on or serving such building, and all alterations, additions and replacements thereto;
- "Business Day" means any day which is not a Saturday, Sunday or a statutory holiday observed in Ontario;
- "Business Taxes" means all taxes, rates, duties, fees and assessments and other charges of every nature and kind that may be levied, rated, charged or assessed against or in respect of:
- (a) all improvements, equipment and facilities of the Tenant on or in the Premises or any part or parts thereof; and
  - (b) any and every business carried on or in the Premises or in respect of the use or occupancy thereof by the Tenant or any Transferee,
  - (c) by any lawful Authority, and any and all taxes which may in future be levied in lieu of any of the foregoing, whether foreseen or unforeseen;
- "Claims" means claims, losses, damages (direct, indirect, consequential or otherwise), suits, judgments, causes of action, legal proceedings, executions, demands, penalties or other sanctions of every nature and kind whatsoever, whether accrued, actual, contingent or otherwise and any and all costs arising in connection therewith, including, without limitation, legal fees and disbursements on a solicitor and his own client basis (including, without limitation, all such legal fees and disbursements in connection with any and all appeals);
- "Commencement Date" means the date described as such in the "Basic Terms";
- "Common Areas" means:
- (a) those areas, facilities, utilities, improvements, equipment and installations (in this definition collectively called the "Facilities") in the Development which, from time to time, are not designated or intended by the Landlord to be leased to the tenants of the Building;
  - (b) those Facilities designated by the Landlord, from time to time, as forming part of the Common Areas;
  - (c) those Facilities which serve or are for the benefit of the Development, whether or not located within, adjacent to or near the Building, and which are designated from time to time by the Landlord as part of the Common Areas, and
  - (d) those Facilities which are provided or designated by the Landlord for the use or benefit of the tenants in the Building.



their employees, customers and other invitees in common with others entitled to the use or benefit of same in the manner and for the purposes permitted by this Lease and for the time so permitted by the Landlord.

Without limiting the generality of the foregoing, unless otherwise outlined herein, the Common Areas shall include the roof, exterior walls, exterior and interior structural elements, bearing walls, signage, public areas, corridors, stairways, public washrooms, utility rooms, storage rooms, janitor rooms, mechanical, electrical, plumbing and other installations, equipment, systems or services and all structures containing same (including, without limitation, the heating, ventilating and air conditioning system) and security, fire, life and safety systems in the Development and all exterior parking areas, landscaped areas, graveled areas, passageways, driveways, private access roads and routes, pedestrian routes and sidewalks generally serving the Development. The Landlord may designate, amend and redesignate the Common Areas from time to time;

"Development" means the Building, the Common Areas, the Premises, and the Lands;

"Event of Default" means any of the following events:

- (a) the Tenant fails to pay any Rent reserved by this Lease on the day or dates appointed for the payment thereof and such failure continues for 5 days following written demand for the payment thereof being made by the Landlord. If, however, the Landlord provides such written notice twice in any 12 month period, it shall not be required to give any further written notices for the 12 month period following the date that the Landlord gives such second notice;
  - (b) the Tenant fails to observe or perform any of the Tenant's Covenants (other than the payment of Rent) and:
    - (i) fails to remedy such breach within 15 days (or such shorter period as may be provided in this Lease) of the receipt or deemed receipt by the Tenant of written notice from the Landlord respecting such breach; or
    - (ii) if such breach cannot be reasonably remedied within 15 days or such shorter period, the Tenant fails to commence to remedy such breach within 15 days or shorter period or thereafter fails to proceed diligently to remedy such breach;
  - (c) the Tenant becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors (including, without limitation, electing to terminate or disclaim this Lease in connection with a proposal made by the Tenant under the Bankruptcy and Insolvency Act (Canada), the Companies Creditors Arrangements Act (Canada) or any other statute allowing the Tenant to terminate or disclaim this Lease);
  - (d) a receiver or a receiver and manager is appointed for all or a portion of the Tenant's property;
  - (e) any steps are taken or any actions or proceedings are instituted by the Tenant or by any other party including without limitation any court or Authority having jurisdiction for the dissolution, winding up or liquidation of the Tenant or its assets;
  - (f) the Tenant makes a sale in bulk of all or a substantial portion of its assets other than in conjunction with a Transfer approved by the Landlord;
  - (g) this Lease or any of the Tenant's assets are taken under a writ of execution;
  - (h) the Tenant assigns, transfers or encumbers this Lease or sublets or permits the occupation or use or the parting with or sharing possession of all or any part of the Premises by anyone except in a manner permitted by this Lease;
  - (i) the Premises become vacant or unoccupied for a period of 10 consecutive days or more without the consent of the Landlord or the Tenant abandons or attempts to abandon the Premises or disposes of its goods so that there would not after such disposal be sufficient goods of the Tenant on the Premises subject to distress to satisfy Rent for at least 3 months;
  - (j) any insurance policies covering any part of the Development or any occupant thereof are actually or threatened to be cancelled or adversely changed as a result of any use or occupancy of the Premises;
  - (k) the Tenant advises the Landlord that it does not intend to continue operating its business in the Premises; or
  - (l) an Event of Default, regardless as to how minor in nature or effect, as defined in this paragraph occurs with respect to any lease or agreement under which the Tenant occupies other premises, if any, in the Building
- For greater certainty, the Landlord shall not be required to give the Tenant any notice in respect of the events described in paragraphs (c) to (l) of this definition, an Event of Default arising immediately upon the occurrence of such an event;
- "Expert" means any architect, engineer, land surveyor, chartered accountant or other professional consultant, in any case, appointed by the Landlord and, in the reasonable opinion of the Landlord, qualified to perform the specific function for which such Person was appointed;

"Fixturing Period" means the period of time, if any, specified as such in the "Basic Terms";

"Force Majeure" has the meaning given that term in Section 20 hereof;

"HST" means the harmonized sales taxes, under the Excise Tax Act (Canada), and all other goods and services taxes, business transfer taxes, value-added or transaction taxes, sales taxes, multi-stage sales taxes, use or consumption taxes or any other taxes on the Landlord with respect to the Rent and any other amounts payable by the Tenant to the Landlord under this Lease which may at any time be imposed by an Authority on or in respect of rental or real property, whether characterized as a goods and services tax, sales tax, value-added tax or otherwise;

"Hazardous Substance" means all contaminants, pollutants, explosives, hazardous waste, pathological waste, generic or process-specific waste, leachates, solvents, pesticides, and all radioactive, noxious, hazardous, toxic, corrosive, combustible, ignitable and reactive materials, substances and constituents (including, without limitation, polychlorinated biphenyls, dioxins, asbestos and urea formaldehyde foam insulation) and all other materials, substances and constituents (whether gas, liquid or solid) deemed, defined to be, listed or referred to as hazardous (either singly or in combination with any other materials, substances or constituents) in or pursuant to any Laws or which may cause an adverse effect (as that term is defined in the Environmental Protection Act (Ontario));

"HVAC Equipment" or "HVAC" means the heating, ventilating, air conditioning and humidity control equipment servicing the Premises;

"Injury" means, without limitation, bodily injury, personal injury, personal discomfort, mental anguish, shock, sickness, disease, death, false arrest, detention or imprisonment, malicious prosecution, libel, slander, defamation of character, invasion of privacy, wrongful entry or eviction and discrimination, or any of them, as the case may be;

"Insured Damage" means that part of any damage occurring to the Premises for which the cost of the repair (less any deductible) is actually recovered by the Landlord under insurance policies required to be carried by the Landlord. For clarity, no damage occurring to the any portion of the Premises to be insured by the Tenant pursuant to its obligations in this Lease (including, without limitation, the leasehold improvements) shall be considered Insured Damage;

"Landlord's Work" means the work, if any, required to be performed by the Landlord as set out in Schedule "C";

"Lands" means the lands described in Schedule "A" and which have the municipal address set out in the "Basic Terms";

"Laws" means all laws, statutes, ordinances, regulations, by-laws, directions, orders, rules, requirements, directions and guidelines of all Authorities;

"Lease" means this document and the Schedules attached to it as originally signed and delivered or as amended from time to time;

"Lease Year" means a period of 12 months commencing on the first day of January in each year except that:

(a) the first Lease Year begins on the Commencement Date and ends on the last day of the calendar year in which the Commencement Date occurs; and

(b) the last Lease Year of the Term begins on the first day of the calendar year during which the last day of the Term occurs and ends on the last day of the Term, provided that the Landlord may, from time to time, by written notice to the Tenant specify an annual date upon which each subsequent Lease Year is to commence, in which event the Lease Year which would otherwise be current when such annual date first occurs shall terminate on such date and appropriate adjustments of Rent resulting from any Lease Year being shorter or longer shall be made;

"Leasehold Improvements" means all items in or serving the Premises and considered at common law as being a leasehold improvement, including, without limitation, all fixtures, improvements, installations, alterations and Alterations from time to time made, erected or installed (whether prior to or following the execution of this Lease) by or on behalf of the Landlord, the Tenant or any previous tenant or occupant of the Premises in, on or which serve the Premises, whether or not easily disconnected or movable and includes all the following, whether or not any of the same are in fact the Tenant's trade fixtures: doors, partitions and hardware; internal walls; windows; cabling of every nature and kind; coolers, freezers, lockers; mechanical, electrical and utility installations designed solely to serve the Premises; carpeting, drapes, other floor and window coverings and drapery hardware; heating, ventilating, air conditioning and humidity control equipment; lighting fixtures; built in furniture and furnishings; counters in any way connected to the Premises or to any utility services located therein; and, all items which cannot be removed without damage to the Premises. Leasehold Improvements do not, however, include the Tenant's trade fixtures (except as otherwise noted above in this definition), free standing furniture and equipment not in any way connected to the Premises or to any utility systems located therein (other than by merely plugging same into the electrical system serving the Premises);

"Mortgage" means any mortgage, charge or security instrument (including a deed of trust and mortgage securing bonds and all indentures supplemental thereto) which may now or hereafter affect the Development;

"Mortgagee" means the mortgagee, chargee, secured party or trustee for bond-holders, as the case may be, named in a Mortgage;

"Operating Costs" means the costs more particularly described in Section 5 of this Lease;

"Use" means the use which may be made of the Premises by the Tenant which is set out in the "Basic Terms";

"Person" means an individual, a corporation, a limited partnership, a general partnership, a trust, a joint stock company, a joint venture, an association, a syndicate, a bank, a trust company, an Authority and any other legal and business entity;

"Premises" means the premises demised by the Landlord to the Tenant for its shared possession as described in Basic Terms;

"Property Taxes" means:

(a) all real property taxes, including local improvement rates, levies, commercial concentration levies, rates, duties and assessments whether general or special, ordinary or extraordinary, foreseen or unforeseen, which may be levied or assessed by any lawful Authority against the Building, Premises, and Lands or any part thereof and any taxes or other amounts which are imposed instead of, or in addition to, any of the foregoing (whether of the foregoing character or not or whether in existence at the date that this Lease was executed);

(b) all costs and expenses incurred by or on behalf of the Landlord for consulting, appraisal, legal and other professional fees and expenses to the extent they are incurred in an attempt to minimize or reduce the amounts described in paragraph (a); and

(c) any and all penalties, late payment or interest charges imposed by any relevant taxing Authority as a result of the Tenant's late payment of any of the amounts described in paragraph (a) or any instalments thereof, as the case may be;

(d)

"Rent" means all Base Rent and Additional Rent payable by the Tenant pursuant to this Lease;

"Rentable Area of the Premises" means the area noted under Basic Terms;

"Rental Deposit" means the amount, if any, set out opposite the heading "Deposit" in the "Basic Terms", plus all monies added to such amount in accordance with the terms of this Lease;

"Schedules" means the schedules attached to this Lease and which are more particularly described in Basic Terms;

"

"Term" means the term of this Lease as set out in Basic Terms;

"Transfer" means any of:

(a) an assignment of this Lease by the Tenant in whole or in part;

(b) any arrangement, written or oral, whether by sublease, licence or otherwise, whereby rights to use space within the Premises are granted to any Person (other than the Tenant) from time to time, which rights of occupancy are derived through or under the interest of the Tenant under this Lease, and

(c) a mortgage or other encumbrance of this Lease or of all or any part of the Premises, or any interest therein; and

"Transferee" means any Person deriving rights through a Transfer.

Certain terms which have been defined within specific sections of this Lease for use solely within those sections are not referred to above.

## SECTION 1 - RECITALS

### a) Lands and Buildings

Whereas the Landlord is the owner of the lands described in "Basic Terms" hereto (the "Lands") on which a multiple occupancy industrial building (herein called the "Building" shown on Schedule "B-1") is erected. The Building, the Lands and the building on the lands known as 1-9-11 Cityview Drive, Etobicoke, Ontario together form a complex (hereinafter called the "Development"). The site plan for the Development is shown on Schedule "B". The legal description for the property is on Schedule "A" hereof.

### b) Premises

And whereas the Landlord has agreed to lease to the Tenant, and the Tenant has agreed to lease from the Landlord, the premises described in "Basic Terms" attached hereto (herein referred to as the "Premises"). The Premises comprise the unit in the Building described in the Basic Provisions and are shown Schedule "B-1".

### c) Use of Common Areas

The use and occupation by the Tenant of the Premises includes the non-exclusive right of the Tenant and Persons having business with the Tenant, in common with the Landlord, its other tenants, subtenants and all others entitled or permitted by the Landlord to the use of such parts of the Common Areas as they relate to the Development as may be designated from time to time by the Landlord as being available for general use by tenants and other occupants of the Development and customers and visitors thereto for such limited purposes as may be permitted by the Landlord, from time to time, subject, however, to the terms and conditions of this Lease and the Rules and Regulations for the use thereof as prescribed from time to time by the Landlord.

### d) Delegation of Authority

The Landlord's property manager, and such other persons as may be authorized by the Landlord from time to time, may act on behalf of the Landlord in connection with any matter contemplated by this Lease, including, without limitation, the giving of notices to the Tenant.

## SECTION 2 - TERM AND POSSESSION

a) The Tenant shall have possession of the Premises for a period commencing on the 1st day of May 2013 and ending on the 30<sup>th</sup> day of June, 2014, (the "Term").

b) Subject to the Landlord's rights under this Lease, and as long as the Lease is in good standing the Landlord covenants that the Tenant shall have quiet enjoyment of the Premises during the Term of this Lease without any interruption or disturbance from the Landlord or any other person or persons lawfully claiming through the Landlord.

c) The Landlord shall not be deemed in default in respect of the performance of any of the provisions of this Lease if the same is due to any cause beyond the reasonable control of the Landlord (except for the wilful act or gross neglect of the Landlord). The rent reserved and covenanted to be paid herein shall not commence until the possession of the Premises is given or is available for occupancy by the Tenant, but no failure to give possession shall in any way affect the validity of this Lease or the obligations of the Tenant hereunder, nor shall the same be construed in any way to extend the term of this Lease.

If the Landlord is unable to give possession of the Premises on or prior to the Commencement Date of the Term by reason of the holding over or retention of possession of any tenant, or for any other reason, or if repairs, improvements or alterations of the Premises or of the Building are not completed, the validity of this Lease shall not be impaired. Provided, however, that the Tenant shall not be liable to make any payments of Base Rent (as hereinafter defined) or Additional Rent (as hereinafter defined) until the Landlord is able to give possession of the Premises to the Tenant.

## SECTION 3 - GRANT OF LEASE

a) The Landlord leases the Premises to the Tenant:

- i) at the Rent set forth herein;
- ii) for the Term set forth in Basic Terms; and
- iii) subject to the conditions and in accordance with the covenants, obligations and agreements herein.

b) The Landlord covenants that he has the right to grant the leasehold interest in the Premises free from encumbrances except as disclosed on title.

## SECTION 4 - RENT AND ADDITIONAL RENT

a) The Tenant shall pay to the Landlord Base Rent in the amount set out in Basic Terms for the respective Lease Year by equal consecutive monthly instalments in advance on the first day of each month.

b) The Tenant further covenants to pay all other sums required by this Lease and agrees that all amounts payable by the Tenant to the Landlord or to any other party pursuant to the provisions of this Lease shall be deemed to be additional rent ("Additional Rent") whether or not specifically designated as such in this Lease.

c) At the Landlord's request, the Tenant shall make all payments under this Lease by way of post-dated cheques, on the Tenant's bank account from the Commencement Date to the end of the calendar year 2013 and for the ensuing months of the Term.

d) The Landlord and the Tenant agree that it is their mutual intention that, except as may be otherwise provided for elsewhere in this Lease, this Lease shall be a completely carefree net lease for the Landlord and that the Landlord

shall not, during the Term of this Lease, be required to make any payments in respect of the Premises other than charges of a kind personal to the Landlord (such as income and estate taxes and mortgage payments).

e) The Landlord, and not the Tenant, will be responsible for paying the Operating Costs as they relate to the repair and maintenance of the Premises, the Building and the Lands unless such repair and maintenance is as a result of the negligence of the Tenant.

f) All payments to be made by the Tenant pursuant to this Lease shall be delivered to the Landlord at the Landlord's address for service set out under Notices herein or to such other place as the Landlord may from time to time direct in writing.

k) The Tenant agrees to pay in advance to the Landlord at signing of this Lease by both parties the Deposit as outlined in Basic Terms.

h) All Rent in arrears and all sums paid by the Landlord for expenses incurred which should have been paid by the Tenant shall bear interest from the date payment was due or made, or expense incurred at a rate per annum equal to the prime commercial lending rate of the Landlord's bank plus two (2) percent.

i) The Tenant acknowledges and agrees that the payments of Rent and Additional Rent provided for in this Lease shall be made without any deduction for any reason whatsoever unless expressly allowed by the terms of this Lease or agreed to by the Landlord in writing; and

ii) no partial payment by the Tenant which is accepted by the Landlord shall be considered as other than a partial payment on account of Rent owing and shall not prejudice the Landlord's right to recover any Rent owing.

#### SECTION 5 - OPERATING COSTS

a) "Operating Costs" means the total, without duplication or profit of the costs, expenses, fees, rentals, disbursements and outlays of every kind in the maintenance, repair, replacement and operation of the Building (excluding repairs of a capital nature and utilities) including, without limitation, the following:

(i) costs of providing base Building entrance security, landscaping, window cleaning, common area waste collection, disposal and recycling and snow removal services and the costs of machinery, supplies, tools, equipment and materials used in connection with the Building;

(ii) costs of maintenance of HVAC, plumbing and electrical systems serving the Building;

(iii) costs of replacing building standard electric light fixtures, ballasts, tubes, starters, lamps, light bulbs and controls (to the extent such item is charged separately to the Tenant pursuant to this Lease then the costs of any such item attributable to other leaseable premises shall be excluded);

(iv) the Landlord's Building insurance (However Tenant agrees that the Tenant shall not have any insurable interest in, or any right to recover any proceeds under any of the Landlord's insurance policies and if solely as a result of the occupancy of the Premises, the conduct of business in the Premises or any acts or omissions of the Tenant in the Premises or any other portion of the Building causes or results in any increase in premiums for any of the Landlord's insurance policies, then, without limiting any other rights or remedies of the Landlord, the Tenant shall pay any such increase as Additional Rent forthwith upon receipt of the invoices of the Landlord for such additional premiums

(iv) costs of:

(aa) operating, maintaining, replacing, modifying and repairing the Building, including without limitation such costs where incurred by the Landlord in order to comply with Applicable Laws or required by the Landlord's insurance carrier or resulting from normal wear and tear to the Building;

(bb) providing, installing, modifying and upgrading energy conservation equipment and systems, life safety and emergency response systems, materials and procedures and telecommunication and broadband systems and equipment if any;

(cc) making alterations, replacements or additions to the Building intended to reduce Operating Costs, improve the operation of the Building and the systems, facilities and equipment serving the Building, or maintain their operation; and

(dd) replacing machinery or equipment, HVAC equipment, which by its nature requires periodic replacement,

#### SECTION 6 - TAXES

a) Property Taxes

i) The Landlord, and not the Tenant, will be responsible for paying the Property Taxes attributable to the Building.

b) Business Taxes and Other Taxes of the Tenant

The Tenant shall promptly pay before delinquency to the taxing Authorities or to the Landlord, if it so directs, as Additional Rent, any taxes, rates, duties, levies and assessments whatsoever, whether municipal, provincial, federal or otherwise, levied, imposed or assessed against or in respect of the operations at, occupancy of, or conduct of

business in or from the Premises by the Tenant or any other permitted occupant, including the Tenant's Business Taxes, if levied in the Province of Ontario. Whenever requested by the Landlord, the Tenant shall deliver to the Landlord copies of receipts for payment of all such taxes.

#### SECTION 7 – UTILITIES

In addition to the Base Rent the Tenant shall pay directly all utilities serving the Building, the Lands and Premises, including: hydro and gas, water, telephone, communications services and any other utilities required by the Tenant for its operation of its business in the Premises. The Tenant shall ensure all utilities have been transferred into its name prior to receiving access to the Premises and, in any event, not later than the Commencement Date. The Landlord shall not be responsible for any late fees or penalties as a result of the Tenant not having paid the utilities on time.

#### SECTION 8 – ASSIGNMENT

- a) The Tenant shall not assign this Lease or sublet the whole or any part of the Premises unless he first obtains the consent of the Landlord in writing, which consent shall not unreasonably be withheld:
  - i) and the Tenant hereby waives his right to the benefit of any present or future Act of the Legislature of Ontario which would allow the Tenant to assign this Lease or sublet the Premises without the Landlord's consent.
- b) The consent of the Landlord to any assignment or subletting shall not operate as a waiver of the necessity for consent to any subsequent assignment or subletting.
- c) Any consent granted by the Landlord shall be conditional upon the assignee, sublessee or occupant executing a written agreement directly with the Landlord agreeing to be bound by all the terms of this Lease as if the assignee, sublessee or occupant had originally executed this Lease as Tenant.
- d) Any consent given by the Landlord to any assignment or other disposition of the Tenant's interest in this Lease or in the Premises shall not relieve the Tenant from his obligations under this Lease, including the obligation to pay Rent and Additional Rent as provided for herein.
- e) If the party originally entering into this Lease as Tenant, or any party who subsequently becomes the Tenant by way of assignment or sublease or otherwise as provided for in this Lease, is a corporation then:
  - i) the Tenant shall not be entitled to deal with its authorized or issued capital or that of an affiliated company in any way that results in a change in the effective voting control of the Tenant unless the Landlord first consents in writing to the proposed change, which consent shall not unreasonably be withheld;
  - ii) if any change is made in the control of the Tenant corporation without the written consent of the Landlord then the Landlord shall be entitled to treat the Tenant as being in default and to exercise the remedies stipulated in Section 15 of this Lease and any other remedies available in law;
  - iii) the Tenant agrees to make available to the Landlord or his authorized representatives the corporate books and records of the Tenant for inspection at reasonable times.

#### SECTION 9 – USE

- a) During the Term of this Lease the Premises shall not be used for any purpose other than a private school without the express consent of the Landlord given in writing. The Tenant shall ensure its use of the Premises is in compliance with all municipal by-laws and regulations as they relate to such use.
- b) The Tenant shall not do or permit to be done at the Premises anything which may:
  - i) constitute a nuisance;
  - ii) cause damage to the Premises;
  - iii) cause injury or annoyance to occupants of neighbouring premises;
  - iv) make void or voidable any insurance upon the Premises;
  - v) constitute a breach of any by-law, statute, order or regulation of any municipal, provincial or other competent authority relating to the Premises.

#### SECTION 10 - REPAIR AND MAINTENANCE

- a) The Tenant covenants that during the term of this Lease and any renewal thereof the Tenant shall keep in good condition the Premises including all Alterations and additions made thereto, and shall, with or without notice, promptly make all needed non-structural repairs and all necessary non-structural replacements as would a prudent owner:
  - i) but the Tenant shall not be liable to effect repairs or replacements:
    - (A) to any structural portions of the Premises (including the roof and the roof membrane), and/or
    - (B) attributable to reasonable wear and tear, or to damage caused by fire, lightning or storm, and/or
    - (C) caused or contributed to by the negligent acts or omissions of the Landlord or those for whom the Landlord is at law responsible, all of which shall be the Landlord's responsibility;
    - (D) for which the Landlord is responsible pursuant to sections 4(e) and 5
- b) The Tenant shall permit the Landlord or a person authorized by the Landlord to enter the Premises to examine the condition thereof and view the state of repair at reasonable times:
  - i) and if upon such examination repairs are found to be necessary, written notice of the repairs required shall be given to the Tenant by or on behalf of the Landlord and the Tenant shall make the necessary repairs within the time specified in the notice;

ii) and if the Tenant refuses or neglects to keep the Premises in good repair the Landlord may, but shall not be obliged to, make any necessary repairs, and shall be permitted to enter the Premises, by himself or his servants or agents, for the purpose of effecting the repairs without being liable to the Tenant for any loss, damage or inconvenience to the Tenant in connection with the Landlord's entry and repairs;

and if the Landlord makes repairs the Tenant shall pay the cost of them immediately as Additional Rent.

c) Upon the expiry of the Term or other determination of this Lease the Tenant agrees peaceably to surrender the Premises, including any Alterations or additions made thereto, to the Landlord in a state of repair consistent with the Tenant's obligations above.

d) The Tenant shall immediately give written notice to the Landlord of any substantial damage that occurs to the Premises from any cause.

#### SECTION 11 - ALTERATIONS AND ADDITIONS

a) If the Tenant, during the Term of this Lease or any renewal of it, desires to make any alterations or additions to the Premises, including but not limited to: erecting partitions, attaching equipment, and installing necessary furnishings or additional equipment of the Tenant's business, the Tenant may do so at his own expense, at any time and from time to time, if the following conditions are met:

i) before undertaking any alteration or addition the Tenant shall submit to the Landlord a plan showing the proposed alterations or additions and the Tenant shall not proceed to make any alteration or addition unless the Landlord has approved the plan, and the Landlord shall not unreasonably or arbitrarily withhold his approval;  
(1) and items included in the plan which are regarded by the Tenant as "Trade Fixtures" shall be designated as such on the plan;

ii) any and all alterations or additions to the Premises made by the Tenant must comply with all applicable building code standards and by-laws of the municipality in which the Premises are located.

b) The Tenant shall be responsible for and pay the cost of any alterations, additions, installations or improvements that any governing authority, municipal, provincial or otherwise, may require to be made in, on or to the Premises.

c) No sign, advertisement or notice shall be inscribed, painted or affixed by the Tenant, or any other person on the Tenant's behalf, on any part of the inside or outside of the building in which the Premises are located unless the sign, advertisement or notice has been approved in every respect by the Landlord.

d) All alterations and additions to the Premises made by or on behalf of the Tenant, other than the Tenant's Trade Fixtures, shall immediately become the property of the Landlord without compensation to the Tenant.

e) The Tenant agrees, at his own expense and by whatever means may be necessary, immediately to obtain the release or discharge of any encumbrance that may be registered against the Landlord's property in connection with any additions or alterations to the Premises made by the Tenant or in connection with any other activity of the Tenant.

f) If the Tenant has complied with his obligations according to the provisions of this Lease, the Tenant may remove his Trade Fixtures at the end of the Term or other termination of this Lease and the Tenant covenants that he will make good and repair or replace as necessary any damage caused to the Premises by the removal of the Tenant's Trade Fixtures.

g) Other than as provided in paragraph above, the Tenant shall not, during the Term of this Lease or anytime thereafter remove from the Premises any Trade Fixtures or other goods and chattels of the Tenant except in the following circumstances:

i) the removal is in the ordinary course of business;

ii) the Trade Fixture has become unnecessary for the Tenant's business or is being replaced by a new or similar Trade Fixture; or

iii) the Landlord has consented in writing to the removal;

but in any case the Tenant shall make good any damage caused to the Premises by the installation or removal of any Trade Fixtures, equipment, partitions, furnishings and any other objects whatsoever brought onto the Premises by the Tenant.

h) The Tenant shall, at his own expense, if requested by the Landlord, remove any or all additions or improvements made by the Tenant to the Premises during the Term and shall repair all damage caused by the installation or the removal or both.

i) The Tenant shall not bring onto the Premises or any part of the Premises any machinery, equipment or any other thing that might in the opinion of the Landlord, by reason of its weight, size or use, damage the Premises or overload the floors of the Premises;

j) and if the Premises are damaged or overloaded the Tenant shall restore the Premises immediately or pay to the Landlord the cost of restoring the Premises.

#### SECTION 12 - INSURANCE

a) During the Term of this Lease and any renewal thereof the Landlord shall maintain with respect to the Premises, insurance coverage insuring against:

i) loss or damage by fire, lightning, storm and other perils that may cause damage to the Premises or the property of the Landlord in which the Premises are located as are commonly provided for as extended perils coverage or as may be reasonably required and obtained by the Landlord and the insurance policy shall



provide coverage on a replacement cost basis in an amount sufficient to cover the cost of all signs and leasehold improvements;

ii) liability for bodily injury or death or property damage sustained by third parties up to such limits as the Landlord in his sole discretion deems advisable;

iii) rental income protection insurance with respect to fire and other perils to the extent of one year's Rent payable under this Lease but such insurance and any payment of the proceeds thereof to the Landlord shall not relieve the Tenant of its obligations to continue to pay rent during any period of rebuilding, replacement, repairing or restoration of the Premises except as provided in Section 15.

b) The Tenant covenants to keep the Landlord indemnified against all claims and demands whatsoever by any person, whether in respect of damage to person or property, arising out of or occasioned by the maintenance, use or occupancy of the Premises or the subletting or assignment of same or any part thereof. And the Tenant further covenants to indemnify the Landlord with respect to any encumbrance on or damage to the Premises or injury to persons occasioned by or arising from the act, Act of Default, or negligence of the Tenant, its officers, agents, servants, employees, contractors, customers, invitees or licensees. Similarly, the Landlord covenants to indemnify the Tenant with respect to any encumbrance on or damage to the Premises or injury to persons occasioned by or arising from the act, default, or negligence of the Landlord, its officers, agents, servants, employees, contractors, customers, invitees or licensees and the Tenant and Landlord agree that the foregoing indemnity shall survive the termination of this Lease notwithstanding any provisions of this Lease to the contrary.

c) The Tenant shall carry insurance in his own name to provide coverage with respect to the risk of business interruption to an extent sufficient to allow the Tenant to meet his ongoing obligations to the Landlord and to protect the Tenant against loss of revenues.

d) The Tenant shall carry insurance in his own name insuring against the risk of damage to the Tenant's property within the Premises caused by fire or other perils and the policy shall provide for coverage on a replacement cost basis to protect the Tenant's stock-in-trade, equipment, Trade Fixtures, decorations and improvements.

e) The Tenant shall carry public liability and property damage insurance in which policy the Landlord shall be a named additional insured and the policy shall include a cross-liability endorsement and the Tenant shall provide the Landlord with an annual copy of the policy.

#### SECTION 13 - DAMAGE TO THE PREMISES

a) If the Premises or the building in which the Premises are located, are damaged or destroyed, in whole or in part, by fire or other peril, then the following provisions shall apply:

i) if the damage or destruction renders the Premises unfit for occupancy and impossible to repair or rebuild using reasonable diligence within 120 clear days from the happening of such damage or destruction, then the Term hereby granted shall cease from the date the damage or destruction occurred, and the Tenant shall immediately surrender the remainder of the Term and give possession of the Premises to the Landlord, and the Rent from the time of the surrender shall abate;

ii) If the Premises can with reasonable diligence be repaired and rendered fit for occupancy within 120 days from the happening of the damage or destruction, but the damage renders the Premises wholly unfit for occupancy, then the rent hereby reserved shall not accrue after the day that such damage occurred, or while the process of repair is going on, and the Landlord shall repair the Premises with all reasonable speed, and the Tenant's obligation to pay Rent shall resume immediately after the necessary repairs have been completed;

iii) If the leased Premises can be repaired within 120 days as aforesaid, but the damage is such that the leased Premises are capable of being partially used, then until such damage has been repaired, the Tenant shall continue in possession and the Rent shall abate proportionately.

b) Any question as to the degree of damage or destruction or the period of time required to repair or rebuild shall be determined by an architect retained by the Landlord.

c) There shall be no abatement from or reduction of the Rent payable by the Tenant, nor shall the Tenant be entitled to claim against the Landlord for any damages, general or special, caused by fire, water, sprinkler systems, partial or temporary failure or stoppage of services or utilities which the Landlord is obliged to provide according to this Lease, from any cause whatsoever.

#### SECTION 14 - ACTS OF DEFAULT AND LANDLORD'S REMEDIES

a) An Act of Default has occurred when:

i) the Tenant has failed to pay Rent for a period of 15 consecutive days, regardless of whether demand for payment has been made or not;

ii) The Tenant has breached his covenants or failed to perform any of his obligations under this Lease; and

1) the Landlord has given notice specifying the nature of the default, a reasonable time period to cure same, and the steps required to correct it; and

2) the Tenant has failed to correct the default as required by the notice;

iii) the Tenant has;

1) become bankrupt or insolvent or made an assignment for the benefit of Creditors;

2) had its property seized or attached in satisfaction of a judgment;

- 3) had a receiver appointed;
  - 4) committed any act or neglected to do anything with the result that a Construction Lien or other encumbrance is registered against the Landlord's property;
  - 5) without the consent of the Landlord, made or entered into an agreement to make a sale of its assets to which the Bulk Sales Act applies;
  - 6) taken action if the Tenant is a corporation, with a view to winding up, dissolution or liquidation;
- iv) any insurance policy is cancelled or not renewed by reason of the use or occupation of the Premises, or by reason of non-payment of premiums;
- v) the Premises
- 1) become vacant or remain unoccupied for a period of 30 consecutive days; or
  - 3) are not open for business on more than thirty (30) business days in any twelve (12) month period or on any twelve (12) consecutive business days;
  - 4) are used by any other person or persons, or for any other purpose than as provided for in this Lease without the written consent of the Landlord.

b) If, because an Act of Default has occurred, the Landlord exercises his right to terminate this Lease and re-let the Premises prior to the end of the Term, the Tenant shall nevertheless be liable for payment of Rent and all other amounts payable by the Tenant in accordance with the provisions of this Lease until the Landlord has re-let the Premises or otherwise dealt with the Premises in such manner that the cessation of payments by the Tenant will not result in loss to the Landlord:

- i) and the Tenant agrees to be liable to the Landlord, until the end of the Term of this Lease for payment of any difference between the amount of Rent hereby agreed to be paid for the Term hereby granted and the Rent any new tenant pays to the Landlord.

c) The Tenant covenants that notwithstanding any present or future Act of the Legislature of the Province of Ontario, the personal property of the Tenant during the term of this Lease shall not be exempt from levy by distress for Rent in arrears:

- i) and the Tenant acknowledges that it is upon the express understanding that there should be no such exemption that this Lease is entered into, and by executing this Lease:

- 1) the Tenant waives the benefit of any such legislative provisions which might otherwise be available to the Tenant in the absence of this agreement; and

- 2) the Tenant agrees that the Landlord may plead this covenant as an estoppel against the Tenant if an action is brought to test the Landlord's right to levy distress against the Tenant's property.

d) If, when an Act of Default has occurred, the Landlord chooses not to terminate the Lease and re-let the Premises, the Landlord shall have the right to take any and all necessary steps to rectify any or all Acts of Default of the Tenant and to charge the costs of such rectification to the Tenant and to recover the costs as Rent.

e) If, when an Act of Default has occurred, the Landlord chooses to waive his right to exercise the remedies available to him under this Lease or at law the waiver shall not constitute condonation of the Act of Default, nor shall the waiver be pleaded as an estoppel against the Landlord to prevent his exercising his remedies with respect to a subsequent Act of Default:

- i) No covenant, term, or condition of this Lease shall be deemed to have been waived by the Landlord unless the waiver is in writing and signed by the Landlord.

#### SECTION 15 - TERMINATION AT END OF TERM

a) The Tenant agrees to permit the Landlord during the last three months of the Term of this Lease to display "For Rent" or "For Sale" signs or both at the Premises and to show the Premises to prospective new tenants or purchasers and to permit anyone having written authority of the Landlord to view the Premises at reasonable hours.

b) If the Tenant remains in possession of the Premises after termination of this Lease as aforesaid and if the Landlord then accepts rent for the Premises from the Tenant, it is agreed that such overholding by the Tenant and acceptance of Rent by the Landlord shall create a monthly tenancy only but the tenancy shall remain subject to all the terms and conditions of this Lease except those regarding the Term.

#### SECTION 16 - ACKNOWLEDGEMENT BY TENANT

a) The Tenant agrees that he will at any time or times during the Term, upon being given at least 5 business days' prior written notice, execute and deliver to the Landlord a statement in writing certifying:

- i) that this Lease is unmodified and is in full force and effect (or if modified stating the modifications and confirming that the Lease is in full force and effect as modified);
- ii) the amount of Rent being paid;
- iii) the dates to which Rent has been paid;
- iv) other charges payable under this Lease which have been paid;
- v) particulars of any prepayment of Rent or security deposits; and
- vi) particulars of any subtenancies.

#### SECTION 17 - SUBORDINATION AND POSTPONEMENT

a) This Lease and all the rights of the Tenant under this Lease are subject and subordinate to any and all charges against the land, buildings or improvements of which the Premises form part, whether the charge is in the nature of a mortgage, trust deed, lien or any other form of charge arising from the financing or re-financing, including extensions or renewals, of the Landlord's interest in the property.

b) Upon the request of the Landlord the Tenant will execute within five business days any form required to subordinate this Lease and the Tenant's rights to any such charge, and will, if required, attorn to the holder of the charge.

c) No subordination by the Tenant shall have the effect of permitting the holder of any charge to disturb the occupation and possession of the Premises by the Tenant as long as the Tenant performs his obligations under this Lease.

#### SECTION 18 - FORCE MAJEURE

Whenever and to the extent that the Landlord shall be unable to fulfil, or shall be delayed or restricted in fulfilling any obligation hereunder, including without limitation in respect of the supply or provision of any heating, service or utility or the making of any repairs, by any cause beyond its reasonable control, the Landlord shall be relieved from the fulfilment of such obligation during the period during which it shall be so unable to fulfil or shall be so delayed or restricted in fulfilling such obligation. Notwithstanding anything herein contained, the provisions of this section shall not operate to excuse the Tenant from the prompt payment of fixed Base Rent, Additional Rent or any other payments required by the terms of this Lease, nor entitle the Tenant to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

#### SECTION 19 - RULES AND REGULATIONS

The rules and regulations adopted and promulgated by the Landlord from time to time and listed on Schedule "D" attached hereto are hereby made a part of this Lease, and the Tenant agrees to comply with and observe the same. The Tenant's failure to keep and observe such rules and regulations shall constitute a breach of this Lease as if the same were contained therein as covenants. The Landlord reserves the right from time to time to amend or supplement such rules and regulations and to adopt and promulgate additional rules and regulations applicable to the Premises, the Building, the Common Areas, or any or all of them. Notice of such rules and regulations and amendments and supplements, if any, shall be given to the Tenant, and the Tenant agrees thereupon to comply therewith, provided that no rule or regulation shall contradict any provision of this Lease. The Landlord shall not be responsible to the Tenant for non-observance or violation of the provisions of such rules and regulations or of the terms of any other lease of premises in the Building and the Landlord shall be under no obligation to enforce any such provisions.

#### SECTION 20 - INTEREST IN LANDS

The Tenant will look solely to the interest of the Landlord in the Development for the collection or satisfaction of any money or judgement which the Tenant may recover against the Landlord and the Tenant will not look for the collection or satisfaction of any such money or judgement from any of the other assets of the Landlord or of any person who is at any time a partner, joint venturer or co-tenant with the Landlord in the Development.

#### SECTION 21 - LANDLORD AS TRUSTEE

Any and all exculpatory provisions, releases and indemnities included in this Lease for the benefit of the Landlord are intended also to benefit the Mortgagees, any owner or lessor with an interest in the Building prior to the Landlord and property managers of the Landlord and the officers, directors, shareholders, employees, agents of each one of them and, for the purposes of such provisions, the Landlord is acting as agent or trustee on behalf of and for the benefit of the persons mentioned above.

#### SECTION 22 - SEVERABILITY

If any provision of this Lease is or becomes invalid, void, illegal or not enforceable, such provision shall be considered separate and severable from this Lease and the remaining provisions shall remain in force and be binding upon the parties hereto as though such provision had not been included.

#### SECTION 23 - NOTICE

Any notice or delivery to be given or made hereunder shall be sufficiently given or made if mailed or sent via electronic facsimile to the Landlord at:

30 Hazelton Avenue, Toronto, Ontario, M5R 2E2  
Fax number: (416) 489-9973

and to the Tenant at:  
the municipal address of the Premises

If notice is mailed then the notice shall be sent by prepaid registered mail. Notice shall be deemed to have been given or made on the day following the date of mailing; if sent via facsimile prior to 4:59 p.m. notice shall be deemed sent that day (provided such day is a business day) and if sent via facsimile after 4:59 p.m. notice shall be deemed to be sent the next day (provided such day is a business day) and any communication sent after that time or on a day which is not a business day shall be deemed to have been duly given and received on the next business day; provided that either party may change its address by written notice to the other and in such event this section shall be deemed to be amended accordingly. The word "notice" in this section shall be deemed to include any request, statement or other writing in this Lease provided or permitted to be given by the Landlord to the Tenant or by the Tenant to the Landlord.

**SECTION 24 – REGISTRATION**

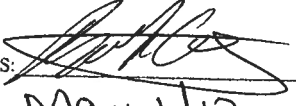
The Tenant shall not at any time register notice of or a copy of this Lease on title to the property of which the premises form part without consent of the Landlord.


**SECTION 25 – INTERPRETATION**

- a) The words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include firms and corporations and vice versa.
- b) Unless the context otherwise requires, the word "Landlord" and the word "Tenant" wherever used herein shall be construed to include the executors, administrators, successors and assigns of the Landlord and Tenant, respectively.
- c) When there are two or more Tenants bound by the same covenants herein contained, their obligations shall be joint and several.

**IN WITNESS WHEREOF** the parties hereto have signed and sealed this Lease as of the day, month and year set forth in "Basic Terms".

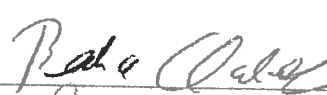
**LANDLORD'S SIGNATURE**

WITNESS:   
DATED: May 1/13

  
Per: Norma Walton  
CHYVIEW INDUSTRIAL LTD.

**TENANT'S SIGNATURE**

**PEEL EDUCATION AND TUTORIAL SERVICES LTD.**

WITNESS:   
DATED: May 1, 2013

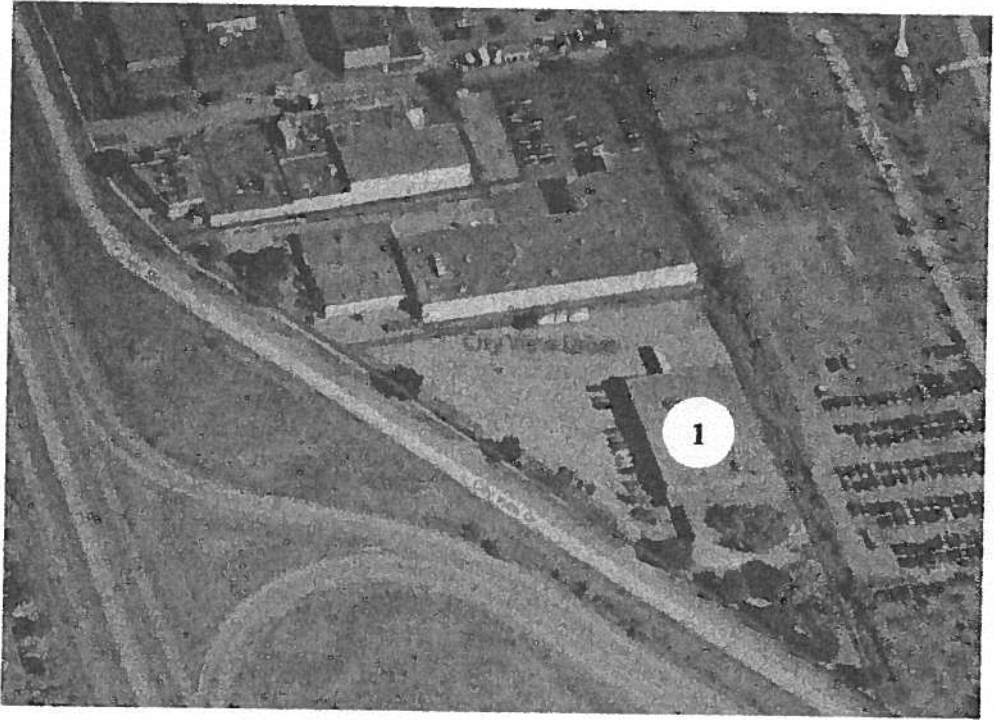
Per:   
Authorized Signing Officer

**SCHEDULE "A"**  
Legal Description

PT LT 22 CON 2 FRONTING THE HUMBER, AS IN TB80921, S/T TB159922 S/T TB79879 ETOBICOKE,  
CITY OF TORONTO

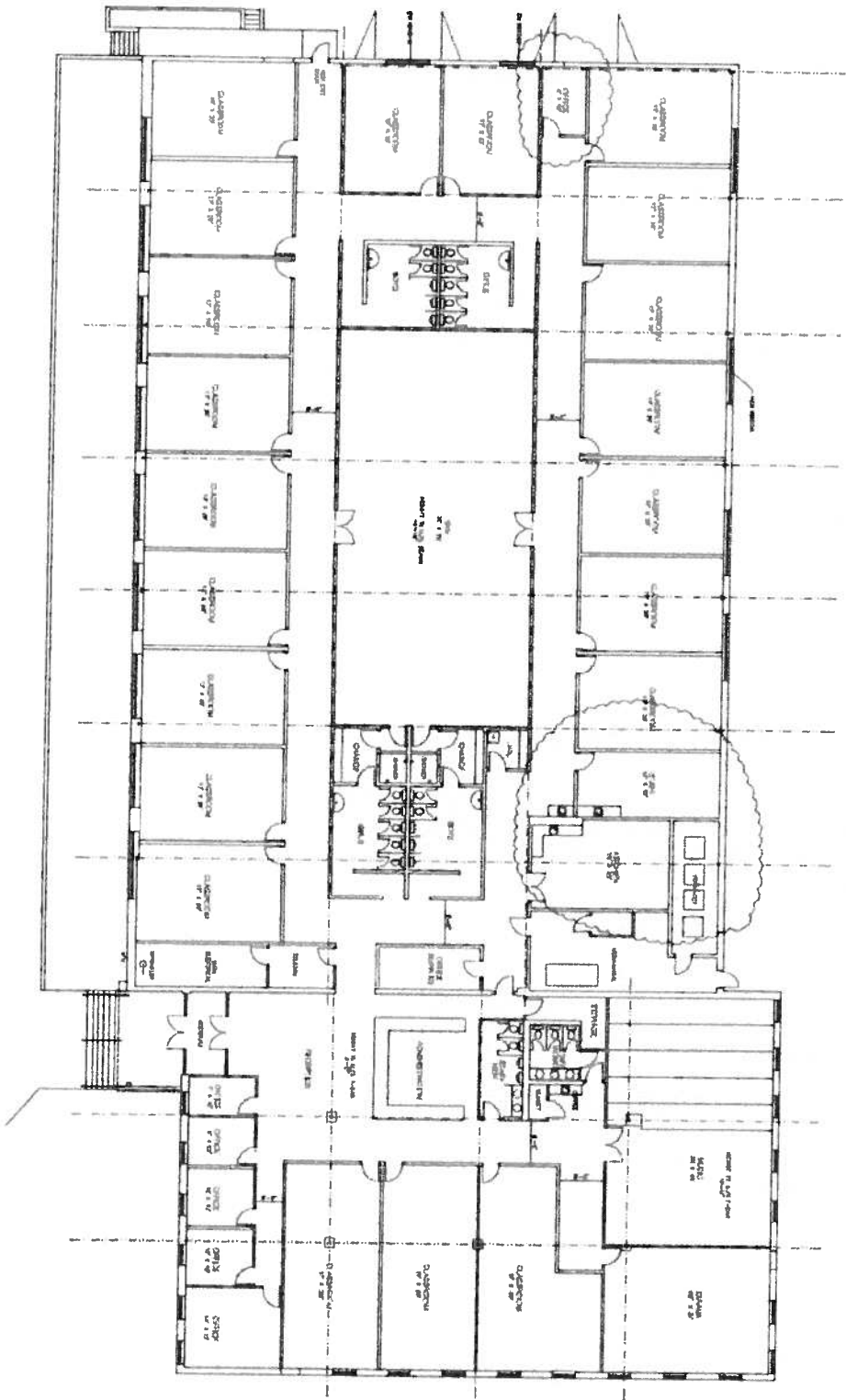


**SCHEDULE "B"**  
**Location of Building on Development Site Plan**  
**Building is shown as 1 on photo below**



*[Handwritten signature]*

SCHEDULE "B-1"  
Initial Layout of Premises



*[Handwritten signature]*

**SCHEDULE "C"**  
**Landlord's Work**

**Landlord's Work**

The Landlord shall, at its sole expense, and to a standard consistent with the Building, complete the following work in the Premises (the "Landlord's Work") in a good and workmanlike manner using new materials and in accordance with all requirements of Applicable Laws, including by-laws, building codes, rules and regulations:

- Demolition -Demolish all interior partitions, doors, frames, ceilings and flooring as required for new build-out - Dispose of all waste
- Acoustics/Framing/Doors -Supply & install new wall framing & drywall to all new classrooms, offices and washrooms to 9ft high -Supply & install new wall framing & drywall to gymnasium to underside of roof deck. -Patch all existing damaged drywall below new ceiling heights -Drywall to be finished paint ready -Supply and install new acoustic ceiling tiles and grid throughout except in gymnasium area -Supply and install sound insulation to top of new classroom ceilings -Supply and install new interior hollow wood doors, knockdown metal frames and hardware as indicated -Supply and install new exterior insulated metal doors and knockdown frames as indicated
- Plumbing -Supply and install child toilets and sinks where indicated -Provide all new domestic water lines as required from existing sources -Cut trench as required to tie in to existing drainage system. Backfill & pour new concrete over new drainage lines
- Sprinklers -Supply and install all necessary labour and material to reconfigure sprinklers to meet current OBC.
- Finishes -Supply and install one coat of primer and two coats of paint to all new and repaired walls -Supply and install new carpet to front office area -Supply and install vinyl base throughout
- Hardware -Supply and install washroom mirrors, toilet partitions, paper towel dispensers and toilet paper holders
- Cleaning -Supply all necessary labour and material for post construction turnover clean
- Documentation/Management -Provide all documentation relating to the project indicated, specification sheets, MSDS sheets, all permits and close-out information -Provide management for project, including Site Supervisor and Project Manager
- Electrical, Lighting, HVAC, Door Closers, Permits, Drawings as they relate to the Landlord's Work above.

The Tenant shall not interfere with or delay the Landlord or its contractors from completing any work as may be required, at any time during the Term of this Lease.



The Tenant shall, under no circumstances, deny the Landlord access to the Premises, provided the Landlord has given the Tenant 48 hours notice, unless an emergency situation as further outlined herein, to show the Premises to prospective buyers or tenants for the Building or consultants as may be required in the sale or leasing of the Building;

Upon the Landlord's Work being completed, the Tenant shall be deemed to have accepted the Landlord's Work unless the Tenant delivers a deficiency notice to the Landlord (which shall contain reasonable particulars of the deficiencies alleged by the Tenant) within 5 Business Days following the date that the Landlord advises the Tenant that the Landlord's Work has been completed. In the event of a dispute over the deficiencies alleged by the Tenant, the decision of the Expert shall be determinative of the issue. The Tenant shall sign off on the deficiencies and the Landlord shall have no further obligation to perform any Landlord's Work or work in the Premises other than as may be outlined in this Lease.



**SCHEDULE "D"**  
**Rules and Regulations**

1. The sidewalks, driveways and parking areas surrounding the Building shall not be used by any tenants for any other purpose than for ingress and egress to and from their respective Premises and for parking facilities. No Tenant shall place or allow to be placed upon the Common Areas any waste paper, garbage or refuse or any other thing whatsoever. No vehicle shall be repaired on or about the Common Areas or left overnight.
2. The water closets and other water apparatus shall not be used for any other purpose other than those for which they were constructed, and no sweepings, rubbish, rags, ashes or other substances shall be thrown therein, and the expense of any damage resulting to them from misuse shall be borne by the Tenant by whom or by whose employee the damage was caused.
3. If any sign, advertisement or notice shall be inscribed, painted or affixed by the Tenant on or to any part of the said Building whatsoever without Landlord consent, then the Landlord shall be at liberty to enter on said premises and pull down and take away any such sign, advertisement or notice, and the expense thereof shall be payable by the Tenant.
4. The Tenant shall not bring in or take out, position, construct, install or move any safe, business machine or other heavy office equipment without first obtaining the prior written consent of the Landlord. In giving such consent, the Landlord shall have the right in its sole discretion, to prescribe the weight permitted and the position thereof, and the use and design of planks, skids or platforms to distribute the weight thereof. All damage done to the Building by moving or using any such heavy equipment or other office equipment or furniture shall be repaired at the expense of the Tenant. The moving of all heavy equipment or other office equipment or furniture shall occur only at times consented to by the Landlord and the persons employed to move the same in and out of the Building must be acceptable to the Landlord. Safes and other heavy office equipment will be moved through the halls and corridors only upon steel bearing plates. No freight or bulky matter of any description will be received into the Building or carried in the elevators (if installed in the Building) except during hours approved by the Landlord.
5. The Landlord shall have the right to enter the Premises at reasonable hours in the day to examine the same or to make such repairs and alterations as it shall deem necessary for the safety and preservation of the Building, and also during the three (3) months previous to the expiration of the Lease of the Premises, to exhibit the said Premises to be let and put upon them its usual notice "For Rent", which said notice shall not be removed by any Tenant.
6. No birds or animals shall be kept in or about the Development ~~nor shall the Tenant operate or permit to be operated any musical or sound-producing instruments or device or make or permit any improper noise inside or outside the Leased Premises which may be heard outside such Leased Premises.~~  
7. If the Tenant desires any electrical or communications wiring, the Landlord reserves the right to direct qualified persons as to where and how the wires are to be introduced and without such directions no boring or cutting for wires shall take place. No other wires or pipes or conduit of any kind shall be introduced without the prior written consent of the Landlord.
8. No one shall use the Premises or loading areas or parking areas for sleeping apartments or residential purposes, or for the storage of personal effects or articles other than those required for business purposes.
9. Tenants and their employees shall not make or commit any improper noise in the Building, or in any way interfere with or annoy other Tenants or those having business with them.
10. All Tenants must observe strict care not to allow their windows or doors to remain open so as to admit rain or snow, or so as to interfere with the heating and air-conditioning of the Building. The Tenants neglecting this rule will be responsible for any damage caused to the property of the other Tenants or to the property of the Landlord by such carelessness. The Tenant, when closing offices for business, day or evening, shall close all windows and lock all doors.
11. The Tenant agrees not to place any additional locks upon any doors of the Premises and not to permit any duplicate keys to be made therefore but to use only additional keys obtained from the Landlord, at the expense of the Tenant, and to surrender to the Landlord on the termination of the Lease all keys of the said premises.
12. The Tenant shall give to the Landlord prompt written notice of any accident or any defect in the water pipes, gas pipes, heating apparatus, telephone or electric light, or other wires in any part of said Building.
13. No offensive odours shall be released by the Tenant's operation so as to effect the enjoyment of any other Tenants in or around the Building.
14. Nothing shall be placed on the outside of windows or projections of the Premises. No air-conditioning equipment shall be placed at the windows of the Premises without the consent in writing of the Landlord.
15. All glass, locks and trimmings in or upon the doors or windows of the Premises shall be kept whole and whenever any part thereof shall become broken, the same shall be immediately replaced or repaired under the direction and to the satisfaction of the Landlord, and such replacements and repairs shall be paid for by the Tenant.
16. No heavy equipment of any kind shall be moved within the Building without skids being placed under the same, and without the consent of the Landlord in writing.
17. No person may enter upon the roof of the Building and any person entering upon the roof does so at their own risk.
18. No Tenant shall be permitted to do cooking apparatus except in a portion of the Building rented for that purpose.
19. No dangerous or explosive materials shall be kept or permitted to be kept in the Leased Premises, the parking lot or the loading areas.
20. The Tenant shall permit window cleaners to clean the windows of the Leased Premises during normal business hours.
21. The parking of automobiles shall be subject to the charges and the reasonable regulations of the Landlord. The Landlord shall not be responsible for damage to or theft of any car, its accessories or contents whether the same be the result of negligence or otherwise.
22. The Tenant shall not mark, drill into or in any way deface the walls, ceilings, partitions, floors or other parts of the Leased Premises and the Building.
23. There shall be no smoking permitted in the demised premises or on any of the Landlord's property at any time.




24. The Tenant shall not install any radio or television antenna or satellite dish on any part of the Lands or Building without the prior written consent of the Landlord.

25. The Landlord shall have the right to make such other and further reasonable rules and regulations and to alter, amend or cancel all rules and regulations as in its judgment may from time to time to be needed for the safety, care and cleanliness of the Building and for the preservation of good order therein and the same shall be kept and observed by the Tenants, and their employees. The Landlord may from time to time waive any of such rules and regulations as applied to particular Tenants and is not liable to the Tenant for breaches thereof by other Tenants.

26. The Tenant shall not park vehicles (including but not limited to cars and trucks) overnight on the property without the prior written permission of the Landlord and, provided the Tenant has the permission of the Landlord, such cars shall be left only in the areas designated by the Landlord.

Handwritten signature and initials, possibly "AB", in the bottom right corner of the page.

**SCHEDULE "E"**  
**Special Provisions**

**1. Construction of New Premises for the Tenant**

The Landlord shall, while the Tenant is in occupancy of the Premises, construct a new school on the property having a municipal address of 140 Queen's Plate Drive, in the City of Etobicoke under the terms and conditions agreed to for such New Premises in separate documentation relating thereto.

**2. Possession of New Premises for the Tenant**

If the Landlord is able to give possession of the New Premises prior to the Expiry Date this Lease shall terminate on a mutually acceptable date to both parties (the "Early Termination Date") and the Tenant shall relocate into the New Premises and provided all monies are paid up to date up to and including the Early Termination Date by the Tenant to the Landlord, the Tenant shall have no further obligations as they relate to the Premises.

As at the Expiry Date or early termination of this Lease on the Early Termination Date noted above, the Tenant shall release, discharge and waive any claims known or unknown, against the Landlord, its successor, assigns, officers or directors, arising out of or in any way connected with the Lease, the Lands, Premises and/or Development and the Landlord shall release, discharge and waive any claims, known or unknown, against the Landlord, its successors, assigns, officers or directors, arising out of or in any way connected with the Lease.

**3. Overhold at the Premises by the Tenant**

If the Landlord is unable to give possession of the New Premises on or prior to the Expiry Date of the Term as a result of the New Premises not having been completed (the "New Premises Delay"), the validity of this Lease shall not be impaired and the Tenant shall continue to abide by the Lease until such time the Landlord is able to deliver possession of the New Premises to the Tenant. In the event there is a New Premises Delay, the Rent payments for the Premises, effective July 1, 2014 until such time the Tenant receives notification from the Landlord the New Premises are ready for the Tenant's occupancy, the Tenant shall pay a monthly Base Rent of \$25,000.00.

**4. Loss of Revenue**

If as a result of the New Premises Delay the Tenant suffers significant revenue loss due to parents not enrolling their children in the school at the New Premises, the Landlord will attempt to resolve what credit, if any, the Landlord may provide; failing agreement the Landlord and Tenant shall mediate the issue for a minimum of 4 hours with a view to resolving; failing agreement at mediation the Landlord and Tenant shall arbitrate the issue in front of a single arbitrator with no right of appeal. Such arbitration shall be conducted in accordance with the procedure agreed upon by the Landlord and the Tenant and, with absence of such agreement, in accordance with the *Arbitration Act*.

**5. Mutual Release.** Upon Tenant satisfying its obligations set forth in this Lease and the Notice of Termination, the Tenant shall release, discharge and waive any claims known or unknown, against the Landlord, its successor, assigns, officers or directors, arising out of or in any way connected with the Lease and the Landlord shall release, discharge and waive any claims, known or unknown, against the Landlord, its successors, assigns, officers or directors, arising out of or in any way connected with the Lease.

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 Approval and Vesting Orders re: 115  
Skyview and 1 Cityview, returnable August 20, 2014)

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

Brian Empey LSUC#: 30640G  
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