

**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**

TENTH REPORT OF THE MANAGER, SCHONFELD INC.

**(Motion for approval and vesting order with respect to
1003 Queen Street East; 1500 Don Mills Road; 875/887 Queen Street East and 1 and 20
Royal Gate Boulevard)**

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TO: **SERVICE LIST**

I N D E X

TAB NO.

- A. Tenth Report of the Manager
- 1. Endorsement of Justice Newbould dated November 5, 2013
- 2. Order of Justice Newbould dated November 5, 2013
- 3. Second Report of the Manager dated January 14, 2014
- 4. Order of Justice Newbould dated January 6, 2014
- 5. E-mail exchange between counsel dated February 7-10, 2014
- 6. Otera payout statement dated April 10, 2014
- 7. Agreement dated June 23, 2010 between WoodGreen Red Door Family Shelter and Ron and Norma Walton
- 8. Affidavit of Bernnitta Hawkins, sworn May 5, 2014
- 9. Letters from Craig Scott and Paula Fletcher
- 10. Agreement dated June 5, 2012 between Red Door and Trinity
- 11. Direction dated July 5, 2013
- 12. Acknowledgement dated July 9, 2013
- 13. Bank Account Statement of Red Door Lands Ltd. for July 2013
- 14. Mortgage in favour of Woodgreen Management Inc.

A

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

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Contents

I.	Introduction.....	1
A.	Purpose of this Report.....	1
B.	Terms of reference	3
C.	Confidentiality	3
D.	Background	3
II.	The 1003 Queen Transaction	4
A.	Interested Parties	4
B.	The Marketing Process	4
C.	Timing of the 1003 Queen Transaction	5
D.	Stakeholder approval	5
E.	Proposed Distribution of Sale Proceeds.....	6
III.	The Don Mills Transaction	6
A.	Interested Parties	6
B.	The Marketing Process	6
C.	Timing of the Don Mills Transaction	8
D.	Stakeholder approval	8
E.	Proposed Distribution of Sale Proceeds.....	9
IV.	The Royal Gate Transaction	9
A.	Interested Parties	9
B.	The Marketing Process	10
C.	Timing of the Transaction.....	12
D.	Stakeholder Positions.....	12
E.	Proposed Distribution of Sale Proceeds.....	12
V.	The 875 Queen Transaction	13
A.	Interested Parties	13
B.	The Shelter	13
C.	The Marketing Process	14
D.	Timing of the Transaction.....	16
E.	Stakeholder positions	16
F.	Proposed Distribution of Sale Proceeds.....	16
VI.	Conclusion and Recommendations	18

I. Introduction

1. This is the Tenth 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**”)¹, together with the properties owned by the Companies (the “**Properties**”).²

A. Purpose of this Report

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

- (a) an approval and vesting order (the “**1003 Queen Approval and Vesting Order**”) in respect of the sale transaction (the “**1003 Queen Transaction**”) contemplated by the Agreement of Purchase and Sale (the “**1003 Queen Agreement**”) dated April 25, 2014 between 2288750 Ontario Inc., in trust for a company to be incorporated (“**2288750**”), and the Manager in respect of the property known municipally as 1003 Queen Street East in Toronto, Ontario (the “**1003 Queen Property**”). The 1003 Queen Agreement is attached as 1003 Queen Confidential Appendix “A”;
- (b) an Order permitting the Confidential Appendices to this Report in respect of the 1003 Queen Transaction (the “**1003 Queen Confidential Appendix Brief**”) to be filed under seal without being served on the Service List;
- (c) an approval and vesting order (the “**Don Mills Approval and Vesting Order**”) in respect of the sale transaction (the “**Don Mills Transaction**”) contemplated by the Agreement of Purchase and Sale (the “**Don Mills Agreement**”) dated April 24, 2014 between Crown Real Properties Inc. (“**Crown**”), and the Manager in respect of the property known municipally as 1500 Don Mills Road in Toronto, Ontario (the “**Don Mills Property**”). The Don Mills Agreement is attached as Don Mills Confidential Appendix “A”;

¹ Schedule “B” was amended by Order dated January 16, 2014.

² The Manager was discharged from certain responsibilities with respect to certain of the Properties pursuant to an Order dated April 1, 2014.

- (d) an Order permitting the Confidential Appendices to this Report in respect of the Don Mills Transaction (the “**Don Mills Confidential Appendix Brief**”) to be filed under seal without being served on the Service List;
- (e) an approval and vesting order (the “**Royal Gate Approval and Vesting Order**”) in respect of the sale transaction (the “**Royal Gate Transaction**”) contemplated by the Agreement of Purchase and Sale dated February 12, 2014 (the “**Royal Gate Conditional Agreement**”, as amended, the “**Royal Gate Agreement**”) between Augend Investments Limited, in trust for a company to be incorporated (“**Augend**”), and the Manager in respect of the property known municipally as 1 and 20 Royal Gate Boulevard in Vaughan, Ontario (the “**Royal Gate Property**”). A copy of the Royal Gate Conditional Agreement is attached as Royal Gate Confidential Appendix “A”;
- (f) an Order permitting the Confidential Appendices to this Report in respect of the Royal Gate Transaction, as described below, to be filed under seal without being served on the Service List (the “**Royal Gate Confidential Appendix Brief**”).
- (g) an approval and vesting order (the “**875 Queen Approval and Vesting Order**”) in respect of the sale transaction (the “**875 Queen Transaction**”) contemplated by the Agreement of Purchase and Sale (the “**875 Queen Agreement**”) dated December 20, 2013, as amended, between Harhay Construction Management Ltd. (“**Harhay**”), and the Manager in respect of the property known municipally as 875 and 887 Queen Street East in Toronto, Ontario (collectively, the “**875 Queen Property**”). The 875 Queen Agreement is attached as 875 Queen Confidential Appendix “A”; and
- (h) an Order permitting the Confidential Appendices to this Report in respect of the 875 Queen Transaction, as described below, to be filed under seal without being served on the Service List (the “**875 Queen Confidential Appendix Brief**”).

3. This Report provides a summary of the 1003 Queen Transaction, the Don Mills Transaction, the Royal Gate Transaction and the 875 Queen 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 1003 Queen Property, the Don Mills Property, the 875 Queen Property or the Royal Gate Property if any 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 1003 Queen Property, the Don Mills Property, the 875 Queen Property and the Royal Gate Property were any information to be made public concerning any discussions of sale process or values of these Properties among the Manager, the parties or any of their advisers and/or any possible bidders for Properties or any of them. 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 Orders authorizing it to file the Confidential Appendices under seal without serving the 1003 Queen Confidential Appendix Brief, the Don Mills Confidential Appendix Brief, the Royal Gate Confidential Appendix Brief or the 875 Queen Confidential Appendix Brief on the Service List.

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.

II. The 1003 Queen Transaction

A. Interested Parties

9. The 1003 Queen Property is owned by one of the Companies, Queen’s Corner Corp. A mortgage in the amount of \$4,000,000 (the “**1003 Queen Mortgage**”) and a Notice of Assignment of Rents each in favour of 368230 Ontario Limited (the “**1003 Queen Mortgagee**”) are registered on title of the 1003 Queen Property. The 1003 Queen Mortgagee is controlled by the Applicants.

10. In addition, a construction lien in the amount of \$74,906.01 in favour of Stephenson’s Rental Services Inc. is registered on title of the 1003 Queen Property.

B. The Marketing Process

11. As noted in the Second Report of the Manager dated January 14, 2014 (the “**Second Report**”), the Manager solicited proposals from five leading commercial real estate firms to market nine properties. These Properties were, in the Manager’s judgment, in a state of development that would facilitate expeditious sales. The Manager retained CBRE Limited (“**CBRE**”) to market these Properties. CBRE was subsequently retained to market the 1003

Queen Property as well as a number of other Properties that are outside the scope of this Report. The Second Report is attached as Appendix “3”.

12. The marketing process for the 1003 Queen Property commenced on February 26, 2014, when CBRE e-mailed a marketing flyer and confidentiality agreement to approximately 929 potential purchasers. The 1003 Queen Property was also featured on CBRE’s website and twitter account.

13. A total of 49 prospective purchasers, including several well-known participants in the Toronto real estate market, requested further information about the 1003 Queen Property from CBRE. The Manager ultimately received two offers to purchase the 1003 Queen Property and entered into an Agreement of Purchase and Sale (“APS”) with the highest bidder. That bidder was not, however, prepared to waive the due diligence condition on the date required by the APS and requested further time to conduct due diligence. Shortly before the due diligence period in the APS was to expire, the Manager received a firm offer to purchase the 1003 Queen Property from 2288750 for the same price as was contemplated by the conditional APS.

14. After consultation with CBRE, the Manager determined that the firm offer from 2288750 was preferable to the conditional offer. Accordingly, the Manager declined the extension sought by the proposed purchaser and entered into the 1003 Queen Agreement with 2288750.

C. Timing of the 1003 Queen Transaction

15. The 1003 Queen Transaction is expected to close on June 24, 2014.

D. Stakeholder approval

16. The 1003 Queen Agreement has been provided to the 1003 Queen Mortgagee and the 1003 Queen Mortgagee has consented to the 1003 Queen Transaction.

17. The Applicants and the Respondents have also been provided with copies of the 1003 Queen Agreement. The Applicants (and, by extension, the 1003 Queen Mortgagee) have consented to the 1003 Queen Transaction. At the Court attendance on May 16, 2014, Ms. Walton advised the Court that the Respondents would not oppose the 1003 Queen Transaction.

E. Proposed Distribution of Sale Proceeds

18. The Manager has asked its counsel, Goodmans LLP (“**Goodmans**”), to provide an opinion with respect to the validity of the 1003 Queen Mortgage. Goodmans has advised that the 1003 Queen Mortgage is validly registered.

19. The Manager recommends that the proceeds of the 1003 Queen Transaction, net of closing costs, be used to partially satisfy amounts owed pursuant to the 1003 Queen Mortgage. The proceeds of the 1003 Queen Transaction will not be sufficient to pay all amounts owed pursuant to the 1003 Queen Mortgage.

III. The Don Mills Transaction

A. Interested Parties

20. The Don Mills Property is beneficially owned by one of the Companies, Donalda Developments Ltd. (“**Donalda**”).

21. A first mortgage in the amount of \$31,000,000 (the “**First Don Mills Mortgage**”), a Notice of Assignment of Rents, and four Notices of Assignment of Lessor Interests, each in favour of CDPQ Mortgage Investment Corporation (“**CDPQ**”), are registered on title to the Don Mills Property.

22. In addition, a second mortgage in the amount of \$3,000,000 (the “**Second Don Mills Mortgage**”), a Notice of Assignment of Rents, and four Notices of Assignment of Lessor Interests, each in favour of Windsor Private Capital Inc. (“**Windsor**”, together with CDPQ, the “**Don Mills Mortgagees**”), are registered on title to the Don Mills Property.

B. The Marketing Process

23. As discussed above, the Manager retained CBRE to market certain Properties, including the Don Mills Property. The Don Mills Property is subject to the Order of Justice Newbould dated January 6, 2014 (the “**January 6 Order**”) which is attached as Appendix “4”. The January 6 Order provided for automatic lifting of the stay of proceedings with respect to the Don Mills Property to permit Otera Capital Inc., as agent for CDPQ, (“**Otera**”) to enforce its rights if, among other things, the Don Mills Property was not listed for sale by January 31, 2014.

24. In late January 2014, the parties and Otera discussed the possibility of delaying the listing of the Don Mills Property to evaluate the advisability of leasing certain vacant space in the Don Mills Property prior to listing it for sale. In order to facilitate these discussions, the parties asked CBRE to value the Don Mills Property based on the assumption that such a leasing effort could be successfully completed. The listing of the Don Mills Property for sale was delayed pending the receipt of this valuation. An exchange of e-mails among counsel confirming that Otera would forbear from the exercise of its rights under the January 6 Order to allow the Manager to proceed to market and sell the Don Mills Property is attached as Appendix "5"

25. After completing the foregoing analysis, the Manager, in consultation with the parties and Otera, decided to list the Don Mills Property for sale. The marketing process for the Don Mills Property commenced on February 14, 2014, when CBRE e-mailed a marketing flyer and confidentiality agreement to approximately 1200 potential purchasers. The Don Mills Property was also advertised in the Globe & Mail during the first two weeks of the Manager's marketing campaign.

26. A total of 18 potential purchasers of the Don Mills Property executed confidentiality agreements with CBRE. These purchasers were provided with access to an on-line data room and an electronic copy of the Confidential Information Memorandum for the Don Mills Property. Four of these parties toured the Don Mills Property. The parties that executed the confidentiality agreements and toured the Don Mills Property are listed in CBRE's marketing report (the "**CBRE Don Mills Report**"), which is attached as Don Mills Confidential Appendix "B".

27. After consultation with CBRE, the Manager determined that an initial bid date of March 19, 2014 was appropriate for the Don Mills Property since it was being sold on an as-is, where-is basis and the Manager was not able to provide updated reports relating to all aspects of the environmental and physical condition of the Don Mills Property. The Manager, in consultation with CBRE, ultimately determined that further time was required to permit bidders to gain comfort with the existing state of the Don Mills Property due to the size and nature of the property. Accordingly, the bid date for the Don Mills Property was extended to April 9, 2014. The offers received on the bid date are summarized in the Don Mills Confidential Appendix "C".

28. The Manager received two first round offers for the purchase of the Don Mills Property. Both bidders were asked to submit a 'best-and-final' bid by April 15, 2014. Both bidders

resubmitted bids with improved pricing. The Manager received and reviewed these offers (which are summarized in the Don Mills Confidential Appendix “D”) on April 15, 2014 based on both pricing and terms. After its review of the second round offers, the Manager advised Crown that it was the preferred bidder.

29. On April 24, 2014, the Manager and Crown executed an agreement of purchase and sale.

C. Timing of the Don Mills Transaction

30. The expected closing of the Don Mills Transaction is June 16, 2014.

D. Stakeholder approval

31. The Manager’s mandate with respect to the Don Mills Property was varied by the January 6 Order. Pursuant to the January 6 Order, the Manager was directed to provide information relating to the marketing and sale of the Don Mills Property to, and obtain consents from, Otera in connection with steps taken by the Manager relating to the marketing and sale of the Don Mills Property.

32. In order to protect the integrity of the sales process for the Don Mills Property, the Manager’s obligation to provide information to Otera was conditional on Otera entering into a confidentiality agreement in a form acceptable to the Manager and Otera, acting reasonably.

33. Otera entered into a confidentiality agreement with the Manager and the Manager kept Otera apprised of the progress of the sales process with respect to the Don Mills Property. The Don Mills Agreement has been provided to Otera and Otera has consented to the sale contemplated therein. Windsor also executed a confidentiality agreement in substantially the same form.

34. The Applicants, the Respondents, and Windsor have also been provided with copies of the Don Mills Agreement. The Applicants, the Respondents and Windsor have each consented to the Don Mills Transaction.

E. Proposed Distribution of Sale Proceeds

35. The Manager asked Goodmans, to provide an opinion with respect to the validity of the First Don Mills Mortgage and the Second Don Mills Mortgage. Goodmans has advised that each of the First Don Mills Mortgage and the Second Don Mills Mortgage are validly registered.

36. The First Don Mills Mortgage provides that, if it is paid before its maturity date of January 1, 2018, the borrower must pay a “yield maintenance” fee calculated based on the present value of the payments remaining on the First Don Mills Mortgage and the difference between the interest rate payable pursuant to the First Don Mills Mortgage and certain reference bonds.

37. Based on the payout statement provided by Otera and attached as Appendix “6” and verified by CBRE on behalf of the Manager, the yield maintenance fee would be approximately \$2.7 million if the First Don Mills Mortgage is repaid in full on June 16, 2014 (when the Don Mills Transaction is scheduled to close). However, the Manager encouraged Crown and Otera to agree to the assumption of all or part of the First Don Mills Mortgage so that the yield maintenance fee could be reduced or eliminated. The Manager understands that Crown and Otera are presently negotiating a partial assumption of the Don Mills Mortgage. If these negotiations are successful then the Manager expects the yield maintenance owed to Otera to be reduced to approximately \$1.35 million.

38. The Manager recommends that the proceeds of the Don Mills Transaction, net of closing costs, be used to satisfy amounts owed pursuant to the First Don Mills Mortgage and the Second Don Mills Mortgage, and 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 Donalda

IV. The Royal Gate Transaction

A. Interested Parties

39. The Royal Gate Property is owned by two of the Companies, Royal Gate Nominee Inc. and Royal Gate (Land) Nominee Inc. (collectively, “**Royal Gate**”). A mortgage in the amount of \$16,800,000 (the “**Royal Gate Mortgage**”) in favour of the Computershare Trust Company of

Canada (“**Computershare**”) is registered on title of the Royal Gate Property. The Manager understands that Computershare registered this mortgage as nominee for Trez Capital Limited Partnership (“**Trez Capital**”).

40. A Notice of Assignment of Rents in favour of Computershare is also registered on title of the Royal Gate Property.

41. In addition, construction liens are registered on title of the Royal Gate Property as follows:

- (a) \$81,337 in favour of Norel Electric Ltd.;
- (b) \$27,911.57 in favour of Laser Heating & Air Conditioning Inc.; and
- (c) \$7,426.83 also in favour of Laser Heating & Air Conditioning Inc.

B. The Marketing Process

42. The Royal Gate Property was the subject of an extensive marketing process. As noted in the Second Report, the Royal Gate Property was subject to an exclusive listing agreement with CBRE when the Manager was appointed. At the time of appointment, efforts to market the Royal Gate Property had commenced. These efforts were continued by the Manager.

43. CBRE conducted a formal marketing campaign for the Royal Gate Property beginning in October 2013. This campaign included e-mails to CBRE’s private database; follow-up calls to potentially interested parties; and listings on MLS, REALNET, Loopnet and Private Capital Investor Database.

44. A total of 34 potential purchasers of the Royal Gate Property executed confidentiality agreements with CBRE. These potential purchasers were provided with access to an on-line data room providing them with relevant information pertaining to the building, environmental condition reports, tenant information, rent rolls and other relevant property details.

45. CBRE conducted three tours of the Royal Gate Property. The prospective purchasers that toured the Royal Gate Property were generally experienced participants in the Toronto

commercial real estate market. These parties are listed in CBRE's marketing report (the "**Royal Gate CBRE Report**"), which is attached as Royal Gate Confidential Appendix "B".

46. The Manager received two first round offers for the Royal Gate Property. After receiving the second offer, submitted by Augend, the Manager was advised that the first offeree would not be submitting another offer. The Manager delivered a counter-offer to Augend. Augend responded with a counter-offer to the Manager's offer and an email rationale for the lower than expected response on pricing was provided by Augend's agent. The Manager and Augend then exchanged several more counter-offers.

47. On February 10, 2014, Augend submitted its final offer. Augend also provided the basis underlying its final offer, citing changes in market rents through the upcoming vacancy of the largest tenant as well as the costs associated with leasing the balance of the Royal Gate Property. CBRE recommended acceptance of Augend's offer.

48. On February 12, 2014, the Manager and Augend executed the Royal Gate Conditional Agreement.

49. On March 13, 2014, Augend requested a 30-day extension to the due diligence period to allow for an environmental assessment to be conducted and for additional information to be provided. The Manager granted the extension, allowing 30 days to Augend to conduct environmental testing and an additional 15 days to review the balance of additional documents it requested.

50. On April 16, 2014, Augend delivered an amendment reducing the purchase price and including several repair and cost items for the Manager to consider. The Manager and Augend executed the amendment (the "**Second Amendment**") thereby extending the Royal Gate Conditional Agreement to April 24, 2014. The Second Amendment is attached as Royal Gate Confidential Appendix "C".

51. Augend continued to negotiate with the Manager and, on April 24, 2014, Augend delivered a revised amendment, further reducing the purchase price.

52. After consulting with CBRE and soliciting input from the parties, and in light of the fact that there had been no further interest in the Royal Gate Property, on April 25, 2014, the

Manager delivered a third amendment to revive the agreement (the “**Third Amendment**”), amend the purchase price and extend the closing date. The Third Amendment was executed by Augend on April 29, 2014 creating a firm agreement of purchase and sale for the Royal Gate Property. The Third Amendment is attached as Royal Gate Confidential Appendix “D”.

C. Timing of the Transaction

53. The expected closing of the Royal Gate Transaction is June 23, 2014.

D. Stakeholder Positions

54. The Applicants and the Respondents have been provided with copies of the Royal Gate Agreement. The Applicants support completion of the Royal Gate Transaction. Ms. Walton advised the parties and the Court that the Respondents would not oppose the Royal Gate Transaction on May 16, 2014.

55. The Royal Gate Agreement was provided to Trez Capital and Trez Capital also supports the completion of the Royal Gate Transaction.

E. Proposed Distribution of Sale Proceeds

56. The Manager has asked Goodmans, to provide an opinion with respect to the validity of the Royal Gate Mortgage. Goodmans has advised that the Royal Gate Mortgage is validly registered.

57. The Manager recommends that the proceeds of the Transaction, net of closing costs, be used to satisfy amounts owed pursuant to the Royal Gate Mortgage. The Manager has requested, but not yet received, a payout statement with respect to the Royal Gate Mortgage.

58. 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 Royal Gate. The validity of the construction lien claims registered against Royal Gate, and the amount (if any) owed to each lien claimant, will be assessed as part of the Manager’s claims process. The Manager proposes holding an amount sufficient to pay each lien claim, plus 25% of that claim to satisfy any potential cost award, in trust pending the completion of its claims process.

V. The 875 Queen Transaction

A. Interested Parties

59. The 875 Queen Property is owned by two of the Companies, Red Door Developments Inc. (which owns 875 Queen Street) and Red Door Lands Ltd. (which owns 887 Queen Street). The following encumbrances are registered on title to the 875 Queen Property:

- (a) an option to purchase the retail portion of any potential development of the 875 Queen Property in favour of Trinity Urban Properties Inc. (“**Trinity**”);
- (b) a mortgage in the amount of \$7,000,000 in favour of RioCan Mortgage Corp. (“**RioCan**”), which is the first mortgage on 875 Queen Street and the second mortgage on 887 Queen Street (the “**RioCan Mortgage**”); and
- (c) a mortgage in the amount of \$1,200,000 in favour of Woodgreen Management Inc. (the “**Woodgreen Mortgage**”), which is the first mortgage on 887 Queen Street.

60. The 875 Queen Property is presently leased to the Woodgreen Red Door Family Shelter (the “**Shelter**”), a non-profit organization that provides shelter services for families.

B. The Shelter

61. In June 2010, the Shelter entered into an agreement with Ronauld and Norma Walton (the “**Waltons**”) whereby, among other things:

- (a) the Shelter agreed to assign its right to purchase the 875 Queen Property to the Waltons; and
- (b) the Waltons agreed to make a substantial donation to, and build a new facility for, the Shelter.

62. The agreement between the Shelter and the Waltons is attached as Appendix “7”.

63. The agreement between the Shelter and the Waltons contemplated that the Shelter’s new facility would be built at the 875 Queen Property. However, Ms. Walton deposed in her

affidavit, sworn October 31, 2013, that she had negotiated an agreement to build this new facility at another of the Properties located at 450 Pape Avenue (the **“Pape Property”**). The Manager understands that the Shelter agreed to purchase the Pape Property for \$6.5 million once the new facility was completed and that \$2 million of this amount was to be paid as a charitable contribution by the Waltons.

64. The Manager understands that negotiations between the Shelter and the Waltons with respect to the potential purchase of the Pape Property ended without resolution in November 2013. The Manager understands that the Shelter no longer has an interest in relocating to the Pape Property. This position is set out in the affidavit of Bernnitta Hawkins, the executive director of the Shelter, sworn May 5, 2014, which is attached as Appendix “8”.

C. The Marketing Process

65. The 875 Queen Property was the subject of an extensive marketing process. As noted in the Second Report, the 875 Queen Property was subject to an exclusive listing agreement with Colliers Ltd. (**“Colliers”**) when the Manager was appointed. At the time of appointment, significant efforts to market the 875 Queen Property had already occurred including:

- (a) a marketing flyer inviting prospective purchasers to execute a confidentiality agreement and receive the Confidential Information Memorandum was widely circulated on October 17, 2013;
- (b) 39 potential purchasers executed confidentiality agreements and were provided with a copy of the Confidential Information Memorandum along with access to the data site relating to the 875 Queen Property;
- (c) 6 bids as well as one verbal note of interest were received on November 21, 2013; and
- (d) the top two first round bidders were invited to submit further offers.

66. Harhay submitted the highest bid for the 875 Queen Property in both the first and second round of offers. This is summarized in Colliers’ marketing and bid summary which is attached as 875 Queen Confidential Appendix “B”. After consultation with Colliers, the Manager

determined that Harhay's offer was clearly preferable to the other offers on the basis of both price and terms. The Manager proceeded to negotiate an agreement of purchase and sale with Harhay, which was executed on December 20, 2013 (the "**December 20 Agreement**"). The December 20 Agreement is a component of the 875 Queen Agreement, which is attached at 875 Queen Confidential Appendix "A".

67. The Manager notes that the 875 Queen Property was originally marketed as a redevelopment opportunity to be delivered to a new purchaser free of tenants. The offers to purchase the 875 Queen Property were based on representations made by the Rose & Thistle Group Ltd. ("**Rose & Thistle**"), before the Manager was appointed, that the Shelter would be moved to the Pape Property and would not affect development at the 875 Queen Property.

68. Following the execution of the 875 Queen Agreement, the Shelter's situation attracted significant media, community and political attention. The Manager met with representatives of the City of Toronto's legal and planning departments to discuss concerns relating to the possible relocation of the Shelter. Paula Fletcher (the local city councillor) and Craig Scott (the member of parliament for Toronto-Danforth, where the 875 Queen Property is located) and others wrote to Harhay asking it to abandon its purchase of the 875 Queen Property. Ms. Fletcher's letter states that "any plan to remove the shelter or develop the property without the shelter" would be met with "determined opposition". The letters from Mr. Scott and Ms. Fletcher are attached at Appendix "9".

69. Harhay requested a price abatement to reflect the increased opposition to development of the 875 Queen Property. The Manager engaged in extensive negotiations with Harhay and ultimately agreed to the terms set out in the 875 Queen Agreement. By letter dated April 15, 2014, Colliers recommended acceptance of these terms. This recommendation letter is attached as 875 Queen Confidential Appendix "C".

70. The Manager is sympathetic to the Shelter's situation and has made attempts to work with the Shelter. Following discussions with the Shelter's counsel, the Manager required that all potential purchasers of the 875 Queen Property agree to extend the Shelter's lease until March 31, 2015. The terms of the 875 Queen Agreement also provide an economic incentive for Harhay to accommodate the Shelter at the 875 Queen Property. More specifically, the purchase price for the 875 Queen Property will increase if Harhay develops the site without the Shelter. In

the Manager's view, these terms represent an appropriate balancing of the Shelter's interests and those of other stakeholders. The Manager also understands that Harhay and the Shelter have engaged in direct negotiations with respect to the Shelter's future at the 875 Queen Property.

D. Timing of the Transaction

71. The expected closing of the 875 Queen Transaction is June 23, 2014.

E. Stakeholder positions

72. The Applicants and Respondents have been provided with copies of the 875 Queen Agreement. The Applicants support completion of the 875 Queen Transaction. Ms. Walton advised the parties and the Court on May 16, 2014 that the Respondents would not oppose the 875 Queen Transaction.

73. The 875 Queen Agreement requires that Harhay recognize the option, registered on title in favour of Trinity, to purchase the retail portion of the 875 Queen Property. The 875 Queen Agreement further provides that the proceeds of the 875 Queen Agreement would be sufficient to pay the RioCan Mortgage in full. Counsel to Trinity and the RioCan Mortgagee have been advised of the offer and have consented to the completion of the 875 Queen Transaction.

74. Both Woodgreen and the Shelter have been provided with a copy of the 875 Queen Agreement but have not yet advised whether they will support completion of the 875 Queen Transaction.

F. Proposed Distribution of Sale Proceeds

75. The Manager has asked Goodmans to provide an opinion with respect to the validity of the RioCan Mortgage and the Woodgreen Mortgage. Goodmans has advised that the RioCan Mortgage is validly registered.

76. Goodmans has advised that the Woodgreen Mortgage is also validly registered. However, for the reasons set out below, the Manager has concluded that the amount of \$800,000 owed to Woodgreen is secured by the Woodgreen Mortgage and that the balance of the debt owed to Woodgreen is unsecured.

77. The Manager understands that, pursuant to an agreement between Red Door and Trinity dated June 5, 2012 (the “**Red Door Agreement**”), Trinity agreed to advance up to \$7 million secured by a mortgage on the 875 Queen Property. The Red Door Agreement is attached as Appendix “10”. One of these advances was to be made on or about June 19, 2013 as a principal payment on the Woodgreen Mortgage. This advance was paid by Rio Can Management Inc. to Fogler Rubinoff LLP (“**Fogler**”), in trust. The Waltons then signed a direction dated July 5, 2013 authorizing Fogler to pay the sum of \$399,152.50 to Woodgreen. This direction is attached as Appendix “11”.

78. The Manager understands that the Waltons then each executed an acknowledgement dated July 9, 2013 to Woodgreen stating that the payment to Woodgreen was made in error. This acknowledgment is attached as Appendix “12”. Woodgreen deposited the cheque from Fogler and wrote a cheque in the same amount to Red Door.

79. On July 9, 2013, \$399,152.50 was deposited in Red Door’s account. Red Door then transferred this amount to Rose & Thistle. Bank account statements evidencing the deposit and the transfer are attached as Appendix “13”.

80. The effect of the foregoing was that Woodgreen received payment of \$400,000 and then made a further advance of the same amount. However, the Woodgreen Mortgage does not provide for the advance of further funds. Accordingly, the Manager has concluded that the Woodgreen Mortgage is valid to the extent of \$800,000 of its registered value. The remaining amount of approximately \$400,000 is outstanding, but is unsecured. The Woodgreen Mortgage is attached as Appendix “14”.

81. The Manager understands that the RioCan Mortgage will be assumed by Harhay on closing of the 875 Queen Transaction. The Manager recommends that the proceeds of the 875 Queen Transaction, net of closing costs, be used to pay the amount of approximately \$800,000 that the Manager has determined to be secured by the Woodgreen Mortgage and that the balance of the proceeds be held in trust pending the results of the Manager’s claims process. To the extent that Woodgreen disputes the Manager’s characterization of the \$400,000 advance described above, that dispute can be addressed in the claims process. The Manager expects that net proceeds from the 875 Queen Transaction will be sufficient to pay the \$400,000 advance if it is determined to be secured by the Woodgreen Mortgage.

VI. Conclusion and Recommendations

82. As set out above, the 1003 Queen Transaction, the Don Mills Transaction, the Royal Gate Transaction and the 875 Queen Transaction are each the result of a broad, transparent and competitive marketing process. The Manager's overall marketing strategy was reported to interested stakeholders and this Honourable Court in the Manager's Second Report and was implemented successfully. Accordingly, the Manager respectfully recommends that the relief sought in its Notice of Motion be granted.

All of which is respectfully submitted this 4th day of June, 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.

SCHEDULE “B” COMPANIES

1. Twin Dragons Corporation
2. Bannockburn Lands Inc. / Skyline – 1185 Eglinton Avenue Inc.
3. Wynford Professional Centre Ltd.
4. Liberty Village Properties Ltd.
5. Liberty Village Lands Inc.
6. Riverdale Mansion Ltd.
7. Royal Agincourt Corp.
8. Hidden Gem Development Inc.
9. Ascalon Lands Ltd.
10. Tisdale Mews Inc.
11. Lesliebrook Holdings Ltd.
12. Lesliebrook Lands Ltd.
13. Fraser Properties Corp.
14. Fraser Lands Ltd.
15. Queen’s Corner Corp.
16. Northern Dancer Lands Ltd.
17. Dupont Developments Ltd.
18. Red Door Developments Inc. and Red Door Lands Ltd.
19. Global Mills Inc.
20. Donalda Developments Ltd.
21. Salmon River Properties Ltd.
22. Cityview Industrial Ltd.
23. Weston Lands Ltd.
24. Double Rose Developments Ltd.
25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Royal Gate Nominee Inc.
29. Royal Gate (Land) Nominee Inc.
30. Dewhurst Development Ltd.
31. Eddystone Place Inc.
32. Richmond Row Holdings Ltd.

- 33. El-Ad (1500 Don Mills) Limited
- 34. 165 Bathurst Inc.

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

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

BETWEEN:

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

Applicants

AND:

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

Respondents

AND

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

BEFORE: Newbould J.

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

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

Fred Myers and Mark S. Dunn, for the Inspector

HEARD: November 1, 2013

ENDORSEMENT

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

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

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

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

Background

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

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

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

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

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

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

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

Concerns of the applicants

(i) \$6 million mortgage

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

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

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

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

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

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

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

(ii) Tisdale Mews

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

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

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

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

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

(iii) Steps to impede a proper inspection

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

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

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

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

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

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

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

(iv) Improper use of bank accounts

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

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

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

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

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

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

(vi) Documentation to support Rose & Thistle invoices

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) Other equity investors

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

Legal principles and analysis

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

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

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

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

[...]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

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

A handwritten signature in black ink, appearing to read "John Newbould", is written over a horizontal line.

Newbould J.

Date: November 5, 2013

2

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



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

) FRIDAY, THE 5th 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

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;~~ ✓ 25
- (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,~~ 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

-4-

- (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;~~ ✓ 2/15
- (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;~~ ✓ 2/15
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Manager's name or in the name and on behalf of the Schedule "B" Corporations, for any purpose pursuant to this Order;
- (j) to undertake environmental investigations, assessments, engineering and building condition or other examinations of the Real Estate;
- (k) subject to paragraph 12 below, to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Schedule "B" Corporations, the Property or the Manager, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

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

-6-

- (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-13-10280-00CL (Commercial List), and in such circumstances the Manager

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE MANAGER

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

CONTINUATION OF SERVICES

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

MANAGER TO HOLD FUNDS

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE MANAGER'S LIABILITY

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

MANAGER'S ACCOUNTS

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

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

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

FUNDING OF THE MANAGERSHIP

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

GENERAL

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



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

NOV 18 2013

NB

SCHEDULE "A" COMPANIES

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

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

SCHEDULE “B” COMPANIES

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

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

SCHEDULE "C"**MANAGER CERTIFICATE**

CERTIFICATE NO. _____

AMOUNT \$_____

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

DATED the _____ day of _____, 20_____.

-17-

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

Per: _____

Name:

Title:

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

-and- NORMA WALTON et al.
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

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Lawyers for the Plaintiffs

3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

B E T W E E N:

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

Applicants

- and -

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

Respondents

- and -

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

SECOND REPORT OF THE MANAGER, SCHONFELD INC.

Contents

I.	Introduction.....	3
A.	Purpose of this Report.....	3
B.	Terms of reference	4
II.	Marketing of the Properties	5
B.	Properties not previously marketed	5
b.	Request for proposals.....	5
c.	Initial Listing Properties	7
d.	Expressions of interest in a portfolio sale	8
e.	Other Properties not yet marketed for sale	9
f.	Unsolicited offers.....	9
C.	Properties subject to pre-existing Agreements of Purchase and Sale	9
D.	Properties subject to listing agreements.....	10
b.	875/887 Queen Street.....	10
c.	1 & 20 Royal Gate	12
d.	1185 Eglinton Ave E.....	12
III.	Other Activities.....	12
A.	Bank accounts and cash management.....	12
B.	Property management	13
C.	Construction and development	14
D.	Communication with third party mortgagees	15
E.	Funding	17
F.	Overdue payables.....	18
b.	18 Wynford Dr.....	18
G.	Construction Liens	20
H.	Distribution of materials	21
I.	Incorrectly named companies	21

- 2 -

J.	Communications with Ms Walton	22
K.	Fees	22
IV.	Conclusions and Recommendations	22

I. Introduction

1. This is the Second Report of Schonfeld Inc. (the “Manager”) in its capacity as Manager pursuant to the Order of Justice Newbould dated November 5, 2013 (the “November 5 Order”), a copy of which is attached as Appendix 1.

2. The Manager was appointed Manager of certain companies listed at Schedule “B” to the November 5 Order (the “Companies”), together with the real estate properties owned by the Companies (the “Properties”). The circumstances giving rise to the appointment of the Manager are described in the Endorsement of Justice Newbould dated November 5, 2013 (the “November 5 Endorsement”) a copy of which is attached as Appendix 2.

A. Purpose of this Report

3. There are several motions returnable on Thursday January 16, 2014 in these proceedings (collectively, the “January 16 Motions”), including motions by certain mortgagees seeking to have the stay lifted and to be “carved out” from the November 5 Order, a motion by Ms Walton for permission to refinance certain properties not subject to the November 5 Order and a motion by the Manager for certain relief including:

- (a) approval of an arrangement negotiated between the Manager and the Applicants to provide funding for the Manager’s fees and disbursements and the limited ongoing operation of the Companies generally comprised of mortgage, utilities and security costs and certain construction obligations;
- (b) an Order authorizing and directing the Manager to post pleadings, orders and other publicly filed information relating to this matter on its website;
- (c) an Order permitting persons claiming to be entitled to liens under the *Construction Lien Act*, R.S.O. 1990, c.C.30 to be exempted from the stay provisions of the November 5 Order solely to allow them to register claims for liens against the Properties and to issue and serve statements of claims to perfect and protect their alleged security interests;

- 4 -

- (d) an Order amending Schedule “B” to the November 5 Order to correct the names of certain Companies as they appear in Schedule “B”;
- (e) an Order directing the Respondents to provide independent documentation confirming the balance of the Reserve Fund held by or on behalf of Metropolitan Toronto Condominium Corporation 1037 (“MTCC 1037”) on or before January 20, 2014;
- (f) approval of the Manager’s activities since its appointment as described below; and
- (g) approving the Manager’s fees and those of its counsel, Goodmans LLP (“Goodmans”).

4. The purpose of this Second Manager’s Report is to provide information regarding these proceedings, report on the activities of the Manager and to provide certain recommendations relating to the January 16 Motions.

B. Terms of reference

5. 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, to the extent that this Report contains any financial information of Companies, the Manager has not audited, or otherwise attempted to independently verify the accuracy or completeness of this financial information. Accordingly, the Manager expresses no opinion or other form of assurance in respect of the financial information.

6. The Manager has not reviewed the validity of any claims asserted, or security registered, against the Companies. Nothing in this report constitutes recognition of the validity or priority of any such claim or registration. Similarly, the Manager has not assessed, and nothing in this report constitutes recognition of, any contractual obligation that is alleged to bind the Companies or the Properties.

II. Marketing of the Properties

7. The Companies own a diverse real estate portfolio comprised of industrial, residential and commercial revenue producing properties in various stages of planning, rezoning and development located throughout the GTA. These Properties fell into three very broad categories when the Manager was appointed:

- (a) twenty four (24) Properties had not been marketed for sale;
- (b) five Properties were the subject of existing Agreements of Purchase and Sale; and
- (c) three Properties were the subject of listing agreements with real estate brokers and in the process of being marketed for sale.

8. Since its appointment, the Manager has worked to secure and stabilize the Properties, evaluate the Properties, formulate a strategy for maximizing realization and implement that strategy. These efforts are described below.

A. Properties not previously marketed

9. The Properties that have not been exposed to the market include income-producing properties, partially tenanted properties and untenanted properties in the early stages of development.

a. Request for proposals

10. The Manager engaged N. Barry Lyons Consultants Limited ("NBLC"), a leading multi-disciplinary real estate consulting firm, to help assess the Properties, formulate a marketing strategy and assist with the assembly of due diligence materials. With the assistance of NBLC, the Manager decided to list the properties listed below (the "Initial Listing Properties"):

- (a) 241 Spadina Ave;
- (b) 18 Wynford Dr;
- (c) 32 Atlantic Ave;
- (d) 5770/5780 Highway #7 W;

- 6 -

- (e) 1131A Leslie St;
- (f) 1450 Don Mills Rd;
- (g) 1500 Don Mills Rd;
- (h) 295 The West Mall; and
- (i) 165 Bathurst St/620-624 Richmond St. W.

11. The Initial Listing Properties were selected because, in the Manager's judgment, they are in a state of development that will facilitate expeditious sales. Most due diligence materials are available and explicable and there are no significant impediments to sale for these properties. There were certain issues with other properties (including, for example, ongoing environmental remediation and ongoing municipal planning applications) that, in the Manager's judgment, required more time or consideration, relative to the Initial Listing Properties, before the commencement of active marketing could be properly undertaken.

12. The Manager prepared a Request for Proposals (the "RFP") dated December 5, 2013 to solicit listing proposals in respect of the Initial Listing Properties from the five largest brokerage firms in the GTA. The RFP, which is attached as Appendix 3, was sent to the following firms:

- (a) Avison Young;
- (b) Cushman & Wakefield;
- (c) Colliers;
- (d) DTZ Barnicke; and
- (e) CBRE Limited ("CBRE").

13. The Manager received responses to the RFP from each of these firms and scored each proposal based on team qualifications and experience, remuneration, marketing timeline and marketing approach.

14. CBRE achieved the highest score on the Manager's analysis. CBRE is a fortune 500 company and the world's largest commercial real estate services firm. The transaction team identified in CBRE's proposal has significant experience, including direct experience with two of the properties. Moreover, CBRE presented a well-thought out marketing plan that will, in the Manager's judgment, maximize realizations from the Initial Listing Properties.

15. The Manager provided its analysis, together with CBRE's response to the RFP, to the Applicants, Respondents and third party mortgagees with interests in the Initial Listing Properties and advised these parties of its intention to enter into a listing agreement with CBRE. Neither the Applicants nor the mortgagees objected to retaining CBRE.¹ The Manager is presently discussing the terms of a formal retainer with CBRE.

b. Initial Listing Properties

16. The Manager, in consultation with CBRE, has determined that, for marketing purposes, the Initial Listing Properties fall into three separate asset classes. Buyers will be encouraged to bid on individual assets or by class of assets, although in the latter case the offereror will be required to submit a property by property allocation of the offer price with its bid. The asset classes group together similar assets in order to facilitate a clear investment strategy for each asset class. The proposed asset classes are as follows:

- (a) **Downtown West Office:** this asset class is comprised of 32 Atlantic Avenue, 241 Spadina Avenue and 620-624 Richmond Street West. These are all brick and beam office assets located relatively close together west of downtown Toronto. Based on CBRE's advice, the Manager's judgment is that grouping these assets together for marketing purposes, while also encouraging individual bids, will maximize demand and realization;
- (b) **Suburban Office:** this asset class is comprised of 1450 Don Mills Rd, 1500 Don Mills Rd, 1131A Leslie St and 295 The West Mall. All of these properties except for 295 The West Mall (which is located in the Highway 427 Corridor) are located in the DVP South office node in Toronto. Since there are similar leasing

¹¹ Two mortgagees did raise concerns through counsel with respect to the sale process generally but did not object to the selection of CBRE. Ms Walton's motion for certain relief relating to the appointment of CBRE was denied.

- 8 -

and marketing dynamics and potential management synergies among these buildings, the Manager believes that grouping them together while also encouraging individual bids will maximize demand and realization. Although 18 Wynford Dr is in a similar location to some of the Companies' suburban office properties, the asset consists of certain units in a commercial condominium building which requires different considerations; and

- (c) **Industrial:** 5770-5780 Hwy 7 W is the only industrial asset among the Initial Listing Properties. The Manager, in consultation with CBRE, is of the view that sale of this asset will be maximized if it is principally marketed separately from the other Initial Listing Properties.

c. Expressions of interest in a portfolio sale

17. In her affidavit sworn January 5, 2014, Ms Walton expressed her belief that the value of the Properties would be maximized if they were sold together. For the reasons described above, CBRE has advised that taking the Initial Listing Properties to market in three separate offerings (and inviting bids on some or all of each asset class) will maximize demand. NBLC has also recommended against marketing the Properties as a single portfolio and certain mortgagees have specifically opposed a portfolio marketing campaign.

18. Based on the foregoing, the Manager has determined that it will not engage in an active marketing campaign or sales process designed to solicit *en bloc* offers.

19. The Manager does not, however, intend to foreclose the possibility of a portfolio sale. The purchasers that contacted Ms Walton are free to bid to purchase some or all of the Properties as part of any sale process.

20. The Manager notes that on January 6, 2014 counsel for one or more of the Respondents raised a concern that if the Manager retained CBRE as broker to sell the Initial Listed Properties, there would be a possibility of two commissions being payable – both to CBRE and to Colliers, the broker with whom Ms Walton had held discussions concerning a portfolio sale. Attached as Appendix 4 is a copy of an email from counsel to Colliers confirming to the Manager that Colliers views itself as acting for potential purchasers and, as such, is not looking to the Manager

for any commission and has dealt with its own clients on that basis. There is no impediment to Colliers' clients coming forward with a proposal to purchase any number of the Properties. To date, no such proposal has been received by the Manager.

21. Colliers' counsel also advised the Manager that Ms Walton had provided certain valuations prepared by Colliers' appraisers to the portfolio purchasers identified in her January 5, 2014 affidavit. Colliers' sales staff do not have access to these valuations and asked that the Manager grant permission for Colliers' valuation staff to share their work with its sales staff and clients. The Manager opposes such disclosure and is concerned that selective disclosure of potentially confidential information to some potential purchasers could have an adverse effect on the sales process.

d. Other Properties not yet marketed for sale

22. Apart from the Initial Listing Properties, 10 other Properties have not yet been formally exposed to the market. The Manager is presently discussing these Properties with the relevant stakeholders to determine when and how these Properties should be exposed to the market. The Manager expects these Properties to be listed as soon as possible.

e. Unsolicited offers

23. The Manager has received a number of unsolicited offers to purchase various Properties since its appointment. The Manager is of the view that, in order to fulfill its obligations, it is required to engage in an orderly marketing process where circumstances allow. The Manager has therefore advised most of the unsolicited offerors that the relevant Property will be brought to the market in the near future and that they will have an opportunity to resubmit their offers at that time. The Manager has, however, engaged in discussions with some unsolicited offerors after consulting with affected stakeholders in certain specific circumstances.

B. Properties subject to pre-existing Agreements of Purchase and Sale

24. When the Manager was appointed, five Companies had already entered into Agreements of Purchase and Sale (the "Existing APS"). The Applicants, Respondents and affected mortgagees have supported completion of the transactions contemplated by the Existing APS. Although none of these transactions are ready to close at this stage, the Manager hopes that one or more sales will be completed in the near future. The Manager will continue to keep all

affected stakeholders apprised of its progress in this regard and will provide a detailed report on each sale once it is ready to close.

C. Properties subject to listing agreements

25. When the Manager was appointed, three Companies had entered into listing agreements with real estate brokerage firms and the Properties owned by these Companies were in the process of being marketed. These properties are listed below:

- (a) 875/887 Queen Street;
- (b) 1 Royal Gate; and
- (c) 1185 Eglinton.

a. 875/887 Queen Street

26. The Property at 875 and 887 Queen Street (collectively the “Queen Street Property”) is owned by Red Door Developments Inc. (“Red Door 1”, which owns 875 Queen) and Red Door Lands Ltd. (“Red Door 2”, which owns 887 Queen). Red Door 1 and Red Door 2 are referred to collectively as the Red Door Owners. The following encumbrances are registered on title to the Queen Street Property:

- (a) an option to purchase the retail portion of the Queen Street Property in favour of Trinity Urban Properties Inc. (“Trinity”);
- (b) a \$7 million mortgage in favour of RioCan Mortgage Corp. (“RioCan”) (first mortgage on 875 Queen Street, second mortgage on 887 Queen Street); and
- (c) A \$1.2 million mortgage in favour of Woodgreen Management Inc. (first mortgage on 887 Queen Street).

27. In addition, the Queen Street Property is presently leased to the Woodgreen Family Red Door Shelter (“Red Door Shelter”), a non-profit organization that provides shelter services for families. In June 2010, Red Door Shelter entered into an agreement with Ronauld and Norma Walton whereby the Waltons agreed to make a substantial donation to, and build Red Door Shelter a new facility for, Red Door Shelter. In her affidavit sworn October 31, 2013, Ms

Walton deposed that she had negotiated an agreement to build this new facility on another Property located at 450 Pape (the "Riverdale Property") owned by Riverdale Mansion Ltd. ("Riverdale Mansion"). It does not appear that any construction work has occurred at the Riverdale Property and Riverdale Mansion does not have sufficient funds to complete such construction. As a result, it is highly unlikely that Red Door Shelter will be able to move to the Riverdale Property when its current lease expires on June 30, 2014.

28. The Manager is sympathetic to Red Door Shelter's situation and, following discussions with counsel to Red Door Shelter, required prospective purchasers of the Queen Street Property to agree to extend Red Door Shelter's existing lease to March 31, 2015.

29. The Queen Street Property was subject to an exclusive listing agreement with Colliers when the Manager was appointed. At that time, significant efforts to market the Queen Street Property had already occurred. More specifically:

- (a) A marketing flyer inviting prospective purchasers to execute a Confidentiality Agreement and receive a Confidential Information Memorandum was widely circulated on October 17, 2013;
- (b) 39 proponents executed confidentiality agreements and were provided with a copy of a Confidential Information Memorandum and access to a data site with respect to the Queen Street Property;
- (c) Six bids and one verbal note of interest were received on November 21, 2013; and
- (d) the two top bidders from the first round were invited to submit further offers.

30. After consulting with Colliers, the Manager determined that one offer was preferable to the other offers and proceeded to negotiate and execute an Agreement of Purchase and Sale with that bidder (the "Queen Street APS"). The Queen Street APS is subject to a due diligence condition and a closing date of July 31, 2014.

31. The Queen Street APS requires that the buyer recognize the option registered on title by Trinity and the proceeds of the Queen Street APS would be sufficient to pay RioCan's mortgage in full. Counsel to Trinity and RioCan has been advised of the offer. The Manager is not

seeking approval of the sale at this time because the due diligence condition has yet to be waived.

b. 1 & 20 Royal Gate

32. The Property at 1 & 20 Royal Gate (the “Royal Gate Property”) is owned by Royal Gate Nominee Inc. (“Royal Gate Inc.”). Computershare Trust Company of Canada (“Computershare”) has registered a mortgage on title to the Royal Gate Property in the amount of \$16.8 million. The Manager understands that Computershare registered this mortgage as nominee for Trez Capital Limited Partnership (“Trez Capital”).

33. Royal Gate Inc. retained CBRE to market the Royal Gate Property for sale pursuant to a listing agreement dated November 1, 2013. CBRE conducted a formal marketing campaign beginning in October 2013. This campaign included e-mails to CBRE’s private database, follow-up calls to potentially interested parties, listings on MLS, REALNET, Loopnet and Private Capital Investor Database. Four potential purchasers toured the Royal Gate Property and the Manager ultimately received two offers for the Property. The Manager is engaged in negotiations with an offeror but no Agreement of Purchase and Sale has been concluded.

c. 1185 Eglinton Ave E

34. The Property at 1185 Eglinton Ave E in Toronto was recently rezoned for a residential condominium. This Property has been listed for sale since October 2013 with Colliers and the Manager has engaged in discussions with potential purchaser groups through Colliers. To date, no Agreement of Purchase and Sale has been negotiated. The Manager, after consultation with the parties and notice to the relevant third party mortgagee, intends to proceed as recommended by Colliers.

III. Other Activities

A. Bank accounts and cash management

35. Immediately after its appointment, the Manager worked with Meridian Credit Union Limited, where the Companies’ bank accounts are held, to transfer signing authority over these accounts to the Manager. The Manager has had control over the Companies’ receipts and disbursements since on or around November 6, 2013.

36. The Manager stopped the co-mingling of funds that occurred prior to its appointment. The revenues (if any) generated by each Property are used to fund expenses relating to that Property and are held in a separate bank account in the name of the owner Company.

37. Prior to the appointment of the Manager, the Companies' books and records were kept using QuickBooks accounting software. QuickBooks is a basic accounting package that is primarily marketed to small businesses. The Companies did not have any:

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

38. In addition, the accounting records for a number of Companies were significantly out of date.

39. The Manager manages the Companies' finances, projects receipts and disbursements for all Companies several weeks in advance and assesses the Companies' funding needs based on these projections. As discussed below, the Applicants agreed to provide the funding required by the Companies between the Manager's appointment and January 31, 2014.

40. A copy of the Manager's Receipts and Disbursements, divided by Company, is attached as Appendix 5.

B. Property management

41. The Manager entered into a Property Management Agreement dated November 15, 2013 (the "Property Management Agreement") with Briarlane Rental Property Management Inc. ("Briarlane"). The Property Management Agreement is attached as Appendix 6. Briarlane is now managing all of the Properties except for the Property at 620 Richmond Street West (the "Richmond Property").

42. Briarlane is responsible for, among other things, lease renewals and amendments, listing space for lease where no leasing agent has been retained, ordinary course repairs to the Properties and day-to-day interactions with tenants. In addition, since mid-December 2013,

Briarlane has been responsible for maintaining the Companies' books and records under the Manager's supervision. Briarlane is in the process of transitioning the Properties to more sophisticated industry-specific software from QuickBooks.

43. The Manager supervises Briarlane's activities and addresses any critical issues that arise with respect to the Properties. The Manager is also engaged with the Companies' trade creditors and suppliers to ensure that necessary goods and services continue to be provided to the Properties.

44. On December 16, 2013, 165 Bathurst Financial Inc. ("Financial") served a motion for, among other things, an Order enjoining the Manager from terminating the Property Management Agreement between 165 Bathurst Inc. (the owner of the Richmond Property) and Esbin Property Management Inc. ("Esbin") in respect of the Richmond Property. The Manager understands that Financial has registered a vendor take-back mortgage over the Richmond Property and that Esbin has significant experience managing the Richmond Property. Accordingly, the Manager, Financial and the parties agreed that Esbin would continue to manage the Richmond Property subject to the Manager's oversight and supervision. The Manager is responsible for maintaining Richmond Property's books and records.

C. Construction and development

45. Several Companies own Properties that are in various stages of construction and development. The Manager has instructed the contractors and consultants carrying out work on the Properties to stop work pending further instruction from the Manager. The two exceptions to this prohibition are the Property at 1485 Dupont Avenue (the "Dupont Property") and the Heward Property.

46. The first stage of a multi-stage environmental remediation of the Dupont Property was partially completed when the Manager was appointed. The Manager determined that it was in the interest of all stakeholders to complete the first stage of this remediation before halting construction. The Manager has also determined that certain ongoing environmental remediation efforts at the Heward Property should be continued.

47. Both of these remediation efforts have been funded by the Applicants and the Respondents.

48. In addition, certain Companies entered into leases that required the construction of new buildings or substantial modifications to existing buildings to suit a particular tenant. The most significant commitments are set out below:

- (a) Northern Dancer Lands Ltd. (“Northern Dancer”) entered into a lease with a private school, MPS Etobicoke, which requires that Northern Dancer build a school to suit MPS Etobicoke in accordance with agreed-upon timelines. Northern Dancer is not able to fund this construction and MPS Etobicoke introduced the Manager to a potential purchaser that may be willing and able to build the required school. In the circumstances, and with the support of the parties, the Manager determined that it is appropriate to engage in discussions with this potential purchaser. However, these discussions have not yet resulted in an executed Agreement of Purchase and Sale.
- (b) By Commercial Lease dated August 23, 2013, Dupont Developments Ltd. (“Dupont Developments”) agreed to lease a substantial portion of the Dupont Property to an animation school, Maxx the Mutt Animation Inc. (the “Maxx Lease”). Pursuant to the Maxx Lease, Dupont Developments agreed to, among other things, remediate certain environmental issues affecting the Dupont Property and substantially renovate the Dupont Property. The Manager determined that Dupont Developments cannot fund the necessary renovations and, accordingly, it has reprobated the Maxx Lease.

D. Communication with third party mortgagees

49. Once the November 5 Order was issued and entered, the Manager obtained contact information for third party mortgagees with interests registered against the Properties from the Respondents. The Manager wrote to these mortgagees on November 19, 2013. A copy of this form of letter is attached as Appendix 7. The Manager then conducted title searches against the Properties, identified any registered mortgagees that had not received notice of the November 5 Order on November 19, 2013 and wrote to these mortgagees on November 22, 2013. A copy of

this form of letter is attached as Appendix 8. A list of the mortgages and construction liens registered on title to the Properties is attached as Appendix 9.

50. The Manager has been contacted by a number of mortgagees, either directly or through counsel, and has spent substantial time seeking to facilitate a resolution between the mortgagees and the Applicants with respect to the terms of the November 5 Order. Although the concerns expressed by the mortgagees varied, many mortgagees objected to the priority of the Manager's Charge and the Manager's Borrowing Charge (as defined in the November 5 Order).

51. To date, at least five mortgagees have served motions to either remove the Property against which they had registered an interest from, or substantially vary the terms of, the November 5 Order. A number of other mortgagees advised that they may seek similar relief if their concerns were not addressed. The Applicants, the Manager and three of the moving mortgagees have reached what is, in the Manager's view, a series of reasonable compromises. These compromises were reflected in the Consent Orders dated December 24, 2013 (the "December 24, Order") and January 6, 2014 (the "January 24 Order"). The December 24 Order and the January 6 Order include similar key terms. More specifically, the relevant parties agreed that:

- (a) the relevant mortgagees would withdraw their motions;
- (b) the Manager's Charge and Manager's Borrowing Charge would be subordinated to pre-existing security interests validly registered on title to each Property;
- (c) revenues derived from a Property would only be used to fund expenses relating to that Property and would not be co-mingled with revenues from other Properties; and
- (d) the relevant Properties would be sold according to pre-established timelines and the mortgagees would have defined rights to participate in, or consent to, the sale process.

52. In light of the funding arrangement described below, the Manager consented to the agreements reflected in the December 24 Order and the January 6 Order and is of the view that these agreements can and should serve as a framework for the other Properties.

E. Funding

53. The mortgagees' objections to the Manager's Charge and the Manager's Borrowing Charge posed a significant problem. Several Properties do not generate revenue or do not generate enough revenue to fund the obligations of the relevant owner Company. The Manager advised the parties early in these proceedings that it would not comingle funds between the various Companies and, accordingly, the Companies that did not generate revenue required an outside funding source.

54. Ms Walton advised the Manager that the Respondents were prepared to provide some of the funding required by the Companies. To date, the Respondents have provided total funding of approximately \$710,250, primarily to fund mortgage payments owed by Companies that do not generate revenue. In the Manager's view, it is not advisable to rely exclusively on funding from the Respondents.

55. In light of the foregoing, the Manager negotiated with the Applicants to borrow funds on the following basis:

- (a) the Applicants agreed to advance the aggregate amount of \$1,352,000 to the Manager in installments between December 20, 2013 and January 31, 2014;
- (b) amounts advanced by the Applicants will accrue interest at the rate of 15% per annum, calculated and compounded monthly not in advance;
- (c) amounts advanced by the Applicants will be subrogated to a proportionate share of the Manager's Charge and the Manager's Borrowing Charge. The priority of the Manager's Charge and the Manager's Borrowing Charge will be amended to rank behind pre-existing registered charges; and
- (d) the Applicants have no obligation to advance further amounts unless agreed to in writing or ordered by the Court but any further advances will be governed by the terms described above.

56. In the Manager's judgment, this borrowing represents the best available option for funding the continued limited operation of the Companies and the Manager's mandate pending

an orderly disposition of the Properties and strikes an appropriate balance between the various interests at play.

F. Overdue payables

57. The Manager has also assessed the Companies' accounts payable balances. Many of the Companies (including those that generate positive revenues) have significant overdue payables including amounts due to utility companies and tax authorities. The Manager has sought to pay down overdue payables to the extent permitted by cash flow.

b. 18 Wynford Dr

58. One of the Companies, Wynford Professional Centre Ltd. ("Wynford Professional") purchased the majority of the commercial condominium units in a condominium located at 18 Wynford Dr in Toronto ("18 Wynford") in early 2011. Since it owns the majority of the units at 18 Wynford, Wynford Professional exercises significant control over the condominium corporation that owns and operates the building, MTCC 1037. In or around February 2011, the condominium corporation retained The Rose & Thistle Group Ltd ("Rose & Thistle") as the property manager for 18 Wynford.

59. On or about December 17, 2013, the Manager was contacted by a representative of the Ontario Lung Association (the "OLA"), which also owns units at 18 Wynford. The OLA asked the Manager to confirm the status of MTCC 1037's property manager, the statutory reserve fund and its accounting records. Since the financial health of MTCC 1037 will likely be relevant to a purchaser of some or all of the units owned by Wynford Professional, the Manager has sought to confirm that the condominium corporation's financial records are up to date, that Wynford Professional has paid all outstanding condominium fees and that the condominium's reserve fund was being appropriately maintained, that the board of MTCC 1037 function and that it is current on all other statutory obligations. The results of these efforts are described below.

60. Between its appointment as property manager in 2011 and the appointment of the Manager in November 2013, Rose & Thistle, as property manager, collected common element and maintenance fees from the other unit owners at 18 Wynford but did not collect fees from Wynford Professional. By invoice dated December 29, 2012 (but presented to the Manager on or about January 6, 2014), a copy of which is attached as Appendix 10, Rose & Thistle purported

to invoice Wynford Professional for all common areas payments owing for 2012. No amounts have been billed or paid for 2011 or 2013.

61. When Wynford Professional purchased its units in early 2011, the reserve fund in the amount of approximately \$1.4 million was provided to Ms Walton or The Rose & Thistle Group Ltd. Work was subsequently performed by Rose & Thistle or its related companies to upgrade 18 Wynford's common elements, although the Manager has not been provided with any records showing what entity performed this work, how much it cost or how it was funded. Further it appears that no Annual General Meeting has been held since 2011, no financial statements have been prepared since 2010, and no board meeting has been convened since December 13, 2011

62. By e-mail dated December 31, 2013, Mr. Schonfeld asked Ms Walton to provide evidence of the balance in the reserve fund. In her response, Ms Walton did not address the request for evidence of the reserve fund's balance and location. Ms Walton did not respond to Mr. Schonfeld's second request for such evidence. These exchanges between Ms Walton and Mr. Schonfeld are attached as Appendix 11.

63. By email dated January 9, 2014, a copy of which is attached as Appendix 12, counsel for the Manager wrote to counsel for the Respondents demanding information concerning the status of the MTCC 1037 reserve fund and concluding as follows:

Stating clearly and simply, the Manger [sic] requires that Ms Walton and Rose & Thistle Group Ltd. Immediately advise it of the amount that either of them or any entity related to or controlled by either of them holds on deposit in the MTCC 1037 statutory reserve and that they provide evidence by way of a copy of the most current bank or credit union account statement or investment certificate evidencing the current MTCC 1037 reserve fund balance. In the Manager's view, any uncertainty regarding 18 Wynford's statutory reserve fund is a significant issue. Condominium unit owners are entitled to an accounting for their funds held in trust as required by the Condominium Act. Prospective purchasers are likely to inquire into the status of 18 Wynford's reserve fund as part of any due diligence process. Furthermore, if Wynford Professional has not paid its condominium fees issues of claims and priorities may be arise...

64. By email dated January 10, 2014, at 3:00 p.m. Mr. Schible responded for Ms Walton, stating that "I am advised that Ms. Walton and Mr. Schonfeld are actively addressing the matter of the reserve fund". Counsel or the Manager responded with an email at 3:13 p.m. as follow:

- 20 -

Your response that Mr. Schonfeld and Ms Walton are addressing the MTCC 1035 reserve fund issue is not acceptable. It has not been addressed to the Manager's satisfaction hence my email below. Where is the reserve fund and what is its current balance?

It exists or it is gone. If it exists, please produce a current bank statement or certificate. We have seen bank statements showing the deposit of the initial amount received in trust by your client and withdrawals of the full amount from that bank account. The funds are being held in trust somewhere else or they have been consumed. Which is it? This is a matter of importance in which clarity and forthrightness is required. We are all lawyers dealing with statutory trust funds that currently cannot be located. If you or your clients have them or know where they are, please advise and provide the evidence sought below. If the trust funds are gone, it is incumbent upon counsel to say so.

A copy of these emails is attached as Appendix 13

65. There has been no further response received from anyone on behalf of Ms Walton. To date, the status of MTCC 1037's reserve fund remains unclear. Accordingly, the Manager respectfully requests an Order directing the Respondents to provide evidence of the balance in the reserve fund no later than January 20, 2014 so that the Manager can assess the effect, if any, that this issue will have on efforts to sell units in 18 Wynford and to inform the other unit owners in the condo corp.

G. Construction Liens

66. The Manager has been contacted by several contractors that have registered, or intend to register, construction liens against one or more of the Properties. These contractors, together with the amount that they claim and the Property against which each lien is registered are listed at Appendix 14.

67. The November 5 Order permits the registration of construction liens but stays all proceedings against the Companies. The Manager understands that, in order to perfect and protect a lien once it is registered, the lien claimant must issue and serve a Statement of Claim seeking certain relief from the relevant Company. The Manager has agreed to lift the stay provided for in the Order to allow lien claimants to take the steps necessary to perfect their security. The Manager does not consent to any further steps being taken by the construction lien claimants other than the service of their Statement of Claim. Determination of the validity and priority of the liens claimed can be dealt with summarily in these proceedings as Properties are

sold and all encumbrances are reviewed. Accordingly, once the lien claimants have served their respective Statements of Claim, their lien actions should be stayed pending the outcome of these proceedings or further order of the Court.

H. Distribution of materials

68. The November 5 Order prohibits the Manager from posting information relating to this proceeding on its website. As a result, the Manager has received requests for copies of material filed to date from a large number of stakeholders. That material is voluminous, ever-increasing and inconvenient to transmit. The Manager is of the view that posting materials filed in these proceedings on its website will allow for a more efficient flow of information to interested parties, will avoid the need for duplicative distribution of materials and ensure that all stakeholders are able to stay informed as these proceedings move forward.

I. Incorrectly named companies

69. In addition, the Manager understands that the owners of certain Properties are not named or were mis-named in the November 5 Order. In particular:

- (a) Royal Gate Holdings Ltd. is listed in Schedule "B". This company does not hold title to any of the Properties. Title is held by Royal Gate Nominee Inc. (in respect of the Royal Gate Property and Royal Gate (Land) Nominee Inc. (in respect of the parking lot adjacent to the Royal Gate Property);
- (b) El-Ad Limited is listed in Schedule "B". The Manager understands that this entity is controlled by the former owners of 1500 Don Mills and that the current owner of that property is El-Ad (1500 Don Mills) Limited; and
- (c) Liberty Village Properties Inc. is named in Schedule "B". The Manager understands that the owner registered on title is Liberty Village Properties Ltd.

70. The Manager respectfully recommends that Schedule "B" be corrected to address these errors.

J. Communications with Ms Walton

71. On January 9, 2014, Ms Walton advised Mr. Schonfeld by email that she had been contacted by a realtor expressing interest in one of the Properties and that, in response, she had directed the realtor to the Manager and suggested a purchase price to the realtor. By letter dated January 9, 2014, counsel to the Manager re-iterated that Ms Walton is not entitled to do anything regarding prospecting purchasers other than direct them to the Manager. This letter is attached as Appendix 15. The response received from Ms Walton's counsel is attached as Appendix 16.

K. Fees

72. Attached hereto as Appendix 17 is the Affidavit of Mr. Schonfeld sworn January 14, 2014, attesting to the fees and disbursements of the Manager for the period from November 5, 2013 to December 31, 2013 in the amount of \$277,033.29 inclusive of HST.

73. Attached hereto as Appendix 18 is the Affidavit of Fred Myers sworn January 14, 2014, a partner of Goodmans, attesting to the fees and disbursements of Goodmans acting on behalf of the Manager, from November 5, 2013 to December 13, 2013 in the amount of \$172,469 inclusive of HST.²

74. The Manager has received and reviewed Goodmans' invoice. The Manager confirmed that the fees and disbursements set out in Goodmans' invoice relate to advice sought by the Manager and that, in the Manager's view, Goodmans' fees and disbursements are reasonable.

IV. Conclusions and Recommendations

75. For the reasons set out in this Report, the Manager respectfully recommends:

- (a) permitting the Manager to post information relating to this matter on its website;
- (b) permitting entities that register construction liens against the Properties to issue and serve statements of claims for the sole purpose of perfecting and protecting their alleged security interests;

² Goodmans' invoices relate to work performed on behalf of Schonfeld Inc. in its capacity as Manager and Inspector pursuant to the Order of Justice Newbould dated October 4, 2013. The amount of \$11,628.85 billed by Goodmans has been allocated to the Inspector mandate and will be dealt with separately.

- 23 -

- (b) permitting entities that register construction liens against the Properties to issue and serve statements of claims for the sole purpose of perfecting and protecting their alleged security interests;
- (c) amending Schedule "B" to the November 5 Order to include certain companies that appear to have been inadvertently omitted from the November 5 Order;
- (d) directing the Respondents to provide independent documentation confirming the balance of the Reserve Fund held by or on behalf of MTCC 1037 on or before January 20, 2014;
- (e) granting Orders consistent with the December 24 Order and the January 6 Order in respect of the remaining Properties;
- (f) approving the Manager's activities since its appointment as described above; and
- (g) approving the Managers fees and those of its counsel, Goodmans.

All of which is respectfully submitted this 14th day of January, 2014.

SCHONFELD INC.

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

Per: _____

S Harlan Schonfeld CPA, CIRP

SCHEDULE "A" COMPANIES

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

SCHEDULE "B" COMPANIES

1. Twin Dragons Corporation
2. Bannockburn Lands Inc. / Skyline – 1185 Eglinton Avenue Inc.
3. Wynford Professional Centre Ltd.
4. Liberty Village Properties Inc.
5. Liberty Village Lands Inc.
6. Riverdale Mansion Ltd.
7. Royal Agincourt Corp.
8. Hidden Gem Development Inc.
9. Ascalon Lands Ltd.
10. Tisdale Mews Inc.
11. Lesliebrook Holdings Ltd.
12. Lesliebrook Lands Ltd.
13. Fraser Properties Corp.
14. Fraser Lands Ltd.
15. Queen's Corner Corp.
16. Northern Dancer Lands Ltd.
17. Dupont Developments Ltd.
18. Red Door Developments Inc. and Red Door Lands Ltd.
19. Global Mills Inc.
20. Donalda Developments Ltd.
21. Salmon River Properties Ltd.
22. Cityview Industrial Ltd.
23. Weston Lands Ltd.
24. Double Rose Developments Ltd.
25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Dewhurst Development Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited

- 26 -

32. 165 Bathurst Inc.

6269963.12

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



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

MONDAY, THE 6TH

JUSTICE NEWBOULD

)

DAY OF JANUARY, 2014

BETWEEN:

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

Applicants

and

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

Respondents

and

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

ORDER

THIS MOTION, made by Otera Capital Inc. as agent of CDPQ Mortgage Investment Corporation ("**Otera**") for an order in respect of the lands municipally known as 1500 Don Mills Road, Toronto, Ontario; the buildings thereon;; and all property subject to the mortgage and security of Otera pursuant to the Mortgage (defined below) (the "**Property**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of Otera dated December 12, 2013, the Motion Record of Otera dated December 16, 2013, including the affidavit of Robert Duranceau and the Exhibits attached thereto, the Supplementary Affidavit of Robert Duranceau sworn December 20, 2013 and the Exhibits attached thereto, the affidavits of James Reitan sworn October 1, October 3, October 24 and December 9, 2013 the affidavit of Dr. Stanley K. Bernstein sworn October 1, 2013, the affidavits of Norma Walton sworn October 3, October 31 and December 17, 2013, the affidavit of Harlan Schonfeld sworn October 1, 2013, 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 facts and books of authorities, filed, and upon hearing counsel for the Applicants, the Respondents, Schonfeld Inc. Receivers + Trustees (the **“Manager”**) and Otera.

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record of Otera 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 (the **“October 4 Order”**), October 25, 2013 and November 5, 2013 (the **“November 5 Order”**) continue in full force and effect except as modified by this Order in respect of the Property and all related rents, parking fees, income, receipts, revenues and other proceeds from or in respect of the Property (the **“Property Revenues”**).

3. THIS COURT ORDERS that the Manager’s Borrowing Charge and the Manager’s Charge shall rank in subsequent priority to any all security interests, trusts, liens, charges, mortgages and encumbrances, statutory or otherwise, in favour of Otera or any other Person validly registered on

title of the Property or against El-Ad (1500 Don Mills) Limited and Donalda Developments Ltd. (the “**Borrower**”) as of January 6, 2014. The Manager’s Borrowing Charge and the Manager’s Charge shall not be registered on title to the Property and shall not, in the event the stay of proceedings is lifted in accordance with paragraphs 9, 14, or 15 hereof or by Court Order, impair Otera’s ability to sell or lease the Property.

4. THIS COURT ORDERS that the Property Revenue shall be used only to fund the costs and expenses directly relating to the management, maintenance, operation and sale of the Property, including reasonable fees and disbursements of the Manager incurred directly in connection with the management, maintenance, operation and sale of the Property and the performance of its obligations under this Order and payment of all amounts owing under the Mortgage (defined below), when due (the “**Property-Specific Costs**”) and for greater certainty shall not be used to fund any allocation of the fees, costs and expenses associated with any other land, building or other property subject to the November 5 Order (the “**Other Schedule “B” Properties**”) or fees of the Manager relating thereto, provided that the Manager shall have no personal liability for obligations of the Borrower.

5. THIS COURT ORDERS that the Borrower shall pay when due, all Property-Specific Costs owing by the Borrower to Otera and arm’s length creditors on account of taxes or other amounts that, if not paid, would have the benefit of a lien, charge or other encumbrance ranking in priority to the Mortgage and the Manager will cause such payments to be made from Property Revenue to the extent funds are available provided that the Manager shall have no personal liability for obligations of the Borrower. The Borrower shall not pay any claims against the Borrower that arose prior to the date of the November 5 Order, other than the obligations in relation to the Mortgage, without the consent of Otera.

6. THIS COURT ORDERS that the proceeds of any borrowing under the Manager's Borrowing Charge (as defined in the November 5 Order) in respect of the Property be used only to fund Property-Specific Costs.

COSTS

7. THIS COURT ORDERS that the costs of the Applicants and Respondents of this Application and the costs of the Inspector (as defined in the October 4 Order) shall not form part of the Manager's Charge or the Manager's Borrowing Charge and shall be borne by the Applicants or Respondents, as may be determined by this Court from time to time.

COMPLIANCE WITH THE MORTGAGE

8. THIS COURT ORDERS that the Borrower shall hereafter comply with the terms of the mortgage, charge and other related loan and security documents, including any general security agreement, in favour of Otera and specifically the documents set out in Schedule "D" hereto (collectively, the "**Mortgage**") from and after the date of this amending Order. For greater certainty, nothing in this paragraph 8 requires the Borrower or the Manager to cure the alleged existing or continuing events of default as of the date of this Order listed in Schedule "C" hereto. Nothing in this paragraph prejudices the right of Otera to rely on such existing or continuing defaults if the stay of proceedings is lifted in accordance with paragraphs 9, 14, or 15 hereof or by Court Order. Nothing in this Order prejudices the rights of Otera to add any costs, fees or other amounts arising from the existing defaults under its Mortgage and/or these proceedings to the indebtedness secured by its Mortgage as permitted by the Mortgage or applicable laws.

9. THIS COURT ORDERS that there shall be an automatic lifting of the stay imposed by paragraphs 12 and 13 of the November 5 Order to permit Otera to enforce its rights and remedies against the Borrower or the Property (including the Property Revenues) under and in accordance

with the Mortgage in the event of any breach of paragraph 8 above including without limitation, any failure to pay any monthly payment of principal, interest and all reserves when due.

10. THIS COURT ORDERS that the Manager shall provide Otera, the Applicants and Respondents, with notice of any breach of this Order, including paragraph 8, of which it becomes aware in respect of the Property and shall, on a monthly basis, provide Otera, the Applicants and Respondents with a certificate confirming that it is not aware of any breach of paragraph 8 in respect of the Property.

11. THIS COURT ORDERS that in the event the stay is lifted in accordance with paragraph 9, 14, or 15 hereof or by Court Order, the relief granted herein is without prejudice to the right of Otera to bring any action, proceeding or claim against the Borrower or any guarantor under the Mortgage or guarantee, or to the right of Otera to raise any existing, continuing or future events of default in these proceedings.

SALE OF PROPERTY

12. THIS COURT ORDERS that subsection 5(l) and (m) of this Court's Order dated November 5, 2013 is modified to require the consent of Otera to take further steps to market, list for sale, sell, convey, lease, rent, transfer or assign the Property or put in place a property manager for the Property from and after the date of this amending Order, in accordance with the Mortgage (including from the date of this Order the sales process to market and sell the Property). Furthermore, nothing in the Order dated November 5, 2013 or this Order shall prejudice the right of Otera to object to a prepayment of the Mortgage or to claim the prepayment charge provided for under the Mortgage.

13. THIS COURT ORDERS that the Manager shall report to Otera, the Applicants and Respondents on the status of the Property, including but not limited to providing timely reports in

respect of leasing or sales activity, copies of any appraisals of the Property, all material information, reports and written communications by the sales agent retained by the Manager in respect of the Property (the “**Sales Agent**”), and any offers for the sale or lease of the Property in the possession of the Manager from time to time, and the Manager shall authorize the Sales Agent to cooperate fully with Otera to provide to Otera timely information and documentation relating to the status of the process to sell the Property or lease space in the Property, subject to the respective recipient executing a confidentiality agreement in a form acceptable to the Manager and Otera, acting reasonably. Otera’s approval shall be required for the sale of the Property or lease of space in the Property. The Manager may request from Otera, and Otera shall provide, a mortgage statement as at the projected closing date in an offer to purchase the Property that the Manager is interested in pursuing. Unless Otera agrees otherwise in writing, and subject to the right of the Manager to seek direction of this Court on notice to Otera, the Manager shall only accept and submit to Court for approval an offer to purchase the Property if the offer provides for payment in full in cash, at closing, of the amount outstanding as shown on the mortgage statement.

14. THIS COURT ORDERS that there shall be an automatic lifting of the stay imposed by paragraphs 12 and 13 of the November 5 Order to permit Otera to enforce its any and/or all of rights and remedies against the Borrower or the Property (including the Property Revenues) under and in accordance with the Mortgage if: (i) by January 31, 2014, the Manager’s plan to sell the Property has not been approved by Otera acting reasonably, the Manager has not commenced the sale process by retaining a reputable real estate agent and listed the Property for sale, or has not commenced to actively market the Property for sale; or (ii) at any time after February 1, 2014, the Manager fails to diligently, continuously and prudently market the Property for sale and market the available space in the Property for lease, unless the Manager and Otera have agreed in writing to extend the deadlines provided in this paragraph 14.

15. THIS COURT ORDERS that there shall be an automatic lifting of the stay imposed by paragraphs 12 and 13 of the November 5 Order to permit Otera to enforce its rights and remedies against the Borrower or the Property (including the Property Revenues) if the sale of the Property is not fully completed by July 31, 2014 (whether or not the relevant Mortgage is in good standing), unless the Manager and Otera have agreed in writing to extend the deadline provided in this paragraph 15.

OTHER RELIEF

16. 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.

17. 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.

18. THIS COURT ORDERS that the stay imposed by paragraphs 12 and 13 of the November 5 Order is lifted for the sole purpose of permitting Otera to deliver a notice for purposes of section 244 of the *Bankruptcy and Insolvency Act* (Canada) if Otera considers it necessary or appropriate to do so.

19. 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 activities of the Manager on not

-8-

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.



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

JAN 07 2014

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SCHEDULE "A" COMPANIES

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

SCHEDULE "B" COMPANIES

1. Twin Dragons Corporation
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4. Liberty Village Properties Inc.
5. Liberty Village Lands Inc.
6. Riverdale Mansion Ltd.
7. Royal Agincourt Corp.
8. Hidden Gem Development Inc.
9. Ascalon Lands Ltd.
10. Tisdale Mews Inc.
11. Lesliebrook Holdings Ltd.
12. Lesliebrook Lands Ltd.
13. Fraser Properties Corp.
14. Fraser Lands Ltd.
15. Queen's Corner Corp.
16. Northern Dancer Lands Ltd.
17. Dupont Developments Ltd.
18. Red Door Developments Inc. and Red Door Lands Ltd.
19. Global Mills Inc.
20. Donalda Developments Ltd.
21. Salmon River Properties Ltd.
22. Cityview Industrial Ltd.
23. Weston Lands Ltd.
24. Double Rose Developments Ltd.
25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Dewhurst Developments Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.

SCHEDULE "C"

The following potential events of default as of the date of this Order under the Mortgage on the Property at 1500 Don Mills Road in Toronto, Ontario with CDPQ Mortgage Investments Corporation are subject to paragraph 8 of this Order:

- a) The Order of this Court dated November 5, 2013;
- b) This Order of the Court;
- c) Any representation made at the time the Mortgage was entered into regarding the ownership of the Mortgagor/Borrower;
- d) The existence of a second mortgage on the Property; and
- e) The non-payment of utilities, taxes and other obligations prior to the date of this Order.

SCHEDULE D

The charge/mortgage in the original principal amount of \$31 million, receipted as AT3195767 on December 12, 2012 and all other security agreements and other documents in connection therewith.

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

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

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

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

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

Lawyers for CDPQ Mortgage Investment
Corporation
#13068647

5

Blake-Daye, Milicent

From: Dunn, Mark
Sent: Wednesday, June 04, 2014 5:22 PM
To: LaBine, Jackie
Subject: FW: 1500 Don Mills and January 6, 2014 order (the "Order") (capitalized terms as defined in the Order)

From: Empey, Brian
Sent: Monday, February 10, 2014 11:17 AM
To: 'Meredith, Heather L.'; Shara N. Roy
Cc: 'Peter Griffin'; Dunn, Mark
Subject: RE: 1500 Don Mills and January 6, 2014 order (the "Order") (capitalized terms as defined in the Order)

Thank you. I will advise the Manager and he will instruct CBRE accordingly.

Brian F. Empey

Goodmans LLP

416.597.4194

bempey@goodmans.ca

From: Meredith, Heather L. [<mailto:HMEREDITH@MCCARTHY.CA>]
Sent: Monday, February 10, 2014 11:14 AM
To: Shara N. Roy
Cc: 'Peter Griffin'; Empey, Brian; Dunn, Mark
Subject: 1500 Don Mills and January 6, 2014 order (the "Order") (capitalized terms as defined in the Order)

Thanks Shara. It is unfortunate there had to be a two week delay in the process to address this issue but we are agreeable to CBRE listing the Property for sale and commencing the active marketing of the Property by February 14, 2014.

To be clear on the structure going forward, the Order is still in place but the stay of proceedings has already been lifted automatically to permit Otera to enforce its rights and remedies by virtue of the failure to meet the deadline in paragraph 14(a) of the Order. However, provided CBRE lists the Property for sale and commences actively marketing the Property by February 14, 2014, Otera will forbear from exercising its rights and remedies at this time. After it is listed, Otera will continue to forbear from exercising its rights and remedies against the Property unless: (i) the Manager fails to diligently, continuously and prudently market the property for sale and market the available space in the property for lease; (ii) either the Manager or the Borrower fails to comply with any aspect of the Order (including, without limitation, any failure to comply with paragraph 8 of the Order or failure to pay monthly principal, interest and all reserves under the Mortgage); or (iii) the sale of the Property is not fully completed by July 31, 2014 (whether or not the Mortgage is in good standing) unless the Manager and Otera have agreed in writing to extend that deadline.

We look forward to receiving confirmation that the Property has been listed and that marketing has commenced. In that regard, my client will expect an update from CBRE regarding their timeline and status of the dataroom and other steps in the marketing process. Robert Duranceau from Otera will be in touch with CBRE directly in that regard.

Best,

Heather

**Heather Meredith**

Partner | Associée

Bankruptcy & Restructuring | Faillite et restructuration

T: 416-601-8342

C: 416-725-4453

F: 416-868-0673

E: hmeredith@mccarthy.ca**McCarthy Tétrault LLP**

Suite 5300

TD Bank Tower

Box 48, 66 Wellington Street West

Toronto ON M5K 1E6

Please, think of the environment before printing this message.

**From:** Shara N. Roy [<mailto:sroy@litigate.com>]**Sent:** Friday, February 07, 2014 4:55 PM**To:** Meredith, Heather L.**Cc:** Peter Griffin; Brian Empey - Goodmans LLP (bempey@goodmans.ca); Mark Dunn (mdunn@goodmans.ca)**Subject:** 1500 Don Mills

Heather,

Further to our discussion Wednesday, our clients will agree to the Manager marketing 1500 Don Mills for sale now with no list price in the hope of achieving a greater price than the CBRE valuation. If we are to do this now, we will need to extend the marketing timeline under the January 6 Order to February 14. The other deadlines under the Order to remain the same and the Order to remain in place. We remain cognizant of CBRE's valuation for a fully tenanted property and will need to evaluate the results of this process in that vein.

Shara

Shara N. Roy

T 416-865-2942

F 416-865-3973

sroy@litigate.com

Lenczner Slaght
130 Adelaide St W
Suite 2600
Toronto, ON
Canada M5H 3P5
www.litigate.com

This e-mail may contain legally privileged or confidential information. This message is intended only for the recipient(s) named in the message. If you are not an intended recipient and this e-mail was received in error, please notify us by reply e-mail and delete the original message immediately. Thank you. Lenczner Slaght Royce Smith Griffin LLP.

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***** Attention *****

This communication is intended solely for the named addressee(s) and may contain information that is privileged, confidential, protected or otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, please advise us immediately and delete this email without reading, copying or forwarding it to anyone.

6

April 10th, 2014

SCHONFELD INC. Receivers + Trusteesinc.

438 University Avenue, 21st Floor
Toronto, ON M5G 2K8

SUBJECT: STATEMENT FOR REIMBURSEMENT PURPOSES

Borrower(s): El-Ad (1500 Don Mills) Limited
Property(ies): 1500 Don Mills Road
Toronto, ON M3B 3K4
Lender: CDPQ Mortgage Investment Corporation
Our File: 2012-0358

Dear Sir or Madam:

Please find enclosed the information for the reimbursement of the above-mentioned loan.

• Principal Balance after May 1 st , 2014 Installment :	29,985,840.59 \$
• Prepayment Indemnity Calculated for a Reimbursement Scheduled on May 1 st , 2014 ¹ :	2,716,292.49 \$
• Tax provision Balance as of May 1 st , 2014 :	(245,159.65) \$
TOTAL REIMBURSEMENT :	32,456,973.43 \$

¹ The exact amount of Prepayment Indemnity will be calculated 24 hours before the reimbursement date and is only included here for your information. Accordingly, please inform us one day before the reimbursement date so that we may send you, without additional charge, a revised statement indicating the exact amount of the prepayment Indemnity. Following the issuance of this statement, any additional statement will incur administrative fees of \$250.

- Daily interest, calculated at the hypothecary rate of 3.85%, will be \$3,075.41 as of May 2nd, 2014.
- This statement is only valid if the pre-authorized debit of May 1st, 2014 in the amount of \$250,675.00 is honoured by the bank. The pre-authorized debit consented by the borrower will be cancelled upon full reimbursement of the loan.

- Please note that the Municipal Tax payment due on May 1st, 2014 in the amount of \$176,617,00 for the above-mentioned property will be paid by the Lender. The tax provision balance shown on this statement has been reduced to reflect this payment.
- Please note that the legal expenses concerning this loan will be assumed by the borrower. The present statement does not take into account these fees.
- This statement is valid until May 16th, 2014, before 12h00 (noon). A reimbursement scheduled after that date will necessitate the issue of a new statement and an administrative fee of \$250 will be charged for that statement, and any subsequent request for statement.
- Please advise us at least one day before the date scheduled for reimbursement and note that **any reimbursement received by the Lender (by cheque or wire) after 12h (noon) will be considered received the next day and will incur an additional day of interest.** The payment should be made to Otéra Capital Inc.
- Following the complete repayment of the loan, we will proceed with the execution of the discharge documents. In order to coordinate the preparation of these documents, you can communicate with :

Mr. Robert Duranceau

(514) 847-5912

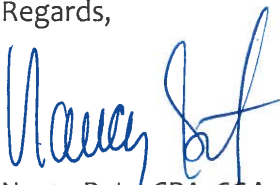
rduranceau@oteracapital.com

Important

Please make payment to **Otéra Capital Inc.**

Please indicate the loan number: **2012-0358-00** as the reference for the bank transfer.

Regards,



Nancy Bety, CPA, CGA
Director, Loan servicing

NB/

E & OE

7

AGREEMENT

Between:

Ron and Norma Walton

"Waltons"

- and -

WoodGreen ~~The~~ Red Door Shelter

"Red Door"

WHEREAS Red Door has purchased conditionally the property known as 875 Queen Street East, Toronto, Ontario (the "Property");

AND WHEREAS the Waltons have agreed to build Red Door a new shelter on the Property (the "Shelter");

AND WHEREAS Red Door is going to assign to the Waltons the Agreement of Purchase and Sale (the "Agreement") such that the Waltons become the purchasers of the Property, subject to their obligations to Red Door;

AND WHEREAS Red Door has provided and will provide deposits totaling \$50,000 and the Waltons will be liable for the balance of the purchase price and the funds required to develop the Property and to build the Shelter;

AND WHEREAS Red Door will raise through a capital campaign the sum of approximately \$4.5 million within 10 years of this agreement and upon receipt of the \$4.5 million, the Waltons will donate the balance of the costs totaling approximately \$2 million and will transfer ownership of the Shelter to Red Door;

THEREFORE the parties agree as follows:

1. On or before June 30, 2011, Red Door will waive the conditions related to the Agreement then the next day assign the Agreement to the Waltons, thus making the purchase firm and making the Waltons the purchasers. At the same time, Red Door will provide the balance of deposit such that their contribution totals \$50,000 in accordance with the Agreement of Purchase and Sale. That \$50,000 will be considered a deposit towards the costs of the Shelter.
2. Waltons will take over all obligations related to the Agreement such that Red Door is removed from liability as it relates to the Agreement. Waltons will indemnify Red Door from any liability of any kind that arises related to the assignment of the Agreement.
3. Waltons intend to build around the Shelter a retail and residential condominium development (the "Development"). As such, Waltons will prepare, at their sole

cost, all drawings and reports and documents required to apply for rezoning and site plan approval of the Property, with target submission date of October 2011.

4. Red Door will coordinate with Waltons' consultants to custom design the Shelter to their specifications, subject to an overall target budget of \$6.5 million, such target budget to include all financing costs, soft costs and hard costs typical of a new build, for the land and construction of the Shelter.
5. Red Door will implement a capital campaign with the objective of raising \$4.5 million plus whatever additional monies they wish to raise. Red Door will be liable for \$4.5 million of the \$6.5 million target cost for the Shelter. Red Door will work diligently to raise that money in as timely a manner as possible.
6. Waltons agree to provide Red Door with ten years from the date of this Agreement to pay the \$4.5 million to Waltons as Red Door's contribution to the Shelter. Once the \$4.5 million has been paid, title to the Shelter will transfer from Waltons to Red Door and Waltons will donate the remaining \$2 million of the Shelter costs. As monies are raised by Red Door, Red Door will supply those monies towards the cost of building the Shelter.
7. Waltons and Red Door will adjust the contributions once the Shelter's design and cost has been finalized, with the intent being that Red Door will pay \$50,000 for their land and Waltons will donate the balance of land value; and Red Door will pay 75% of all costs of building the Shelter and once that 75% of costs has been paid, the Waltons will donate the remaining 25% of all costs.
8. Waltons will be liable for all closing costs, purchase costs, financing costs, and everything required to close the purchase of the Property and carry the Property pending approvals through to final closings and cashing out of the Development. The purchase is currently scheduled to close on June 30, 2012. From date of closing of sale to date of vacating of the existing building, Red Door will be responsible for paying all operating costs for the Property along with continuing to pay rent at their current level or some other level to be agreed upon.
9. Waltons will be responsible for finance, bookkeeping, office administration, accounting, information technology provision, creating the websites that are required, legal protection of trade names and legal structure of the business, and all other responsibilities of running the Development.
10. Waltons will be solely responsible for arranging for the pre-selling of the condominiums proposed to be built and for paying all carrying costs for the property.
11. Once the Development is ready to be constructed, Waltons and Red Door will coordinate together the timing of the temporary closure and relocation of the Shelter pending construction completion.


12. Waltons will build the Shelter to the agreed-upon specifications at the Waltons' costs subject to the contribution and repayment provisions set out above.
13. Red Door will occupy the Shelter once it is ready for occupancy, and at that time will take over payment of all operating expenses along with a reasonable rent to be negotiated by the parties pending title transfer.
14. The parties will prepare and sign whatever additional legal documents are required to implement this agreement and evidence and protect their respective interests and responsibilities.
15. The above represents all deal terms between the parties.

Dated at Toronto, Ontario this ^{23rd} JUNE 2010


Ron Walton


Norma Walton


The Red Door Shelter


The Red Door Shelter

Treasurer

Executive Director

8

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, and THE ROSE & THISTLE
GROUP LTD., AND THOSE CORPORATIONS LISTED ON SCHEDULE
B HERETO

Respondents

and

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

AFFIDAVIT OF BERNNITTA HAWKINS
SWORN MAY 5, 2014

I, BERNNITTA HAWKINS, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am the Executive Director of the Woodgreen Red Door Family Shelter Ltd.
("Red Door") as such I have personal knowledge of all the facts stated in this affidavit.
2. I have read the Affidavit of Norma Walton Sworn May 2, 2014 and have prepared
this Affidavit in response.

3. Contact between Norma Walton and the Board of Directors of Red Door ended effectively in November 2013.

4. Negotiations between Red Door and Norma Walton with respect to any purchase or temporary arrangements at 450 Pape Avenue ended without resolution at that same time.

5. In the meantime, the Board of Directors of Red Door has lost complete confidence in Norma Walton. It communicated such by way of letter sent to Norma Walton by Red Door's solicitor on February 25, 2014. That letter is attached as Exhibit "A" to my affidavit.

6. Red Door no longer has any interest in relocating under any terms to 450 Pape Avenue.

Sworn/affirmed before me, a
commissioner for the taking of
affidavits, this 5th day of May, 2013
in the City of Toronto in the
Province of Ontario.


Ian Leo Grover Flett
(LSUC #58033B)

)
)
)
)
)


Bernnitta Hawkins

Eric K. Gillespie Professional Corporation
Barristers & Solicitors
10 King Street East, Suite 600
Toronto, ON M5C 1C3

Eric Gillespie - egillespie@gillespielaw.ca
Ian Flett - iflett@gillespielaw.ca

Tel: 416.703.7034
Fax: 416.703.9111

Counsel to Woodgreen Red Door Family Shelter

9



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Craig Scott

Member of Parliament / Député
Toronto—Danforth

March 31, 2014

Chris Harhay, President
Harhay Construction Management Ltd.
540 Richmond Street West
Toronto ON M5V 1Y4

Dear Mr. Harhay,

Re: The Red Door Family Shelter, 875 Queen St. East

I am writing this letter as an urgent request that you prevent the potential sale of the building that houses the Red Door Family Shelter, one of the largest family shelters in Toronto, located within my constituency of Toronto-Danforth.

For over 30 years the Red Door Family Shelter has provided essential front-line support for those who find themselves in desperate need. This often means housing new Canadians, refugees and Aboriginal women and children – groups that are too often marginalized in our society.

I share the concerns of constituents who have contacted me, as well my colleagues in Toronto-Danforth - our local City Councillors and M.P.P. - about the loss of this critical service on Queen St. East. There is overwhelming support for the Red Door Family Shelter and, at the time of writing, nearly 8000 people have signed an online petition in support of the shelter. My constituents understand the travesty of homelessness in our city and that together we must do everything possible to protect the vulnerable. Worsening the already-limited support services in place is unacceptable, all the more so if a family shelter ends up being lost so that condos may be built in its place.

Homeless is a matter of federal concern, as witnessed most recently by the efforts of the

TORONTO-DANFORTH

741 Broadview Avenue
Suite 304
Toronto ON M4K 3Y3
Tel/Tél: (416) 405 8914
Fax/Télé: (416) 405 8918

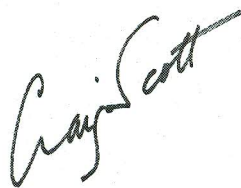
craig.scott@parl.gc.ca
www.craigscott.ndp.ca

OTTAWA

House of Commons/
Chambre des communes
Ottawa ON K1A 0A6
Tel/Tél: (613) 992-9381
Fax/Télé: (613) 992-9389

Official Opposition to have Parliament enact a process leading to a national housing strategy. Accordingly, in my capacity as the Member of Parliament for Toronto-Danforth, please know that I strongly oppose the Red Door Family Shelter losing its home. I urge you to reconsider your position on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Scott". The signature is written in a cursive, flowing style.

Craig Scott, MP
Toronto-Danforth

cc. Harlan Schonfeld
J. Merryweather



方卓怡 市議員 **Paula FLETCHER**

Councillor Toronto-Danforth Ward 30

March 26, 2014

Chris Harhay, President
Walter Harhay, Director
Harhay Construction Management Ltd.
540 Richmond Street West
Toronto, ON M5V 1Y4

Dear Messrs. Harhay,

Re: 875 Queen Street East, The Red Door Shelter

I am writing as the City Councillor for Ward 30 (Toronto-Danforth) with a request that you carefully consider abandoning the purchase of the Red Door Shelter (the "Shelter") at 875 Queen Street East in light of significant concern from the community regarding the future of the Shelter.

On March 25th the community of Leslieville and South Riverdale met to discuss the imminent purchase of this location (under receivership). So far, I believe you have been unable to commit to preserving this important social service agency at its preferred and historic location, causing great distress to many residents and supporters of the Shelter. The eviction of the Shelter and its families, women and children in need of safe and supportive emergency shelter would be a terrible and utterly avoidable tragedy.

For several years, Ward 30 constituents have maintained that the Shelter is one of the most important service providers in our area. I have given my commitment to voters to make this one of our City's highest priorities for protection.

I am advised the Shelter is in the process of retaining legal counsel and is investigating with the United Church of Canada the circumstances of their loss of their title to the property, possibly by improper means.

I ask you to pass this letter on to your legal counsel, investors and any professionals associated with your development team. Even if this sale goes through, any plan to remove the Shelter or develop the site without the shelter will be met with the determined opposition in a well-organized community deeply committed to this cause. I am considering requesting City Staff to prepare an Interim Control By-law to allow the careful consideration of future land uses at the site and within the Queen Street East/ Leslieville Planning Study Area.

Currently City staff are assessing the heritage value of WoodGreen United Church and WoodGreen Neighbourhood House.

Please advise my office in writing on an urgent basis that you will not proceed with this purchase and that you stand with our community and not against it.

Sincerely,

Paula Fletcher

Councillor Paula Fletcher
Ward 30, Toronto-Danforth

cc: S.H. Schonfeld
J. Merryweather



City Hall, 100 Queen St. West, Suite C44, Toronto, ON., M5H 2N2

Telephone: (416) 392-4060 Fax: (416) 397-5200 email: councillor_fletcher@toronto.ca

10

AGREEMENT

THIS AGREEMENT made as of the 5th day of June, 2012.

BETWEEN:

RED DOOR DEVELOPMENTS LTD. and RED DOOR LANDS LTD.
(hereinafter referred to as "Red Door")

OF THE FIRST PART

- and -

TRINITY URBAN PROPERTIES INC.
a company incorporated under the laws of the Province of Ontario,
(hereinafter referred to as "Trinity")

OF THE SECOND PART

WHEREAS Red Door has entered into an unconditional agreement or agreements to purchase (the "**Purchase Agreement**") the properties known as 875 Queen Street East ("875") and 887 Queen Street East ("887"), both in Toronto, Ontario (collectively the "**Properties**");

AND WHEREAS the closing of the purchase of 887 is scheduled for ~~June 20~~ ^{July 6} 2012 and the closing of the purchase of 875 is scheduled for ~~June 27~~ ^{July 6} 2012 (collectively the "**Closing**");

AND WHEREAS Red Door intends to construct a retail/residential development and a women's shelter facility on the Properties (the "**Development**");

AND WHEREAS Trinity has agreed to provide a \$7 million loan secured by a first mortgage in the amount of \$7 million registered against title to 875 and a second mortgage in the amount of \$7 million registered against title to 887 subsequent only to the VTB, as hereinafter defined (the "**Mortgage**");

AND WHEREAS Red Door has agreed to grant to Trinity an option to purchase the retail portion of the Development;

NOW THEREFORE WITNESSETH in consideration of the sum of TWO DOLLARS (\$2.00) and other good and valuable consideration now paid by each party to the other, the parties agree as follows:

- 2 -

1. Trinity shall provide a loan to a maximum of \$7 million to Red Door to be advanced as follows:

- (a) The sum of \$1,200,000 on ~~June 20~~ ^{July 6}, 2012 concurrent with the purchase of 887;
- (b) The sum of \$4,600,000 on ~~June 27~~ ^{July 6}, 2012 concurrent with the purchase of 875;
- (c) The sum of \$400,000 on or about June 19, 2013 to be applied by Red Door as a principal payment owing on the vendor take-back mortgage in the principal amount of \$1,200,00 (the "VTB") respecting 887;
- (d) The sum of \$400,000 on or about June 19, 2014 to be applied by Red Door as a principal payment under the VTB respecting 887, provided the mortgage in favour of Trinity has not been repaid and provided funds are still owing by Trinity on account of the purchase referred to in said Section 6; and
- (e) The sum of \$400,000 on the earlier of June 19, 2015 or the closing of the purchase referred to in Section 6 below to be applied by Red Door as a principal payment under the VTB respecting 887 provided that the mortgage in favour of Trinity has not been repaid and provided funds are still owing by Trinity on account of the purchase referred to in said Section 6.

2. Trinity will register a first mortgage against title to 875 and a second mortgage against title to 887 to secure the \$7 million. The mortgage will be in favour of Trinity or whom it may direct.

3. Ron and Norma Walton will personally guarantee the loan on a joint and several basis.

4. Red Door will pay to Trinity interest of 6% per annum, compounded quarter yearly with all interest to be accrued and paid upon maturity of the loan or on the date the Option is exercised in the event Section 7(b) below applies.

5. The mortgage term shall be for a period of two years such that the mortgage is due on ~~June 19~~ ^{July 6}, 2014 (the "Maturity Date");

6. Red Door agrees to grant an option to purchase (the "Option") the retail component of the Development to Trinity exercisable on or before the Maturity Date on the following terms:

- (a) Purchase Price - \$7 million dollars based on 20,000 SF of ground floor leasable retail space in the Development calculated on the basis of \$350 per square foot. The area of the retail portion of the Development will be certified by an architect and the purchase price adjusted accordingly.
- (b) Trinity will be entitled to purchase the number of parking spaces required by Trinity, acting reasonably, at cost.
- (c) The retail component of the Development will be created by way of strata title. Red Door will be responsible for creating the strata title at its own expense.

- 3 -

- (d) If the second floor of the Development is zoned for retail purposes Trinity shall also have the option to purchase that second floor of retail space with such option also exercisable on the Maturity Date at a price to be negotiated at that time, provided that the price for same will not be greater than \$350 per leaseable square foot.
- (e) The purchase transaction shall be completed upon the retail component being capable of being legally transferred or conveyed Trinity, or whom it may direct. RioCan Real Estate Investment Trust, its affiliated or related corporations, shall be entitled to participate in the purchase of the retail component.
- (f) The purchase of the retail component must be completed no later than the 19th day of June, ~~2017~~ ²⁰²⁰ failing which the agreement to purchase the same shall be at an end and any monies, including principal and accrued interest owing on the mortgage shall be repaid by Red Door to Trinity.
- (g) Trinity shall be entitled to pledge its interest and/or option to purchase in the Development to RioCan Real Estate Investment Trust or any related or affiliated corporation or entity thereto and notice of such pledge of the option to purchase may be registered on title. Notice of the actual option to purchase will also be registered on title.
- (h) On closing of the purchase transaction Red Door will direct, if the loan has not been repaid, the purchaser to pay to Trinity such amount of the net closing proceeds as are necessary to repay, in full, all indebtedness secured by the Mortgage.
7. (a) If Trinity does not exercise the Option all principal and accrued interest under the Mortgage shall be paid to Trinity on the Maturity Date.
- (b) If Trinity exercises the option and the retail portion of the Development comprises less than 20,000 SF of leasable area, the Borrower shall repay to Trinity, at the time the option is exercised, the amount of principal owing under the Mortgage equal to the result of the following formula:
- $$20,000 \text{ minus the actual leaseable area of the retail portion of the Development} \times 350$$
- together with accrued interest on such amount.
- (c) In the event Trinity exercises the Option, the Maturity Date of the Mortgage shall be extended to the earlier of (i) the closing of the purchase transaction resulting from the exercise of the Option or (ii) the termination of the purchase transaction, and the mortgage shall remain as security for the purchase price and shall continue to accrue interest on such amount. Alternatively, should Red Door wish to discharge the Mortgage then upon repayment of all principal and accrued interest to Trinity (or the Borrower providing alternative security satisfactory to Trinity in its sole and absolute discretion) and upon the parties entering into a binding agreement of purchase and sale for the retail portion of the Development the Mortgage shall be discharged.

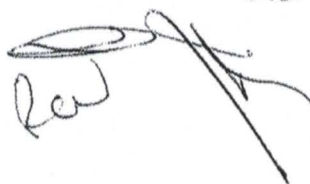
- 4 -

8. Trinity will be responsible for designing and leasing the retail component of the Development, all parties acting reasonably.
9. Red Door will be responsible for covering all costs of the Development, including construction costs, and Trinity will not be liable to pay anything further other than \$350 PSF for the retail portion of the Development that they purchase and reimbursement cost for each parking space they purchase.
10. Nothing herein shall be binding on the parties until a formal loan agreement and option agreement are entered into by the parties and Trinity shall have no obligation to advance any funds to Red Door until a loan agreement and option agreement have been executed by the parties to the satisfaction of Trinity and the Security, as hereinafter defined, has been delivered and registered all in form acceptable to Trinity in its sole, absolute and unfettered discretion. The loan agreement shall require, among other things, the following security documents (collectively, the "Security Documents"):
 - (a) a registered charge as aforesaid;
 - (b) a registered general assignment of rents;
 - (c) the joint and several guarantee of Ron Walton and Norma Walton;
 - (d) a general security agreement from the Borrower;
 - (e) such other security documents reasonably required by Trinity;

to the satisfaction of counsel to Trinity including the registration thereof in the appropriate land registry office and including PPSA registrations as required against the Borrower. *but not against the Guarantors personally.*

Agreed to and accepted this 20th day of June, 2012.

as amended



TRINITY URBAN PROPERTIES INC.

Per: 

Name: John Ruddy

Title: President

I have authority to bind the Corporation



- 5 -

Agreed to and accepted this ^{HR} 11 day of June, 2012.

as
amended

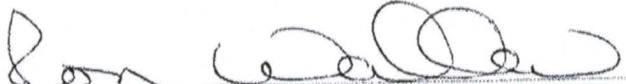
RED DOOR DEVELOPMENTS LTD. AND RED
DOOR LANDS LTD.

Per: 


Name: Norma Walton


Title: Director


I have authority to bind the Corporation



RON WALTON as Guarantor


Witness


Witness


NORMA WALTON as Guarantor

1

1

DIRECTION**TO:** Rio Can Management Inc.**AND TO:** Fogler, Rubinoff LLP, its solicitors**RE:** Loan agreement (the "**Loan Agreement**") dated July 6, 2012 by and among Red Door Developments Inc., Red Door Lands Ltd. and Ron Walton and Norma Walton and Rio Can Management Inc. for the purpose of financing 875 and 887 Queen Street East, Toronto

We hereby authorize and direct you to pay the July 5th, 2013 advance in respect of the above-referenced loan as follows:

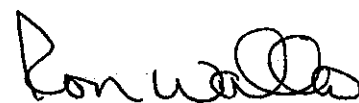
1. The sum of \$847.50 payable to Fogler, Rubinoff LLP; and
 2. The sum of \$399,152.50 payable to Woodgreen Management Inc. *or its solicitors in trust.*
- and this shall be your good and sufficient authority for so doing.

A photocopy, facsimile transmission, scanned/e-mailed, or other legible electronic facsimile of this document may be relied upon to the same extent as if it were an original executed version.

DATED this 5th day of July, 2013.

RED DOOR DEVELOPMENTS INC.

Per: 
 Norma Walton – President


 Ron Walton

RED DOOR LANDS LTD.

Per: 
 Norma Walton – President


 Norma Walton

12

ACKNOWLEDGEMENT

To: Jory Kesten

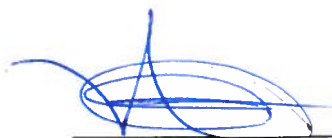
From: Norma Walton and Red Door Lands Ltd.

Re: Payment of \$399,152.50 to Woodgreen Management Inc.

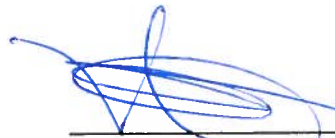
Date: July 9, 2013

I hereby acknowledge that the certified cheque for \$399,152.50 payable to Woodgreen Management Inc. is in error and is not intended to be a payment against the principal of the outstanding first mortgage of \$1.2 million owed by Red Door Lands Ltd. and secured against 887 Queen Street East.

Dated at Toronto, Ontario this 9th day of July, 2013



Norma Walton



RED DOOR LANDS LTD.

Per: Norma Walton
President

Norma Walton

From: Jory Kesten [jorykesten@rogers.com]
Sent: Tuesday, July 09, 2013 3:06 PM
To: Norma Walton
Subject: 887 Queen St E - First Mortgage

Norma:

Please acknowledge issuance of 400,000 cheque from Red Door Lands Ltd. to Woodgreen Management Inc today is in error, and is being replaced and returned, and is not intended to be a payment against the outstanding First Mortgage.

Please print, sign as "Acknowledged on Behalf of Red Door Lands Ltd", and send original to my attention at 10744 Hwy 27, Kleinburg, Ontario L0J1C0.

Jory

Acknowledged on behalf of
Red Door lands Ltd,
on July 9, 2013



13

Wellesley Branch
56 Wellesley Street W., Suite 103
Toronto Ontario M5S 2S3
416.928.6468

123

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001979

Statement Period Ending: July 31, 2013
Account Number: 9692179
Number of Cheques: 1

Red Door Lands Ltd.
30 Hazelton Av
Toronto ON M5R 2E2

Deposit Accounts

Chequing 0 - Red Door Lands Ltd.

Date	Account Activity	Withdrawals	Deposits	Balance
30-Jun-2013	Balance Forward			111.91
02-Jul-2013	Combined Deposit		6,215.00	6,326.91
04-Jul-2013	Combined Deposit		1,355.03	7,681.94
05-Jul-2013	Transfer Out # 060444533	-1,600.00		6,081.94
	7311954 wellesy cheq			
05-Jul-2013	Cheque # 13	-6,000.00		81.94
10-Jul-2013	Combined Deposit		399,152.50	399,234.44
10-Jul-2013	Transfer Out # 102307734	-399,100.00		134.44
	7311954 wellesy cheq			
25-Jul-2013	Transfer In		1,900.00	2,034.44
	7311954 wellesy cheq			
26-Jul-2013	Transfer Out # 092619420	-2,000.00		34.44
	7311954 wellesy cheq			
29-Jul-2013	Transfer In		2,100.00	2,134.44
	7311954 wellesy cheq			
31-Jul-2013	Transaction Fees	-5.00		2,129.44
	Account Totals	408,705.00	410,722.53	2,129.44



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Please contact your branch within 30 days if this statement does not agree with your records.

Member Number: 9692179
Member Name: Red Door Lands Ltd.

July 2013

Cheque #13
\$6,000.00

Red Door Lands Ltd. 13
Name 30 HAZELTON AVE CHEQUE NO.
Address TORONTO, ON M5S 2E2
City/Town Postal Code ACCOUNT NO.
PAY to the order of WOOD GREEN MANAGEMENT INC. \$ 6,000.00
- Six THOUSAND - 100 DOLLARS
Meridian MERIDIAN CREDIT UNION
WILLESLEY
50 WILLESLEY ST. W.
TORONTO, ONTARIO M5S 2S3
RE July 5, 2013
0000013 0074200837 09692179 00000600000

Printer ID# 1021
16722-004
JUL 05 2013
THE TORONTO DOWNSIDE BANK
01004151
84
16722-004

July 2013

14

Properties

PIN	21055 – 0068	LT	Interest/Estate	Fee Simple
Description	PCL G–1 SEC M204; PT LT G PL M204 TORONTO; PT LT H PL M204 TORONTO PARTS 1 AND 3, R3025; TORONTO , CITY OF TORONTO			
Address	TORONTO			
PIN	21055 – 0069	LT	Interest/Estate	Fee Simple
Description	PCL H–1 SEC M204; PT LT H S/S QUEEN ST EAST PL M204 TORONTO COMM AT A POINT IN THE SLY LIMIT OF QUEEN ST E WHERE THE SAME WOULD BE INTERSECTED BY THE PRODUCTION NLY OF THE CENTRE LINE OF PARTITION WALL BTN THE MAIN PARTS OF THE BRICK STORE BUILDINGS STANDING IN MAY 1922 UPON THE SAID LT AND LANDS IMMEDIATELY TO THE W THEREOF, THE SAID POINT BEING DISTANT 20 FT 7 INCHES MEASURED WLY ALONG THE SAID LIMIT OF QUEEN ST E FROM THE WLY LIMIT OF LOGAN AV (FORMERLY CALLED BLONG ST); THENCE SLY TO AND ALONG THE SAID CENTRE LINE OF WALL IN ALL A DISTANCE OF 33 FT 9 INCHES TO AN ANGLE IN THE SAME; THENCE ELY ALONG THE CENTRE LINE OF PARTITION WALL BTN THE AFORESAID BUILDINGS AND ON A COURSE ABOUT PARALLEL TO THE SAID LIMIT OF QUEEN ST E 3 FT TO THE CENTRE LINE OF PARTITION WALL BTN THE REAR PARTS OF THE AFORESAID STORE BUILDINGS; THENCE SLY ALONG THE LAST MENTIONED CENTRE LINE OF WALL 28 FT 10 1/2 INCHES TO A POINT IN THE SLY FACE OF THE SLY WALL OF THE SAID REAR PARTS OF THE SAID STORE BUILDINGS, WHICH POINT IS DISTANT 17 FT 5 3/4 INCHES MEASURED WLY ON A COURSE PARALLEL TO THE SAID LIMIT OF QUEEN ST E FROM THE SAID LIMIT OF LOGAN AV; THENCE SLY IN A STRAIGHT LINE 8 FT 1 1/2 INCHES TO A POINT IN THE SLY FACE OF THE SLY WALL OF THE FRAME EXTENSIONS OF THE SAID STORE BUILDINGS, WHICH POINT IS DISTANT 17 FT 11 1/2 INCHES MEASURED WLY ON A COURSE PARALLEL TO THE SAID LIMIT OF QUEEN ST E FROM THE SAID LIMIT OF LOGAN AV; THENCE SLY ALONG THE LINE OF FENCE DIVIDING IN PT THE REAR PREMISES OF THE SAID STORE BUILDINGS 26 FT 6 INCHES TO A POINT IN THE NLY FACE OF THE NLY WALL OF CERTAIN FRAME SHEDS STANDING AT THE DATE THEREINBEFORE LAST MENTIONED UPON THE REAR PREMISES OF THE SAID STORE BUILDINGS, WHICH POINT IS DISTANT 17 FT 2 1/2 INCHES MEASURED WLY ON A COURSE ABOUT PARALLEL TO THE SAID LIMIT OF QUEEN ST E FROM THE SAID LIMIT OF LOGAN AV; THENCE SLY ALONG THE CENTRE LINE OF PARTITION BTN THE SAID SHEDS, 10 FT 3 INCHES TO THE SLY FACE OF THE SAID SHEDS; THENCE WLY ALONG THE SAID SLY FACE OF SHEDS, BEING ABOUT PARALLEL TO THE SAID LIMIT OF QUEEN ST E, 2 FT 9 1/2 INCHES; THENCE SLY ALONG THE CENTRE LINE OF PARTITION WALL IN AN OLD FRAME BUILDING STANDING AT THE DATE THEREINBEFORE LAST MENTIONED, UPON THE REAR PREMISES OF THE SAID STORE BUILDINGS, AND CONTINUING THENCE SLY PARALLEL TO THE SAID LIMIT OF LOGAN AV, IN ALL A DISTANCE OF 24 FT 6 INCHES TO A POINT IN THE NLY LIMIT OF THE LANE IN THE SAID LT, WHICH POINT IS DISTANT 19 FT 10–3/4 INCHES, MEASURED WLY THEREON FROM THE SAID LIMIT OF LOGAN AV; THENCE ELY ALONG THE SAID LIMIT OF LANE 19 FT 10–3/4 INCHES TO THE WLY LIMIT OF LOGAN AV; THENCE NLY ALONG THE SAID LIMIT OF LOGAN AV 132 FT TO THE SLY LIMIT OF QUEEN ST E AFORESAID; THENCE WLY ALONG THE LAST MENTIONED LIMIT 20 FT 7 INCHES, MORE OR LESS, TO THE POC; TORONTO , CITY OF TORONTO			
Address	TORONTO			

Chargor(s)

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

Name

RED DOOR LANDS LTD.

Address for Service

30 Hazelton Avenue
Toronto, Ontario
M5R2E2

I, Norma Walton, President, have the authority to bind the corporation.
This document is not authorized under Power of Attorney by this party.

Chargee(s)

Capacity

Share

Name

WOODGREEN MANAGEMENT INC.

Chargee(s)

Capacity

Share

Address for Service

10744 Highway 27
Kleinburg, Ontario
L0J 1C0

Statements

Schedule: See Schedules

Provisions

Principal

\$1,200,000.00

Currency

CDN

Calculation Period

semi-annually, not in advance

Balance Due Date

2015/07/06

Interest Rate

6.0%

Payments

Interest Adjustment Date

2012 07 06

Payment Date

5th day of each month

First Payment Date

2012 08 05

Last Payment Date

2015 07 05

Standard Charge Terms

200033

Insurance Amount

See standard charge terms

Guarantor

Signed By

John Todd Holmes

100-95 Barber Greene Rd.
Toronto
M3C 3E9

acting for Chargor (s)

Signed

2012 07 06

Tel

4164491400

Fax

4164497071

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

Submitted By

DEVRY, SMITH & FRANK

100-95 Barber Greene Rd.
Toronto
M3C 3E9

2012 07 06

Tel

4164491400

Fax

4164497071

Fees/Taxes/Payment

Statutory Registration Fee

\$60.00

Total Paid

\$60.00

SCHEDULE

Principal Payments

The Chargor shall make the following payments on account of the principal outstanding under this charge by the following times on the following dates:

1. The sum of \$400,000.00 by 5:00pm on July 5, 2013;
2. The sum of \$400,000.00 by 5:00pm on July 5, 2014; and
3. The sum of \$400,000.00 by 5:00pm on July 5, 2015.

Interest Payments

Interest shall be payable on the 5th day of each month on the balance of the principal outstanding from time to time, as well after as before maturity of this charge, and both before and after default and judgement until paid.

PREPAYMENT

The Chargor may prepay the whole or any part of the principal outstanding under this charge at any time or times after 5:00pm on July 5, 2013 without notice, bonus or penalty.

MAINTENANCE OF BUILDING

The Chargor agrees to fully maintain the existing building and shall not perform any work on the subject property aside from maintenance work items until this charge has matured and/or been paid in full, or the Chargor provides the Chargee with a certified appraisal, from a qualified appraiser, confirming a value of at least \$2,400,000.00 for the land alone.

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

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

(Motion for approval and vesting order with respect to
1003 Queen Street East; 1500 Don Mills Road;
875/887 Queen Street East and 1 and 20 Royal Gate
Boulevard)

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

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

Lawyers for The Manager

File No. 14-0074