

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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

Applicants

- and -

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

Respondents

- and -

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

MOTION RECORD

December 16, 2013

AIRD & BERLIS LLP
Barristers & Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

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Lawyers for 165 Bathurst Financial Inc.

SERVICE LIST

TO: **AIRD & BERLIS LLP**
Barristers & Solicitors
Brookfield Place
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Attention: Steven L. Graff / Ian Aversa

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Lawyers for 165 Bathurst Financial Inc.

AND TO: **LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**
2600-130 Adelaide Street West
Toronto, ON M5H 3P5

Attention: Peter H. Griffin / Peter Osborne / Shara N. Roy

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Lawyers for the Applicants

AND TO: **FASKEN MARTINEAU DuMOULIN LLP**
333 Bay Street, Suite 2400
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Toronto, ON M5H 2T6

Attention: John A. Campion / Emmeline Morse

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Lawyers for the Respondents

AND TO: GOODMAN'S LLP
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333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Attention: Fred Myers / Brian Empey / Mark S. Dunn

Tel: (416) 597-5923 / (416) 849-6895

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Email: fmyers@goodmans.ca / bempey@goodmans.ca / mdunn@goodmans.ca

Lawyers for the Court-appointed Manager

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SUPERIOR COURT OF JUSTICE
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- and -

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**THOSE CORPORATIONS LISTED ON SCHEDULE B HERETO,
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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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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**

NOTICE OF MOTION

165 Bathurst Financial Inc. ("**Financial**") will make a motion to a judge presiding over the Commercial List on Wednesday, December 18, 2013 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR an Order, including, among other things:

- (a) excluding the lands and premises owned by 165 Bathurst Inc. ("**Bathurst**"), which are municipally known as 620 Richmond Street West in Toronto, Ontario and legally described in PIN 21239-0081 (LT) (the "**Richmond Street Property**"), from the definition of "Property" contained in paragraph 3 of the

Order of the Honourable Mr. Justice Newbould dated November 5, 2013 (the “**Order**”) wherein he appointed Schonfeld Inc. as manager (in such capacity, the “**Manager**”) of certain properties owned by the corporations listed on Schedule “B” to the Order (the “**Schedule B Corporations**”);

- (b) lifting the stay of proceedings imposed pursuant to paragraphs 12 and 13 of the Order so as to permit Financial to commence and continue power of sale proceedings to realize upon its mortgage registered on title to the Richmond Street Property;
- (c) amending paragraphs 21 and 24 of the Order so as to provide that the Manager’s Charge and the Manager’s Borrowings Charge (as such terms are defined in the Order) shall rank subordinate to the security interests, mortgages and encumbrances in favour of Financial on the Richmond Street Property;
- (d) enjoining the Manager from (i) taking any steps to terminate the Property Management Agreement dated August 1, 2008 between Bathurst and Esbin Property Management Inc. (“**Esbin**”) and (ii) engaging a new property manager for the Richmond Street Property, and, if either of the foregoing has occurred, re-engaging Esbin as the property manager;
- (e) Financial’s costs of this motion on a substantial indemnity basis;
- (f) if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same; and
- (g) such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) Financial holds the second-ranking registered mortgage on title to the Richmond Street Property;

- (b) Financial does not hold any other security over, or have an interest in, any lands or premises owned by the 31 Schedule "B" Corporations other than Bathurst;
- (c) Financial wishes to proceed on its own to enforce its mortgage on the Richmond Street Property by way of power of sale proceedings without the involvement of the Manager appointed pursuant to the Order;
- (d) the services of the Manager, and the added costs they would entail, are not required for the management or the sale of the Richmond Street Property;
- (e) as the sale of the Richmond Street Property does not require the involvement of the Manager, and as Financial has no interest or involvement in the other lands or premises owned by the Schedule "B" Corporations, it is inappropriate for the charges created by paragraphs 21 and 24 of the Order to attach to the Richmond Street Property in priority to Financial's mortgage thereon;
- (f) a party related to the mortgagee, namely, Esbin, had been the manager of the Richmond Street Property for in excess of twenty years and there is no reason to alter the management of the Richmond Street Property at this stage;
- (g) the imposition of the Court-ordered charges which prioritize to the mortgage in favour of Financial on the Richmond Street Property at the behest of a shareholder or unsecured creditor is inequitable in the circumstances;
- (h) the other grounds set out in the affidavit of Marvin Pernica sworn December 5, 2013;
- (i) subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (j) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (k) rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

(l) such further and other grounds as counsel may advise and this Court may permit.

2. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the affidavit of Marvin Pernica sworn December 5, 2013;
- (b) the Order of the Honourable Mr. Justice Newbould issued on November 5, 2013 in these proceedings;
- (c) the Endorsement of the Honourable Mr. Justice Newbould issued on November 5, 2013 in these proceedings; and
- (d) such further and other material as counsel may submit and this Court may permit.

Date: December 16, 2013

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

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Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Lawyers for 165 Bathurst Financial Inc.

TO: ATTACHED SERVICE LIST

DBDC SPADINA LTD. et al.

- and - **NORMA WALTON et al.**

Applicants

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

NOTICE OF MOTION

AIRD & BERLIS LLP
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Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Lawyers for 165 Bathurst Financial Inc.

TAB 2

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Respondents

- and -

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

**AFFIDAVIT OF MARVIN PERNICA
(sworn December 5, 2013)**

I, **MARVIN PERNICA**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a director and officer of 165 Bathurst Financial Inc. ("**Financial**"). Financial is a secured creditor of 165 Bathurst Inc. ("**Bathurst**"). I am responsible for the protection and preservation of the amounts owed by Bathurst to Financial. I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. This Affidavit is sworn in support of a motion for an Order, including, among other things:

- (a) excluding the lands and premises owned by 165 Bathurst Inc. ("**Bathurst**"), which are municipally known as 620 Richmond Street West in Toronto, Ontario and legally described in PIN 21239-0081 (LT) (the "**Richmond Street Property**"), from the definition of "Property" contained in paragraph 3 of the Order of the Honourable Mr. Justice Newbould dated November 5, 2013 (the "**Order**") pursuant to which he appointed Schonfeld Inc. as manager (in such capacity, the "**Manager**") of certain properties owned by the corporations listed on Schedule "B" to the Order (the "**Schedule "B" Corporations**");
- (b) lifting the stay of proceedings imposed pursuant to paragraphs 12 and 13 of the Order so as to permit Financial to commence and continue power of sale proceedings to realize upon its mortgage registered on title to the Richmond Street Property;
- (c) amending paragraphs 21 and 24 of the Order so as to provide that the Manager's Charge and the Manager's Borrowings Charge (as such terms are defined in the Order) shall rank subordinate to the security interests, mortgages and encumbrances in favour of Financial on the Richmond Street Property; and
- (d) enjoining the Manager from (i) taking any steps to terminate the Property Management Agreement dated August 1, 2008 between Bathurst and Esbin Property Management Inc. ("**Esbin**") and (ii) engaging a new property manager for the Richmond Street Property.

3. Bathurst is a corporation incorporated on July 9, 1997 pursuant to the laws of the Province of Ontario. A copy of Bathurst's corporate profile report is attached as **Exhibit "A"** to this Affidavit. Bathurst is the registered owner of the Richmond Street Property.

4. Financial is a corporation incorporated on May 8, 2013 pursuant to the laws of the Province of Ontario. A copy of Financial's corporate profile report is attached as **Exhibit "B"** to this Affidavit.

5. The Richmond Street Property is a converted industrial loft building, which was originally built in 1918. It has ten floors plus a basement and approximately 56,855 square feet of rentable space.

6. A copy of the parcel register for the Richmond Street Property, with currency to November 28, 2013, is attached as **Exhibit "C"** to this Affidavit.

7. Financial holds the second ranking charge/mortgage registered on title to the Richmond Street Property.

8. Financial's charge/mortgage (the "**Financial Mortgage**") was registered on June 28, 2013 as Instrument Number AT3337816 in the principal amount of \$6,575,000 on title to the Richmond Street Property, which was subsequently amended pursuant to a Charge Amending and Confirming Agreement dated July 9, 2013 as evidenced by a notice, which was registered as Instrument Number AT3375124 on title to the Richmond Street Property. A copy of the Financial Mortgage is attached as **Exhibit "D"** to this Affidavit.

9. The Financial Mortgage is subordinate to a first-ranking charge/mortgage in favour of Computershare Trust Company of Canada, which was registered on August 31, 2012 as

Instrument Number AT3116739 in the principal amount of \$4,428,622 on title to the Richmond Street Property (the “**Computershare Mortgage**”).

10. The Financial Mortgage was placed on the Richmond Street Property at the time of its sale in July of 2013 and represents, in essence, a vendor take back mortgage in favour of the former beneficial owners of the Richmond Street Property.

11. Prior to the sale of the Richmond Street Property in July of 2013, the former beneficial owners of the Richmond Street Property owned that property for approximately twenty years.

12. The parcel register shows no other charges/mortgages registered against the Richmond Street Property other than the Financial Mortgage and the Computershare Mortgage.

13. For the past twenty years during its ownership by the prior owners and even since the sale of the Richmond Street Property in July of 2013, the Richmond Street Property has been managed by Esbin pursuant to a Property Management Agreement dated August 1, 2008 between Bathurst and Esbin. Esbin is a party that is indirectly related to the former owner. A copy of the Property Management Agreement is attached as **Exhibit “E”** to this Affidavit.

14. Financial does not hold any other security over, or have an interest or involvement in, any lands or premises owned by the 31 Schedule “B” Corporations other than Bathurst.

15. As of December 5, 2013, Bathurst was indebted to Financial, pursuant to the Financial Mortgage, in the amount of \$6,624,681.78 in principal and interest.

16. Financial wishes to realize on its mortgage without the intervention of the Manager.

17. Specifically, Financial wishes to proceed on its own to enforce its mortgage on the Richmond Street Property by way of power of sale proceedings without the involvement of the Manager appointed pursuant to the Order.

18. Financial is therefore seeking an order varying the Order by lifting the stay of proceedings contained therein to permit Financial to pursue its power of sale proceedings without the intervention of the Manager.

19. In addition, as Financial has no interest or involvement in any of the other lands or premises owned by the Schedule "B" Corporations, it also seeks a variation of the Order to provide that the Manager's Charge (which includes a proportionate share of the general costs incurred with respect to all of the other properties subject to the Order) or the Manager's Borrowings Charge be subordinate to Financial's Mortgage on the Richmond Street Property.

20. Under Ontario law, all interested parties would receive notice of the power of sale proceedings and would be entitled to assert any claims they may have to the Richmond Street Property or to the proceeds of sale. In any event, Financial is prepared to undertake to ensure that notice of all steps in the proceedings be provided to all interested parties, including the Manager. Financial is also prepared to undertake to direct that any surplus funds, after repayment of indebtedness owed to Computershare and Financial pursuant to the Computershare Mortgage and the Financial Mortgage, respectively, be paid to the Manager to be dealt with in the context of these proceedings in accordance with the further directions of this Court.

21. This Affidavit is made in support of the within motion, and for no other or improper purpose whatsoever.

SWORN before me at the City of
Toronto, in the Province of Ontario,
this 5th day of December, 2013.

Commissioner for taking affidavits, etc.

IAN AVERSA

)
)
)
)

MARVIN PERNICA

EXHIBIT “A”

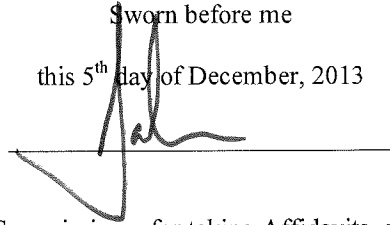
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF MARVIN PERNICA

Sworn before me

this 5th day of December, 2013

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

Commissioner for taking Affidavits, etc

Request ID: 015941085
Transaction ID: 52762328
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2013/11/28
Time Report Produced: 08:08:46
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CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
1245596	165 BATHURST INC.	1997/07/09
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address	Date Amalgamated	Amalgamation Ind.
30 HAZELTON AVENUE	NOT APPLICABLE	NOT APPLICABLE
	New Amal. Number	Notice Date
TORONTO ONTARIO CANADA M5R 2E2	NOT APPLICABLE	NOT APPLICABLE
		Letter Date
Mailing Address		NOT APPLICABLE
30 HAZELTON AVENUE	Revival Date	Continuation Date
	NOT APPLICABLE	NOT APPLICABLE
TORONTO ONTARIO CANADA M5R 2E2	Transferred Out Date	Cancel/Inactive Date
	NOT APPLICABLE	NOT APPLICABLE
	EP Licence Eff.Date	EP Licence Term.Date
	NOT APPLICABLE	NOT APPLICABLE
	Number of Directors Minimum Maximum	Date Commenced in Ontario
	00001 00010	NOT APPLICABLE
Activity Classification		Date Ceased in Ontario
NOT AVAILABLE		NOT APPLICABLE

Request ID: 015941085
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Province of Ontario
Ministry of Government Services

Date Report Produced: 2013/11/28
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CORPORATION PROFILE REPORT

Ontario Corp Number

1245596

Corporation Name

165 BATHURST INC.

Corporate Name History

165 BATHURST INC.

Effective Date

1997/07/09

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator:
Name (Individual / Corporation)

NORMA

WALTON

Address

30 HAZELTON AVENUE

TORONTO
ONTARIO
CANADA M5R 2E2

Date Began

2013/06/17

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Request ID: 015941085
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Province of Ontario
Ministry of Government Services

Date Report Produced: 2013/11/28
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CORPORATION PROFILE REPORT

Ontario Corp Number

1245596

Corporation Name

165 BATHURST INC.

Administrator:
Name (Individual / Corporation)

NORMA

WALTON

Address

30 HAZELTON AVENUE

TORONTO
ONTARIO
CANADA M5R 2E2

Date Began

2013/06/17

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Administrator:
Name (Individual / Corporation)

NORMA

WALTON

Address

30 HAZELTON AVENUE

TORONTO
ONTARIO
CANADA M5R 2E2

Date Began

2013/06/17

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

TREASURER

Resident Canadian

Request ID: 015941085
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Province of Ontario
Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

1245596

Corporation Name

165 BATHURST INC.

Administrator:
Name (Individual / Corporation)

NORMA

WALTON

Address

30 HAZELTON AVENUE

TORONTO
ONTARIO
CANADA M5R 2E2

Date Began

2013/06/17

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Request ID: 015941085
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Province of Ontario
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CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1245596

165 BATHURST INC.

Last Document Recorded

Act/Code Description

Form

Date

CIA CHANGE NOTICE

1

2013/07/04 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

EXHIBIT “B”

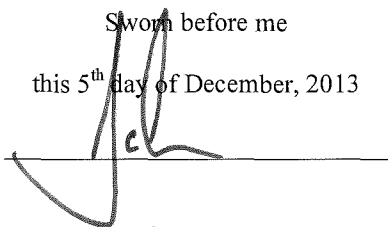
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF MARVIN PERNICA

Sworn before me

this 5th day of December, 2013

A handwritten signature in dark ink, appearing to be 'C. L.', is written over a horizontal line.

Commissioner for taking Affidavits, etc

Request ID: 015941084
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Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2013/11/28
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CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
2372344	165 BATHURST FINANCIAL INC.	2013/05/08
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address	Date Amalgamated	Amalgamation Ind.
MARTIN USHER 162 CUMBERLAND STREET	NOT APPLICABLE	NOT APPLICABLE
Suite # 300 TORONTO ONTARIO CANADA M5R 3N5	New Amal. Number	Notice Date
	NOT APPLICABLE	NOT APPLICABLE
		Letter Date
		NOT APPLICABLE
Mailing Address	Revival Date	Continuation Date
MARTIN USHER 162 CUMBERLAND STREET	NOT APPLICABLE	NOT APPLICABLE
Suite # 300 TORONTO ONTARIO CANADA M5R 3N5	Transferred Out Date	Cancel/Inactive Date
	NOT APPLICABLE	NOT APPLICABLE
	EP Licence Eff.Date	EP Licence Term.Date
	NOT APPLICABLE	NOT APPLICABLE
	Number of Directors Minimum Maximum	Date Commenced in Ontario
	00001 00010	NOT APPLICABLE
Activity Classification		Date Ceased in Ontario
NOT AVAILABLE		NOT APPLICABLE

Request ID: 015941084
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Province of Ontario
Ministry of Government Services

Date Report Produced: 2013/11/28
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CORPORATION PROFILE REPORT

Ontario Corp Number

2372344

Corporation Name

165 BATHURST FINANCIAL INC.

Corporate Name History

165 BATHURST FINANCIAL INC.

Effective Date

2013/05/08

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator:
Name (Individual / Corporation)

JONATHAN
HUSSMAN

Address

109 OLD FOREST HILL ROAD

TORONTO
ONTARIO
CANADA M5P 2R8

Date Began

2013/05/08

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Request ID: 015941084
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Province of Ontario
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CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2372344	165 BATHURST FINANCIAL INC.

Administrator: Name (Individual / Corporation)	Address
JONATHAN HUSSMAN	109 OLD FOREST HILL ROAD TORONTO ONTARIO CANADA M5P 2R8

Date Began	First Director	Resident Canadian
2013/05/08	NOT APPLICABLE	
Designation	Officer Type	
OFFICER	PRESIDENT	Y

Administrator: Name (Individual / Corporation)	Address
ROSS LYNDON	8 ALBERMARLE AVENUE TORONTO ONTARIO CANADA M4K 1H7

Date Began	First Director	Resident Canadian
2013/05/08	NOT APPLICABLE	
Designation	Officer Type	
OFFICER	OTHER	

Request ID: 015941084
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CORPORATION PROFILE REPORT

Ontario Corp Number

2372344

Corporation Name

165 BATHURST FINANCIAL INC.

Administrator:
Name (Individual / Corporation)

MARTIN

USHER

Address

38 AVENUE ROAD

Suite # 1200
TORONTO
ONTARIO
CANADA M5R 2G2

Date Began

2013/05/08

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Administrator:
Name (Individual / Corporation)

MARTIN

USHER

Address

38 AVENUE ROAD

Suite # 1200
TORONTO
ONTARIO
CANADA M5R 2G2

Date Began

2013/05/08

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y

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Ministry of Government Services

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Ontario Corp Number

Corporation Name

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165 BATHURST FINANCIAL INC.

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Date

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2013/05/30 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

PLEASE NOTE THAT WHEN THE SAME INDIVIDUAL HOLDS MULTIPLE 'OTHER UNTITLED' OFFICER POSITIONS, AS INDICATED ON A FORM 1 UNDER THE *CORPORATIONS INFORMATION ACT*, ONLY ONE OF THESE 'OTHER UNTITLED' POSITIONS HELD BY THAT INDIVIDUAL WILL BE REFLECTED ON THIS REPORT.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

EXHIBIT “C”

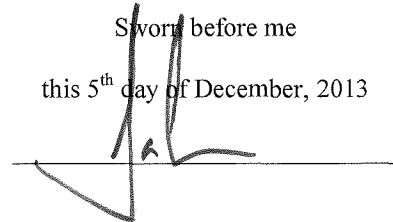
Attached is Exhibit "C"

Referred to in the

AFFIDAVIT OF MARVIN PERNICA

Sworn before me

this 5th day of December, 2013

A handwritten signature in dark ink, appearing to be 'J. L.', is written over a horizontal line. The signature is stylized with a large 'J' and a distinct 'L'.

Commissioner for taking Affidavits, etc



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #66

21239-0081 (LT)

PAGE 1 OF 2
PREPARED FOR HSolomos01
ON 2013/11/28 AT 08:37:02

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

PROPERTY DESCRIPTION: LT 27 PL D111 TORONTO; PT LT 9 SEC C PL MILITARY RESERVE TORONTO (AKA MAJOR GOODWINS PROPERTY) AS IN CA491186 EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE

LT CONVERSION QUALIFIED

OWNERS' NAMES

165 BATHURST INC.

RECENTLY:

FIRST CONVERSION FROM BOOK

CAPACITY SHARE

BENO

PIN CREATION DATE:

2003/05/26

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2003/05/26 **						
CT334695	1978/12/21	AGREEMENT				C
CT538203	1982/06/23	AGREEMENT			THE CORP. OF THE CITY OF TORONTO THE MUNICIPALITY OF METROPOLITAN TORONTO	C
REMARKS: ENCROACHMENT						
CA83690	1990/04/02	AGREEMENT			CITY OF TORONTO	C
CA491186	1997/08/15	TRANS POWER SALE	\$2,053,565		165 BATHURST INC.	C
AT3116739	2012/08/31	CHARGE	\$4,428,622	165 BATHURST INC.	COMPUTERSHARE TRUST COMPANY OF CANADA	C
AT3116740	2012/08/31	NO ASSGN RENT GEN		165 BATHURST INC.	COMPUTERSHARE TRUST COMPANY OF CANADA	C
REMARKS: AT3116739.						
AT3327892	2013/06/18	NOTICE OF LEASE	\$2	165 BATHURST INC.	BELL MOBILITY INC.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #66

21239-0081 (LT)

PAGE 2 OF 2
PREPARED FOR HSolomos01
ON 2013/11/28 AT 08:37:02

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT3337816	2013/06/28	CHARGE	\$6,575,000	165 BATHURST INC.	165 BATHURST FINANCIAL INC.	C
AT3375124	2013/08/12	NOTICE		165 BATHURST INC.	165 BATHURST FINANCIAL INC.	C
REMARKS: RE:AT3337816						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

EXHIBIT “D”

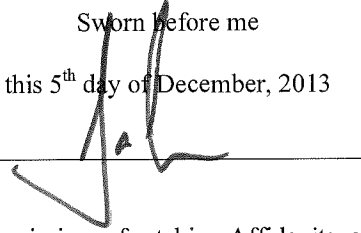
Attached is Exhibit "D"

Referred to in the

AFFIDAVIT OF MARVIN PERNICA

Sworn before me

this 5th day of December, 2013

A handwritten signature in black ink, appearing to be "J. A. [unclear]", is written over a horizontal line.

Commissioner for taking Affidavits, etc

Properties

PIN 21239 - 0081 LT **Interest/Estate** Fee Simple
Description LT 27 PL D111 TORONTO; PT LT 9 SEC C PL MILITARY RESERVE TORONTO (AKA MAJOR GOODWINS PROPERTY) AS IN CA491186 EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO
Address 620 RICHMOND ST W
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 165 BATHURST INC.
Address for Service c/o The Rose and Thistle Group Ltd.
30 Hazelton Avenue
Toronto, Ontario M5R 2E2

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

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

Chargee(s)**Capacity****Share**

Name 165 BATHURST FINANCIAL INC.
Address for Service c/o 162 Cumberland Street
Suite 300
Toronto, Ontario
M5R 3N5

Provisions

Principal	\$ 6,575,000.00	Currency	CDN
Calculation Period	monthly, not in advance		
Balance Due Date	2016/06/17		
Interest Rate	4.0%		
Payments	\$ 21,916.67		
Interest Adjustment Date	2013 06 17		
Payment Date	5th day of each month		
First Payment Date	2013 07 05		
Last Payment Date	2016 06 05		
Standard Charge Terms	200033		
Insurance Amount	full insurable value		
Guarantor			

Additional Provisions

The Chargor may prepay the whole or any part or parts of the Principal at any time or time without notice, bonus or penalty.

Interest only shall be payable on the 1st day of each month on the balance of the Principal outstanding from time to time, as well after as before maturity of the charge and both before and after default and judgment until paid.

The Chargor shall make Principal payments of \$250,000.00 on July 5th, 2014 and July 5th, 2015.

The Chargor shall deliver 12 postdated cheques for the first year of the term of the Charge commencing on July 5th, 2013, and thereafter for the second and third years on July 5th, 2014 and July 5th, 2015, respectively.

The Chargor shall not have the right of offset, equitable or otherwise for any reason, any monies owing by it under the charge.

The Chargor shall, from time to time, provide upon ten days from a written request from the Chargee, a mortgage statement confirming the terms of the charge and the amount of principal and interest owing and that there are no rights of setoff.

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

yyyy mm dd Page 2 of 2

Signed By

Rafaela Paiva

100-95 Barber Greene Rd.
Toronto
M3C 3E9acting for
Chargor(s)

Signed

2013 06 28

Tel 416-449-1400

Fax 416-449-7071

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

2013 06 28

Tel 416-449-1400

Fax 416-449-7071

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

Land Registration Reform Act
SET OF STANDARD CHARGE TERMS
 (Electronic Filing)

DYE & DURHAM CO. INC.
 Form No. 300E

Filed by
 Dye & Durham Co. Inc.

Filing Date: November 3, 2000

Filing number: 200033

The following Set of Standard Charge Terms shall be applicable to documents registered in electronic format under Part III of the Land Registration Reform Act, R.S.O. 1990, c. L.4 as amended (the "Land Registration Reform Act") and shall be deemed to be included in every electronically registered charge in which this Set of Standard Charge Terms is referred to by its filing number, as provided in Section 9 of the Land Registration Reform Act, except to the extent that the provisions of this Set of Standard Charge Terms are modified by additions, amendments or deletions in the schedule. Any charge in an electronic format of which this Set of Standard Charge Terms forms a part by reference to the above-noted filing number in such charge shall hereinafter be referred to as the "Charge".

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|---|---|
| <p><i>Exclusion of Statutory Covenants</i></p> <p><i>Right to Charge the Land</i></p> <p><i>No Act to Encumber</i></p> <p><i>Good Title in Fee Simple</i></p> <p><i>Promise to Pay and Perform</i></p> <p><i>Interest After Default</i></p> <p><i>No Obligation to Advance</i></p> <p><i>Costs Added to Principal</i></p> <p><i>Power of Sale</i></p> | <ol style="list-style-type: none"> 1. The implied covenants deemed to be included in a charge under subsection 7(1) of the <i>Land Registration Reform Act</i> as amended or re-enacted are excluded from the Charge. 2. The Chargor now has good right, full power and lawful and absolute authority to charge the land and to give the Charge to the Chargee upon the covenants contained in the Charge. 3. The Chargor has not done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the land, or any part or parcel thereof, is or shall or may be in any way impeached, charged, affected or encumbered in title, estate or otherwise, except as the records of the land registry office disclose. 4. The Chargor, at the time of the delivery for registration of the Charge, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee simple, of and in the land and the premises described in the Charge and in every part and parcel thereof without any manner of trusts, reservations, limitations, provisos, conditions or any other matter or thing to alter, charge, change, encumber or defeat the same, except those contained in the original grant thereof from the Crown. 5. The Chargor will pay or cause to be paid to the Chargee the full principal amount and interest secured by the Charge in the manner of payment provided by the Charge, without any deduction or abatement, and shall do, observe, perform, fulfill and keep all the provisions, covenants, agreements and stipulations contained in the Charge and shall pay as they fall due all taxes, rates, levies, charges, assessments, utility and heating charges, municipal, local, parliamentary and otherwise which now are or may hereafter be imposed, charged or levied upon the land and when required shall produce for the Chargee receipts evidencing payment of the same. 6. In case default shall be made in payment of any sum to become due for interest at the time provided for payment in the Charge, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, and both before and after default and judgement, shall bear interest at the rate provided for in the Charge. In case the interest and compound interest are not paid within the interest calculation period provided in the Charge from the time of default a rest shall be made, and compound interest at the rate provided for in the Charge shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the land. 7. Neither the preparation, execution or registration of the Charge shall bind the Chargee to advance the principal amount secured, nor shall the advance of a part of the principal amount secured bind the Chargee to advance any unadvanced portion thereof, but nevertheless the security in the land shall take effect forthwith upon delivery for registration of the Charge by the Chargor. The expenses of the examination of the title and of the Charge and valuation are to be secured by the Charge in the event of the whole or any balance of the principal amount not being advanced, the same to be charged hereby upon the land, and shall be, without demand therefor, payable forthwith with interest at the rate provided for in the Charge, and in default the Chargee's power of sale hereby given, and all other remedies hereunder, shall be exercisable. 8. The Chargee may pay all premiums of insurance and all taxes, rates, levies, charges, assessments, utility and heating charges which shall from time to time fall due and be unpaid in respect of the land, and that such payments, together with all costs, charges, legal fees (as between solicitor and client) and expenses which may be incurred in taking, recovering and keeping possession of the land and of negotiating the Charge, investigating title, and registering the Charge and other necessary deeds, and generally in any other proceedings taken in connection with or to realize upon the security given in the Charge (including legal fees and real estate commissions and other costs incurred in leasing or selling the land or in exercising the power of entering, lease and sale contained in the Charge) shall be, with interest at the rate provided for in the Charge, a charge upon the land in favour of the Chargee pursuant to the terms of the Charge and the Chargee may pay or satisfy any lien, charge or encumbrance now existing or hereafter created or claimed upon the land, which payments with interest at the rate provided for in the Charge shall likewise be a charge upon the land in favour of the Chargee. Provided, and it is hereby further agreed, that all amounts paid by the Chargee as aforesaid shall be added to the principal amount secured by the Charge and shall be payable forthwith with interest at the rate provided for in the Charge, and on default all sums secured by the Charge shall immediately become due and payable at the option of the Chargee, and all powers in the Charge conferred shall become exercisable. 9. The Chargee on default of payment for at least fifteen (15) days may, on at least thirty-five (35) days' notice in writing given to the Chargor, enter on and lease the land or sell the land. Such notice shall be given to such persons and in such manner and form and within such time as provided in the <i>Mortgages Act</i>. In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, it is agreed that notice may be effectually given by leaving it with a grown-up person on the land, if occupied, or by placing it on the land if unoccupied, or at the option of the Chargee, by mailing it in a registered letter addressed to the Chargor at his last known address, or by publishing it once in a newspaper published in the county or district in which the land is situate; and such notice shall be sufficient although not addressed to any person or persons by name or designation; and notwithstanding that any person to be affected thereby may be unknown, unascertained or under disability. Provided further, that in case default be made in the payment of the principal amount or interest or any part thereof and such default continues for two months after any payment of either falls due then the Chargee may exercise the foregoing powers of entering, leasing or selling or any of them without any notice, it being understood and agreed, however, that if the giving of notice by the Chargee shall be required by law then notice shall be given to such persons and in such manner and form and within such time as so required by law. It is hereby further agreed that the whole or any part or parts of the land may be sold by public auction or private contract, or partly |
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one or partly the other; and that the proceeds of any sale hereunder may be applied first in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the land or by reason of non-payment or procuring payment of monies, secured by the Charge or otherwise, and secondly in payment of all amounts of principal and interest owing under the Charge; and if any surplus shall remain after fully satisfying the claims of the Chargee as aforesaid same shall be paid as required by law. The Chargee may sell any of the land on such terms as to credit and otherwise as shall appear to him most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence or commencement of title or otherwise which he shall deem proper, and may buy in or rescind or vary any contract for the sale of the whole or any part of the land and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit the Chargee shall be bound to pay the Chargor only such monies as have been actually received from purchasers after the satisfaction of the claims of the Chargee and for any of said purposes may make and execute all agreements and assurances as he shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder.

Quiet Possession

10. Upon default in payment of principal and interest under the Charge or in performance of any of the terms or conditions hereof, the Chargee may enter into and take possession of the land hereby charged and where the Chargee so enters on and takes possession or enters on and takes possession of the land on default as described in paragraph 9 herein the Chargee shall enter into, have, hold, use, occupy, possess and enjoy the land without the let, suit, hindrance, interruption or denial of the Chargor or any other person or persons whomsoever.

Right to Distrain

11. If the Chargor shall make default in payment of any part of the interest payable under the Charge at any of the dates or times fixed for the payment thereof, it shall be lawful for the Chargee to distrain therefor upon the land or any part thereof, and by distress warrant, to recover by way of rent reserved, as in the case of a demise of the land, so much of such interest as shall, from time to time, be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress for rent. Provided that the Chargee may distrain for arrears of principal in the same manner as if the same were arrears of interest.

Further Assurances

12. From and after default in the payment of the principal amount secured by the Charge or the interest thereon or any part of such principal or interest or in the doing, observing, performing, fulfilling or keeping of some one or more of the covenants set forth in the Charge then and in every such case the Chargor and all and every other person whosoever having, or lawfully claiming, or who shall have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the land shall, from time to time, and at all times thereafter, at the proper costs and charges of the Chargor make, do, suffer, execute, deliver, authorize and register, or cause or procure to be made, done, suffered, executed, delivered, authorized and registered, all and every such further and other reasonable act or acts, deed or deeds, devises, conveyances and assurances in the law for the further, better and more perfectly and absolutely conveying and assuring the land unto the Chargee as by the Chargee or his solicitor shall or may be lawfully and reasonably devised, advised or required.

Acceleration of Principal and Interest

13. In default of the payment of the interest secured by the Charge the principal amount secured by the Charge shall, at the option of the Chargee, immediately become payable, and upon default of payment of instalments of principal promptly as the same mature, the balance of the principal and interest secured by the Charge shall, at the option of the Chargee, immediately become due and payable. The Chargee may in writing at any time or times after default waive such default and any such waiver shall apply only to the particular default waived and shall not operate as a waiver of any other or future default.

Unapproved Sale

14. If the Chargor sells, transfers, disposes of, leases or otherwise deals with the land, the principal amount secured by the Charge shall, at the option of the Chargee, immediately become due and payable.

Partial Releases

15. The Chargee may at his discretion at all times release any part or parts of the land or any other security or any surety for the money secured under the Charge either with or without any sufficient consideration therefor, without responsibility therefor, and without thereby releasing any other part of the land or any person from the Charge or from any of the covenants contained in the Charge and without being accountable to the Chargor for the value thereof, or for any monies except those actually received by the Chargee. It is agreed that every part or lot into which the land is or may hereafter be divided does and shall stand charged with the whole money secured under the Charge and no person shall have the right to require the mortgage monies to be apportioned.

Obligation to Insure

16. The Chargor will immediately insure, unless already insured, and during the continuance of the Charge keep insured against loss or damage by fire, in such proportions upon each building as may be required by the Chargee, the buildings on the land to the amount of not less than their full insurable value on a replacement cost basis in dollars of lawful money of Canada. Such insurance shall be placed with a company approved by the Chargee. Buildings shall include all buildings whether now or hereafter erected on the land, and such insurance shall include not only insurance against loss or damage by fire but also insurance against loss or damage by explosion, tempest, tornado, cyclone, lightning and all other extended perils customarily provided in insurance policies including "all risks" insurance. The covenant to insure shall also include where appropriate or if required by the Chargee, boiler, plate glass, rental and public liability insurance in amounts and on terms satisfactory to the Chargee. Evidence of continuation of all such insurance having been effected shall be produced to the Chargee at least fifteen (15) days before the expiration thereof; otherwise the Chargee may provide therefor and charge the premium paid and interest thereon at the rate provided for in the Charge to the Chargor and the same shall be payable forthwith and shall also be a charge upon the land. It is further agreed that the Chargee may at any time require any insurance of the buildings to be cancelled and new insurance effected in a company to be named by the Chargee and also of his own accord may effect or maintain any insurance herein provided for, and any amount paid by the Chargee therefor shall be payable forthwith by the Chargor with interest at the rate provided for in the Charge and shall also be a charge upon the land. Policies of insurance herein required shall provide that loss, if any, shall be payable to the Chargee as his interest may appear, subject to the standard form of mortgage clause approved by the Insurance Bureau of Canada which shall be attached to the policy of insurance.

Obligation to Repair

17. The Chargor will keep the land and the buildings, erections and improvements thereon, in good condition and repair according to the nature and description thereof respectively, and the Chargee may, whenever he deems necessary, by his agent enter upon and inspect the land and make such repairs as he deems necessary, and the reasonable cost of such inspection and repairs with interest at the rate provided for in the Charge shall be added to the principal amount and be payable forthwith and be a charge upon the land prior to all claims thereon subsequent to the Charge. If the Chargor shall neglect to keep the buildings, erections and improvements in good condition and repair, or commits or permits any act of waste on the land (as to which the Chargee shall be sole judge) or makes default as to any of the covenants, provisos, agreements or conditions contained in the Charge or in any charge to which this Charge is subject, all monies secured by the Charge shall, at the option of the Chargee, forthwith become due and payable, and in default of payment of same with interest as in the case of payment

before maturity the powers of entering upon and leasing or selling hereby given and all other remedies herein contained may be exercised forthwith.

- Building Charge** 18. If any of the principal amount to be advanced under the Charge is to be used to finance an improvement on the land, the Chargor must so inform the Chargee in writing immediately and before any advances are made under the Charge. The Chargor must also provide the Chargee immediately with copies of all contracts and subcontracts relating to the improvement and any amendments to them. The Chargor agrees that any improvement shall be made only according to contracts, plans and specifications approved in writing by the Chargee. The Chargor shall complete all such improvements as quickly as possible and provide the Chargee with proof of payment of all contracts from time to time as the Chargee requires. The Chargee shall make advances (part payments of the principal amount) to the Chargor based on the progress of the improvement, until either completion and occupation or sale of the land. The Chargee shall determine whether or not any advances will be made and when they will be made. Whatever the purpose of the Charge may be, the Chargee may at its option hold back funds from advances until the Chargee is satisfied that the Chargor has complied with the holdback provisions of the *Construction Lien Act* as amended or re-enacted. The Chargor authorizes the Chargee to provide information about the Charge to any person claiming a construction lien on the land.
- Extensions not to Prejudice** 19. No extension of time given by the Chargee to the Chargor or anyone claiming under him, or any other dealing by the Chargee with the owner of the land or of any part thereof, shall in any way affect or prejudice the rights of the Chargee against the Chargor or any other person liable for the payment of the money secured by the Charge, and the Charge may be renewed by an agreement in writing at maturity for any term with or without an increased rate of interest notwithstanding that there may be subsequent encumbrances. It shall not be necessary to deliver for registration any such agreement in order to retain priority for the Charge so altered over any instrument delivered for registration subsequent to the Charge. Provided that nothing contained in this paragraph shall confer any right of renewal upon the Chargor.
- No Merger of Covenants** 20. The taking of a judgment or judgments on any of the covenants herein shall not operate as a merger of the covenants or affect the Chargee's right to interest at the rate and times provided for in the Charge; and further that any judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as provided in the Charge until the judgment shall have been fully paid and satisfied.
- Change in Status** 21. Immediately after any change or happening affecting any of the following, namely: (a) the spousal status of the Chargor, (b) the qualification of the land as a family residence within the meaning of Part II of the *Family Law Act*, and (c) the legal title or beneficial ownership of the land, the Chargor will advise the Chargee accordingly and furnish the Chargee with full particulars thereof, the intention being that the Chargee shall be kept fully informed of the names and addresses of the owner or owners for the time being of the land and of any spouse who is not an owner but who has a right of possession in the land by virtue of Section 19 of the *Family Law Act*. In furtherance of such intention, the Chargor covenants and agrees to furnish the Chargee with such evidence in connection with any of (a), (b) and (c) above as the Chargee may from time to time request.
- Condominium Provisions** 22. If the Charge is of land within a condominium registered pursuant to the *Condominium Act* (the "Act") the following provisions shall apply. The Chargor will comply with the Act, and with the declaration, by-laws and rules of the condominium corporation (the "corporation") relating to the Chargor's unit (the "unit") and provide the Chargee with proof of compliance from time to time as the Chargee may request. The Chargor will pay the common expenses for the unit to the corporation on the due dates. If the Chargee decides to collect the Chargor's contribution towards the common expenses from the Chargor, the Chargor will pay the same to the Chargee upon being so notified. The Chargee is authorized to accept a statement which appears to be issued by the corporation as conclusive evidence for the purpose of establishing the amounts of the common expenses and the dates those amounts are due. The Chargor, upon notice from the Chargee, will forward to the Chargee any notices, assessments, by-laws, rules and financial statements of the corporation that the Chargor receives or is entitled to receive from the corporation. The Chargor will maintain all improvements made to the unit and repair them after damage. In addition to the insurance which the corporation must obtain, the Chargor shall insure the unit against destruction or damage by fire and other perils usually covered in fire insurance policies and against such other perils as the Chargee requires for its full replacement cost (the maximum amount for which it can be insured). The insurance company and the terms of the policy shall be reasonably satisfactory to the Chargee. This provision supersedes the provisions of paragraph 16 herein. The Chargor irrevocably authorizes the Chargee to exercise the Chargor's rights under the Act to vote, consent and dissent.
- Discharge** 23. The Chargee shall have a reasonable time after payment in full of the amounts secured by the Charge to deliver for registration a discharge or if so requested and if required by law to do so, an assignment of the Charge and all legal and other expenses for preparation, execution and registration, as applicable to such discharge or assignment shall be paid by the Chargor.
- Guarantee** 24. Each party named in the Charge as a Guarantor hereby agrees with the Chargee as follows:
- (a) In consideration of the Chargee advancing all or part of the Principal Amount to the Chargor, and in consideration of the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by the Chargee to the Guarantor (the receipt and sufficiency whereof are hereby acknowledged), the Guarantor does hereby absolutely and unconditionally guarantee to the Chargee, and its successors, the due and punctual payment of all principal moneys, interest and other moneys owing on the security of the Charge and observance and performance of the covenants, agreements, terms and conditions herein contained by the Chargor, and the Guarantor, for himself and his successors, covenants with the Chargee that, if the Chargor shall at any time make default in the due and punctual payment of any moneys payable hereunder, the Guarantor will pay all such moneys to the Chargee without any demand being required to be made.
 - (b) Although as between the Guarantor and the Chargor, the Guarantor is only surety for the payment by the Chargor of the moneys hereby guaranteed, as between the Guarantor and the Chargee, the Guarantor shall be considered as primarily liable therefor and it is hereby further expressly declared that no release or releases of any portion or portions of the land; no indulgence shown by the Chargee in respect of any default by the Chargor or any successor thereof which may arise under the Charge; no extension or extensions granted by the Chargee to the Chargor or any successor thereof for payment of the moneys hereby secured or for the doing, observing or performing of any covenant, agreement, term or condition herein contained to be done, observed or performed by the Chargor or any successor thereof; no variation in or departure from the provisions of the Charge; no release of the Chargor or any other thing whatsoever whereby the Guarantor as surety only would or might have been released shall in any way modify, alter, vary or in any way prejudice the Chargee or affect the liability of the Guarantor in any way under this covenant, which shall continue and be binding on the Guarantor, and as well after as before maturity of the Charge and both before and after default and judgment, until the said moneys are fully paid and satisfied.
 - (c) Any payment by the Guarantor of any moneys under this guarantee shall not in any event be taken to affect

the liability of the Chargor for payment thereof but such liability shall remain unimpaired and enforceable by the Guarantor against the Chargor and the Guarantor shall, to the extent of any such payments made by him, in addition to all other remedies, be subrogated as against the Chargor to all the rights, privileges and powers to which the Chargee was entitled prior to payment by the Guarantor; provided, nevertheless, that the Guarantor shall not be entitled in any event to rank for payment against the lands in competition with the Chargee and shall not, unless and until the whole of the principal, interest and other moneys owing on the security of the Charge shall have been paid, be entitled to any rights or remedies whatsoever in subrogation to the Chargee.

- (d) All covenants, liabilities and obligations entered into or imposed hereunder upon the Guarantor shall be equally binding upon his successors. Where more than one party is named as a Guarantor all such covenants, liabilities and obligations shall be joint and several.
- (e) The Chargee may vary any agreement or arrangement with or release the Guarantor, or any one or more of the Guarantors if more than one party is named as Guarantor, and grant extensions of time or otherwise deal with the Guarantor and his successors without any consent on the part of the Chargor or any other Guarantor or any successor thereof.

Severability 25. It is agreed that in the event that at any time any provision of the Charge is illegal or invalid under or inconsistent with provisions of any applicable statute, regulation thereunder or other applicable law or would by reason of the provisions of any such statute, regulation or other applicable law render the Chargee unable to collect the amount of any loss sustained by it as a result of making the loan secured by the Charge which it would otherwise be able to collect under such statute, regulation or other applicable law then, such provision shall not apply and shall be construed so as not to apply to the extent that it is so illegal, invalid or inconsistent or would so render the Chargee unable to collect the amount of any such loss.

Interpretation 26. In construing these covenants the words "Charge", "Chargee", "Chargor", "land" and "successor" shall have the meanings assigned to them in Section 1 of the *Land Registration Reform Act* and the words "Chargor" and "Chargee" and the personal pronouns "he" and "his" relating thereto and used therewith, shall be read and construed as "Chargor" or "Chargors", "Chargee" or "Chargees", and "he", "she", "they" or "it", "his", "her", "their" or "its", respectively, as the number and gender of the parties referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted. And that all rights, advantages, privileges, immunities, powers and things hereby secured to the Chargor or Chargors, Chargee or Chargees, shall be equally secured to and exercisable by his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be. The word "successor" shall also include successors and assigns of corporations including amalgamated and continuing corporations. And that all covenants, liabilities and obligations entered into or imposed hereunder upon the Chargor or Chargors, Chargee or Chargees, shall be equally binding upon his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be, and that all such covenants and liabilities and obligations shall be joint and several.

Paragraph headings 27. The paragraph headings in these standard charge terms are inserted for convenience of reference only and are deemed not to form part of the Charge and are not to be considered in the construction or interpretation of the Charge or any part thereof.

Date of Charge 28. The Charge, unless otherwise specifically provided, shall be deemed to be dated as of the date of delivery for registration of the Charge.

Effect of Delivery of Charge 29. The delivery of the Charge for registration by direct electronic transfer shall have the same effect for all purposes as if such Charge were in written form, signed by the parties thereto and delivered to the Chargee. Each of the Chargor and, if applicable, the spouse of the Chargor and other party to the Charge agrees not to raise in any proceeding by the Chargee to enforce the Charge any want or lack of authority on the part of the person delivering the Charge for registration to do so.

DATED this day of (year)

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

yyyy mm dd Page 1 of 2

Properties

PIN 21239 - 0081 LT
Description LT 27 PL D111 TORONTO; PT LT 9 SEC C PL MILITARY RESERVE TORONTO (AKA MAJOR GOODWINS PROPERTY) AS IN CA491186 EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO
Address 620 RICHMOND ST W
TORONTO

Consideration

Consideration \$ 0.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name 165 BATHURST INC.
Address for Service c/o The Rose and Thistle Group Ltd.
30 Hazelton Avenue
Toronto, Ontario M5R 2E2

I, NORMA WALTON, PRESIDENT, have the authority to bind the corporation.

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

Party To(s)**Capacity****Share**

Name 165 BATHURST FINANCIAL INC.
Address for Service c/o 162 Cumberland Street
Suite 300
Toronto, Ontario
M5R 3N5

I, Martin Usher, A.S.O., have the authority to bind the corporation

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

Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice may be deleted by the Land Registrar when the registered instrument, AT3337816 registered on 2013/06/28 to which this notice relates is deleted

Schedule: See Schedules

This document relates to registration no.(s)AT3337816

Signed By

John Todd Holmes

100-95 Barber Greene Rd.
Toronto
M3C 3E9

acting for
Applicant(s)

Signed

2013 08 12

Tel 416-449-1400

Fax 416-449-7071

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

Submitted By

DEVRY, SMITH & FRANK

100-95 Barber Greene Rd.
Toronto
M3C 3E9

2013 08 12

Tel 416-449-1400

Fax 416-449-7071

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

yyyy mm dd Page 2 of 2

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

CHARGE AMENDING AND CONFIRMING AGREEMENT

THIS AGREEMENT made as of the 9th day of July, 2013 (the "Agreement").

BETWEEN:

165 BATHURST INC.
(the "Chargor")

- AND -

165 BATHURST FINANCIAL INC.
(the "Chargee")

WHEREAS:

A. By a charge/mortgage of land registered on June 28, 2013 in the Land Registry Office for the Land Titles Division of Toronto (No. 80) as Instrument No. AT3337816 (the "Charge") the Chargor charged the land municipally known as 620 Richmond Street West, Toronto, Ontario and more particularly described in Schedule "A" attached hereto (the "Charged Land") to the Chargee.

B. The Chargor and the Chargee wish to amend, ratify and confirm the Charge.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. The parties hereto acknowledge and agree that the Charge is hereby amended to reflect and incorporate the following:

- (a) The amount of "\$21,916.67" indicated in the computer field of the Charge entitled "Payments" is deleted and replaced with "See Schedule".
- (b) The sentence "Interest only shall be payable on the 1st day of each month on the balance of the Principal outstanding from time to time, as well after as before maturity of the charge and both before and after default and judgment until paid" set out in the computer field of the Charge entitled "Additional Provisions" is deleted.
- (c) The sentence "The Chargor shall make Principal payments of \$250,000.00 on July 5th, 2014 and July 5th, 2015" set out in the computer field of the Charge entitled "Additional Provisions" is deleted.
- (d) The following provisions are added to the computer field of the Charge entitled "Additional Provisions":
 - (i) Interest only at the rate of 4.0% per annum calculated monthly and payable monthly as follows:
 - (ii) Interest calculated at the rate of 2.4% per annum to be paid on the 5th day of each and every month during the term and;
 - (iii) The remaining payment of interest at the rate of 1.6% per annum, calculated and compounded monthly and added to the mortgage principal shall be payable on maturity or prepayment of the Charge or upon default.

2. This Agreement is supplemental to and shall be read with and be deemed to be part of the Charge, and the Charge shall be deemed to be amended as herein provided, and all changes made apply, *mutatis mutandis*, to the Charge.

3. All the terms and conditions of the Charge, except only insofar as the same are amended by the express provisions of this Agreement, are confirmed and ratified in all respects and shall hereafter continue in full force and effect as amended.

4. The Charge shall henceforth be read in conjunction with this Agreement, and the Charge and this Agreement shall have effect, so far as is practical, as if all the provisions of the Charge and this Agreement were contained in one instrument.

5. The Charge and all the terms, conditions, provisos, rights and obligations therein, except only insofar as the same are amended hereby, shall survive and shall not merge or be extinguished by the execution and delivery of this Agreement, and shall remain in full force and effect thereafter. The Chargor hereby ratifies, confirms and acknowledges the terms of the Charge as hereby amended, and agrees to be bound by the terms, conditions, provisos and obligations contained therein and in this Agreement.

6. The Chargor shall, at its expense, from time to time and at all times hereafter, upon every reasonable request of the Chargee, make, do, execute and deliver or cause to be made, done executed and delivered all such further acts, deeds, assurances and things as may be necessary, in the opinion of the Chargee, for more effectually implementing and carrying out the true intent and meaning of this Agreement.

7. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and taken together shall be deemed to constitute one and the same instrument.

8. Counterparts may be executed either in original, faxed or emailed, ".pdf" or ".tif" form and the parties adopt any signatures received by a receiving fax machine or email or as a ".pdf" or ".tif" file as original signatures of the parties.

9. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, estate trustees, personal representatives, successors and assigns.

SCHEDULE "A"

LEGAL DESCRIPTION

LT 27 PL D111 TORONTO; PT LT 9 SEC C PL MILITARY RESERVE TORONTO (AKA MAJOR GOODWINS PROPERTY) AS IN CA491186 EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO

PIN: 21239-0081 (LT)

EXHIBIT “E”

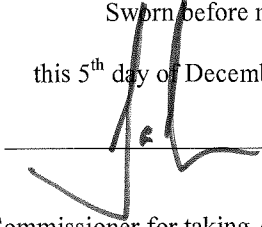
Attached is Exhibit "E"

Referred to in the

AFFIDAVIT OF MARVIN PERNICA

Sworn before me

this 5th day of December, 2013



Commissioner for taking Affidavits, etc

PROPERTY MANAGEMENT AGREEMENT

This Agreement made as of the 1st day of August, 2008

B E T W E E N:

165 Bathurst Inc.

(the "Owner")

OF THE FIRST PART

- and -

Esbin Property Management Inc.

(the "Manager")

OF THE SECOND PART

Witnesses that, whereas:

- (a) the Owner is the registered owner of the Property; and
- (b) the Manager is engaged, inter alia, in the business of managing commercial real estate; and
- (c) the Owner wishes to retain the Manager to manage the Property.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and the sum of ten dollars (\$10.00) paid by each party to each other party and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties covenant and agree as follows:

ARTICLE ONE INTRODUCTION

1.01 **DEFINITIONS.** In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words shall have the respective meanings set forth in this section 1.01:

"Agreement" means this agreement, every schedule to this agreement and every properly executed instrument that, by its terms, amends or supplements this agreement;

"Approved Budget" means, collectively, the annual budgets and any revisions thereof approved by the Owner pursuant to subsections 3.03(a)(i) and (ii);

"Approved Leasing Plan" means a leasing plan and any revisions thereof approved by the Owner pursuant to subsection 3.03(a)(iii);

"Accountants" mean such firm of Chartered Accountants as the Owner may appoint from time to time in its sole discretion and expense;

"Business Day" means Monday to Friday, both inclusive, except any such day which is a statutory holiday under the laws of either Canada or the Province of Ontario;

"Contracts" means all contracts and agreements relating to the Property procured and/or negotiated by the Manager or on behalf of the Owner or entered into with third parties by the Manager on behalf of the Owner or by the Owner;

"Emergency" means a condition or circumstance occurring in or about the Property which if not remedied immediately would, with reasonable certainty, result in substantial damage either to the Property or other property or in physical injury or death;

"Event of Default" means:

- (i) The failure of the Owner or the Manager to perform their respective duties and obligations in accordance with this Agreement; or
- (ii) A breach by the Manager of any trust or fiduciary duty created by this Agreement for funds received by it or the Manager's refusal to account for such funds.

"Event of Insolvency" means any one or more of the following events:

- (i) If the Owner or the Manager shall:
 - (a) be wound up, dissolved, or liquidated, or become subject to the provisions of the Winding-up Act, R.S.C. 1985, Chapter W-11, as amended from time to time, or have its existence terminated or have any resolution passed therefor;
 - (b) make a general assignment for the benefit of its creditors or a proposal under the Bankruptcy and Insolvency Act, R.S.C. 1985, Chapter B-3, as amended from time to time; or
 - (c) propose a compromise or arrangement under the Companies' Creditors Arrangement Act, R.S.C. 1985, Chapter C-36, as amended from time to time, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future law relative to bankruptcy, insolvency, or other relief for debtors or for the benefit of creditors;

(ii) if a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the Owner or the Manager seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to companies' bankruptcy, insolvency, or other relief for or against debtors, and the Owner or the Manager shall acquiesce in the entry of such order, judgment or decree or such order, judgment or decree shall remain unvacated or unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the day of entry thereof; or if any trustee in bankruptcy, receiver, receiver and manager, liquidator or any other officer with similar powers shall be appointed for the Owner or the Manager or of all or any substantial part of its property with the consent or acquiescence of the Owner or the Manager or such appointment shall remain unvacated or unstayed for an aggregate of thirty (30) days (whether or not consecutive); or

(iii) If the Owner or Manager shall become insolvent.

"Fiscal Year" means the period of twelve (12) months ending on July 31 in each year. Provided, however, that the first fiscal year shall commence on the date hereof and end on July 31, 2009 or such other fiscal period as shall be designated by the Owner;

"Annual Gross Revenue" means all revenues, income and proceeds of any kind earned directly or indirectly by the Owner from the operation of the Property in a fiscal year for which such determination is being made in accordance with generally accepted accounting principles (save as otherwise provided herein) consistent with the practices in the commercial real estate industry in Canada, and calculated on an accrual basis, without duplication, including, without limitation, rental payments of all kinds from all Tenants including capital taxes and large corporations taxes recoverable from any Tenants, lease termination payments, proceeds from the sale of leasehold improvements and Tenant fixtures left behind by Tenants upon termination of their Leases, revenue, if any, from any parking facilities, damage recoveries, tax recoveries, insurance proceeds relating to lost revenue, but not proceeds of financing or refinancing of the Property or any part thereof and proceeds of insurance or expropriation, proceeds arising from the sale of or other disposition of any chattel, corporate taxes (except recoverable capital taxes and large corporations taxes as defined above) and goods and services tax.

"Hazardous Substances" means any hazardous or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the Province of Ontario or the Government of Canada and, without limitation, includes:

(a) radio-active substances, explosives, urea formaldehyde foam, asbestos and polychlorinated by-phenyls;

- (b) any substance that, if added to water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man;
- (c) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition that:
 - (i) endangers the health, safety or welfare of any persons;
 - (ii) interferes with normal enjoyment of life or property by a person; or
 - (iii) causes damage to property.
- (d) any substance declared to be hazardous or toxic under any law or regulation or order now existing or hereafter enacted or promulgated by any governmental authority having jurisdiction; and
- (e) any other substance that is or may become hazardous, dangerous or toxic to persons or property.

"Improvements" means all buildings and other fixed improvements now or hereafter situated on the Lands;

"Initial Term" has the meaning ascribed thereto in section 2.02 hereof;

"Lands" means the lands described in Schedule "A" and municipally known as 620 Richmond Street West, Toronto, in the Province of Ontario;

"Leasing Costs" means all costs related to or associated with the cost of leasing premises in the Property, including, without limitation, tenant inducements, Owner's work, lease takeovers, third party brokerage fees, moving costs, the value of free rent periods calculated based on the monthly rent payable immediately following the free rent period under a Tenant's Lease, Tenant relocations, loans to Tenants at less than market interest rates, and lease takeovers;

"Leasing Fee" has the meaning ascribed thereto in section 4.02 hereof;

"Management Fee" has the meaning ascribed thereto in section 4.01 hereof;

"Manager" means the party hereto of the second part and, subject to the provisions of section 6.08, its successors and assigns;

"Net Cash Flow" means the difference (if positive) between:

- (i) Annual Gross Revenue during any Fiscal Year; and

- (ii) the aggregate, during that same Fiscal Year, of:
- (a) the amount of Operating Expenses paid or accrued during such period (excluding any amortization of deferred Operating Expenses);
 - (b) the amount of all debt service payments paid or accrued on behalf of the Owner;
 - (c) the amount of all fees, commissions and other amounts paid or accrued during such period to the Manager pursuant to this Agreement;
 - (d) all Leasing Costs paid or accrued by or on behalf of the Owner;
 - (e) the amount of any reserve in respect of such period (not otherwise included in Operating Expenses) maintained by the Owner or by the Manager in accordance with an Approved Budget or as otherwise approved by the Owner; and
 - (f) the amount of all such other payments (including, without limitation, expenditures of a capital nature whether or not receivable from Tenants and expenditures expressly excluded from the definition of Operating Expenses) which have been paid or accrued during such period by or on behalf of the Owner in respect of the Building.

"Notice of Complaint" has the meaning ascribed thereto in section 5.01(a);

"Notice of Termination" has the respective meanings ascribed thereto in sections 5.01(a) and 5.01(b);

"Operating Costs" are as defined in the form of Standard Lease for the Property;

"Prime Rate" means the rate of interest per annum established from time to time by HSBC Bank Canada or its successor as a reference rate of interest for Canadian dollar loans made by it in Canada and adjusted automatically upon any change in such rate of interest;

"Property" means the Lands and the Improvements;

"Renewal Term" has the meaning ascribed thereto in section 2.02 hereof;

"Standard Lease" means any of the respective forms of lease, amendment, assignment, surrender or partial surrender as approved by the Owner, for use with respect to the Property;

"Subsidiary" means with respect to any corporation, another corporation at least fifty percent (50%) of the outstanding voting shares of which are owned or controlled, directly or indirectly, by such first-mentioned corporation or by one or more Subsidiaries of such first-mentioned corporation or by such first-mentioned corporation and one or more of its Subsidiaries; "Parent" means, with respect to any corporation, another corporation of which such first-mentioned corporation is a Subsidiary; and "Affiliate" means, with respect to any corporation, any Parent or Subsidiary of such corporation, or any Parent or Subsidiary of a Parent of such corporation; and

"Tenant" means a tenant or licensee of premises in the Property.

1.02 CALCULATIONS. All calculations required or permitted under this Agreement including, without limitation, the calculation of Operating Expenses, all financial statements, budgets, projections, and the interpretation of accounting terms used herein shall be made on the basis of generally accepted accounting principles and practices as commonly used in the real estate industry in Canada.

1.03 GENERAL. Headings contained herein are inserted for convenience of reference only and are not to be considered for the purposes of interpretation. All monetary references are to Canadian dollars. References to sections, subsections and parts are to those of this Agreement. The schedules referred to in this Agreement are attached to and form part of it. If any date herein falls on a day that is not a Business Day, the same shall be done on the next succeeding Business Day. Words importing the singular shall include the plural and vice versa.

ARTICLE TWO RETAINER OF MANAGER

2.01 MANAGEMENT. Under and pursuant to the provisions of this Agreement, the Manager, as independent contractor, shall honestly, faithfully, properly and efficiently manage on behalf of and in accordance with the best interests of the Owner all aspects of the operation, maintenance, repair, management, leasing and re-leasing of the Property in accordance with all applicable laws and to professional standards similar to those of prudent owners of comparable properties of the same class in the Greater Toronto Area.

2.02 TERM AND AUTOMATIC RENEWAL TERMS. This Agreement is for a term of no less than 3 (Three) Fiscal Years (herein called the "Initial Term") commencing as of the date hereof and ending on July 31, 2011 and thereafter for automatic successive renewal terms (herein called the "Renewal Terms") of 1 year each unless and until this Agreement terminates in accordance with the provisions of either this section 2.02 or section 5.01. Subject only to the provisions of section 5.01 and to the right of either the Owner or the Manager to terminate this Agreement by notice to the other given not less than 90 days prior to the expiration of either the Initial Term or any of the Renewal Terms, as the case may be, the Manager shall automatically be rehired at the expiration of

the Initial Term and each of the Renewal Terms to manage the Property pursuant to this Agreement.

2.03 REIMBURSEMENT FOR COSTS. The Owner agrees to reimburse the Manager for reasonable costs incurred by the Manager as a result of any termination pursuant section 5.01, including the cost of terminating any service contracts or contracts for the supply or leasing of equipment or other supplies in accordance with section 5.04 hereof, which are not, at the option of the Owner, transferred to the Owner at termination of this agreement

ARTICLE THREE SERVICES

3.01 SCOPE OF AUTHORITY. In connection with the performance by the Manager of its duties under this Agreement, the Manager shall have the authority, on behalf of the Owner and in accordance with the instructions and directions of the Owner:

- (a) to negotiate, settle and administer the terms of all tenancies and renewals thereof and other arrangements for the occupancy of space in the Property and amendments provided that:
 - (i) such terms are no less favourable to the Owner than those of the current Approved Leasing Plan and the effective net rate of rent indicated thereby is achieved;
 - (ii) the Owner's form of Standard Lease for office, retail, or storage space in the Property, as the case may be, is used and is amended only to reflect whatever reasonable requirements a prospective Tenant may have;
 - (iii) the Manager presents for the Owner's signature all leases and related documents and all contracts negotiated by the Manager within the scope of its authority and the Manager shall not itself sign any contracts or leases except as otherwise provided herein;
 - (iv) the Owner and Manager cause their respective representatives to be available at all reasonable times upon reasonable notice to provide instructions to the other of them during its negotiations, whether under this subsection or otherwise.
- (b) to negotiate, settle, administer and execute as agent on behalf of the Owner, all contracts relating to the operation, maintenance and servicing

of the Property including, without limitation, contracts for parking services, provided that:

- (i) the expense thereby to be incurred is provided for in the current Approved Budget;
 - (ii) each such contract whose duration is for a period greater than six (6) months shall be approved and executed by the Owner before it is entered into unless the same may be terminated without penalty on not more than sixty (60) days' written notice given at any time by or on behalf of the Owner in its sole discretion; and
 - (iii) the Owner shall at the request of the Manager from time to time execute all contracts negotiated by the Manager within the scope of its authority;
- (c) to incur all other expenses, whether or not of a capital nature, provided for in the current Approved Budget with respect to the item or category of expense therein provided;
- (d) to settle all claims made against the Owner provided that the amount claimed does not exceed \$5,000,00; and
- (e) in the event of an Emergency when the representatives of the Owner cannot, after reasonable efforts by the Manager, be reasonably located for the purpose of giving approval, to proceed with such steps as in its discretion are deemed urgently necessary for the protection or preservation of either the Property or the Owner or the Manager, as the case may be, from any damage, penalty or other liability and upon the happening of any such event the Manager shall promptly give notice thereof to the Owner.

3.02 SERVICES. In furtherance of its obligation to manage the Property in a proper and efficient manner, but subject always to the provisions of section 3.01, the Manager shall:

- (a) Leasing and Re-leasing: Use its best commercial efforts to co-ordinate with Tenants and prospective tenants who will lease, re-lease and renew leases for premises in the Property, or to cause premises to be leased under its general supervision and direction;
- (b) Tenant Liaison: supervise the establishment and maintenance of a suitable scheme of liaison between each Tenant and the Owner;

- (c) Notice to Tenants: be responsible for the giving of all notices and statements required to be given to Tenants under the terms of their respective leases or licenses;
- (d) Collect Rents: for and on behalf of and for the account of the Owner, collect all rents and other amounts payable by Tenants and obtain where applicable, sales figures and calculate percentage rent to be paid and, whenever the Manager deems it necessary, cause the books and records of any Tenant to be inspected or audited or both, at the expense of the Owner;
- (e) Timely Payment: use reasonable efforts to ensure that all rent and all other amounts payable by Tenants are regularly received by the Manager for the account of the Owner and to advise the Owner of any delinquency exceeding 60 days;
- (f) Collection of Arrears and Instituting Legal Proceedings: endeavour, by first issuing demand for payment, to collect for the benefit of the Owner any amounts, the collection of which is the responsibility of the Manager and which amounts are in arrears from any of the Tenants with all possible dispatch, and use all reasonable efforts to obtain payment of such amounts which are due without resort to any remedies available to the Owner and, when such efforts have not been successful within 90 days of the initial due date (or such earlier date specified by the Owner in accordance with the provisions of the balance of this subsection), with the prior written approval of the Owner, engage legal counsel to take advantage of such remedies at the Owner's expense; and, on behalf of and in the name and at the expense of the Owner, engage legal counsel to commence and prosecute any legal action by way of lawsuit which is available by law to the Owner for the protection of the Owner's rights for the recovery of any amounts owing by Tenants and unpaid, including interest, costs and expenses recoverable. The Manager shall keep the Owner apprised of the status and developments of any proceedings on a regular basis as determined by the Owner. The Manager shall not have the right to settle or discontinue any such proceedings without the prior approval of the Owner. The Owner at all times shall have the right to direct the course of any action, proceedings or remedies taken under this subsection;
- (g) Performance of Obligations: use reasonable efforts to ensure compliance by the Owner and the Tenants with the terms and conditions of all contractual, statutory or municipal obligations with respect to the Property including, without limitation, all leases and in so doing the Manager may call upon the Owner to provide any payments necessary in connection therewith and the Owner shall forthwith make such payments;

- (h) Lease Forms: for a fee of \$500.00 (to the extent that such fee is not recoverable from the tenant) per lease document, lease amending agreement or consent, prepare for review, approval and execution by the owner and the Owner's counsel appropriate forms of lease including the Standard Lease and related documents for use in the leasing of premises in the Property;
- (i) Rules and Regulations: from time to time recommend to the Owner for its approval rules and regulations for the better or more efficient operation of the Property and use its reasonable efforts to cause whatever rules and regulations have been so approved to be observed by Tenants;
- (j) Promotion: carry out such advertising and promotional activities with respect to the Property as may be deemed necessary by the Manager and the Owner and as are contemplated in any promotional program approved by the Owner, the cost of which is included in an Approved Budget;
- (k) Pay Bills, etc.: subject as provided in this Agreement, by requisitioning such funds from the Owner, pay all carrying charges and other expenses relating to the operation of the Property including, without limitation, realty taxes, debt service payments of the Owner, water rates, light and power rates, merchants' association dues, supplies, contractors, wages, fuel costs and insurance premiums as they become due (or earlier, if earlier payment is required in order to enjoy discounts or to avoid increased costs) and any other expenses either as contemplated in any current budget or as approved from time to time by the Owner;
- (l) Review Taxes: review property taxes and assessments and when directed by the Owner and at Owner's expense take steps to retain consultants and/or legal counsel to contest or appeal such assessments; and
- (m) Notification: promptly give notice to the Owner of any damage to the Property and copies of any notices given by the Manager to any insurer of the Property with respect to any claim against the Property or the Owner or any circumstances which might give rise to any such claim.

3.03 BUDGETS, LEASING PLANS, REPORTS AND BANKING. In connection with its obligation to manage the Property, the Manager shall:

- (a) Annual Budgets: not less than sixty (60) days prior to the commencement of each Fiscal Year prepare and submit to the Owner for its approval the following materials:
 - (i) an annual operating budget and cash flow forecast on a monthly basis which shall set forth both anticipated revenues and expenses

on an accrual basis (including a budget for the period ending July 31, 2009 to be provided within 90 days of the commencement of this agreement);

- (ii) an annual capital expenditure budget; and
- (iii) an annual leasing plan which shall set forth proposals on tenant mix, rental rates, tenant inducements and any other material terms and conditions for new leases of premises in the Property;

the Owner shall either approve or provide comments on such materials by not later than twenty-one (21) days after their receipt; so long and to the extent that any budget or plan proposed under subsections 3.03(a) (i), (ii) and (iii) has not been so approved the Manager may proceed on the basis of the most recently approved budget or plan;

- (b) Reports: not more than fifteen (15) days after the end of each month or quarter as the case may be, in each Fiscal Year, prepare and provide to the Owner a written report or reports for the Property setting out:

Monthly

- (i) an income statement with comparisons to the Approved Budget on a monthly and year to date basis;
- (ii) a balance sheet;
- (iii) an aged receivable report together with a reconciled listing of receivables;
- (iv) other reports as currently provided or required by the Owner; and
- (v) an up to date rent roll and status report including information as to tenant changes and movements, lease amendments, vacancies and new leasing

Quarterly

- (i) a leasing and operating report including, but not limited to, current vacancies, leasing activity, building maintenance, tenant's issues, and explanations of budget variances.
- (c) Billings: establish and maintain suitable records and systems to handle all billings to Tenants including all payments which, by the terms of any lease for premises in the Property, are to be collected as a part of rent or otherwise on a periodic basis;
- (d) Banking: handle all banking necessary for the due performance of the accounting and administrative functions of the Manager under this

Agreement and for the receipt and disbursement of all monies of the Owner pertaining to the operations of the Property required to be attended to by the Manager under this Agreement;

- (e) Cash Management: be responsible for the management of cash balances held by the Manager for the Owner in connection with the operations of the Property from time to time and shall deposit in a separate (interest bearing, if available) account or accounts, to be maintained by the Manager in the Owner's name or as it may direct (which account or accounts shall be at HSBC Bank Canada or other such bank designated and approved by the Owner, with all funds therein to be held separately and in trust for the Owner) all cash, cheques and other negotiable instruments received by the Manager pursuant to this Agreement; the Manager shall deal with such cash, cheques and negotiable instruments in accordance with sound management practices so that the Owner is adequately protected and receives reasonable income thereon;
- (f) Provisions of Funds: the Owner shall promptly furnish to the Manager sufficient funds to enable it to make such expenditures as required under this Agreement; if the Owner fails to furnish such funds, the Manager shall not be required to expend its own funds and shall have no other liability whatsoever for any consequences arising from such failure by the Owner and the Owner hereby agrees to indemnify and save the Manager harmless for any and all actions by any parties arising from failure to make any expenditures by reason of the failure to provide such funds; if the Manager is requested in writing by the Owner and so elects, at its sole discretion, to advance its own funds on behalf of the Owner such payments shall constitute a demand obligation of the Owner to the Manager and bear interest at a rate per annum equal to fifteen percent (15%), calculated and compounded monthly in arrears, until such advances are paid to the Manager;
- (g) Distribution to Owner: the Manager shall distribute Net Cash Flow to the Owner on an agreed basis based on budgeted cash flows;
- (h) Monies Held in Trust: the Manager acknowledges that all monies received by the Manager pursuant to any of the obligations provided for in this Agreement for or on account of the Owner shall be received by the Manager and held by the Manager in trust for the Owner. Notwithstanding the foregoing, the Owner shall pay the Manager monthly or the Manager may deduct from the monies received by it pursuant to this Agreement, the amount of the fees payable for the Manager under Article 4.00;

- (i) Books of Account; Information: the Manager at all times shall maintain timely, professional and appropriate books of account and records with respect to all transactions entered into in performance of this Agreement; the Owner may at reasonable times and intervals obtain information with respect to the Property and cause such inspections of the books and records maintained by the Manager pursuant to this Agreement relating to the Property to be made as may be reasonable in the circumstances;
- (j) Method of Keeping Accounts: the Manager shall maintain at its offices in the City of Toronto (in accordance with instructions given by the Owner from time to time as to the manner in which the same shall be maintained) accounts with respect to matters arising under this Agreement in order for the Owner readily to extract financial statements pertaining to the Property in the form required by it. The Manager shall co-operate with the Accountants in their preparation of such financial statements and their presentation to the Owner;
- (k) Annual Financial Statements: at the option of the Owner, not more than 90 days after the end of each Fiscal Year, the Manager shall prepare and provide to the Owner financial statements for the Property prepared in accordance with generally accepted accounting principles and practices as commonly used in the real estate industry in Canada, including a balance sheet, a profit and loss statement and a statement of changes in financial position for such Fiscal Year, and if required by the Owner to be audited by an auditor to be designated by the Owner at the expense of the Owner; and
- (l) Additional Reports and Information: in addition to the reports and statements to be provided pursuant to subsection 3.03(b) and 3.03(k), the Manager shall provide the Owner with whatever additional reports and information relating to the Property the Owner may reasonably request. The cost of preparing such additional reports and information by the Manager in connection therewith and a reasonable fee is to be for the account of the Owner.

3.04 REPAIRS AND OPERATIONS. The Owner shall pay for, and the Manager shall arrange, supervise and direct the following services:

- (a) Repairs and Alterations: the making of all repairs to the Property and all alterations and redecoration which may become necessary or desirable in keeping with the policies from time to time established by the Owner and shall cause all things to be done with respect thereto that the Manager shall deem necessary to comply with any and all regulations of any governmental authority having jurisdiction;

- (b) Climate Control: keeping the Property heated and cooled to reasonable temperatures, according to the season, and causing the heating, ventilating and air conditioning equipment to be operated, maintained and kept in repair in conformity with the obligations of the Owner to Tenants;
- (c) Common Areas: keeping the interior and exterior common areas of the Property clean and, where the same are open to the elements, reasonably free from snow and ice and maintaining the landscaping of the Property; and
- (d) General: the performing and, where desirable, the contracting for all things necessary for the proper and efficient management, operation and maintenance of the Property and the performing of every other reasonable act whatsoever in or about the Property to carry out the intent of this Agreement.

3.05 SECURITY. The Manager, with the prior approval of the Owner, shall arrange and supervise adequate security for the physical protection of the Property and, when necessary, for the control of vehicular and pedestrian access and egress, the cost of such security to be for the account of the Owner.

3.06 PERSONNEL. The Manager shall be responsible for making available such of its competent employees (who shall not for any purpose be, or be deemed to be, the employees of the Owner) as shall be necessary and desirable for the performance by the Manager of its obligations under this Agreement.

3.07 FIDELITY BOND. If required by the Owner, the Manager shall arrange, obtain and maintain a Fidelity Bond for and in the name of the Owner in an amount of not less than Two Hundred and Fifty Thousand Dollars (\$250,000.00) per occurrence (or such other amount as may be appropriate or agreed to between the parties) with loss payable to the Owner. The Owner agrees that the Manager shall be named as an insured party along with the Owner and the Fidelity Bond shall not be terminable by either the insurer or the Owner unless sufficient prior notice of cancellation has been delivered by registered mail to the Owner and the Manager. The premium for the Fidelity Bond, if required by the Owner, shall be an expense of the Owner.

3.08 SERVICES, MATERIALS AND SUPPLIES. The Manager shall contract on behalf of the Owner for or purchase all services, materials and supplies rendered by it in the performance of its duties and responsibilities under this Agreement, which services, materials and supplies shall be paid for by the Owner.

3.09 INSURANCE. The Owner shall be responsible for the placement of all insurance required by the Owner with respect to the Property. The Manager is obligated to advise the Owner of any breaches in the provisions of the policy and of all occurrences that may give rise to a claim or breach of the policy and to liaise with insurance adjusters.

The Manager will be provided with copies of all policies of insurance in respect of the Property. The Owner shall pay all premiums and any deductible amount payable under the policies.

The Manager shall be named as an additional named insured in Owner's liability insurance policies. The Owner acknowledges that the Manager is not authorized nor obligated to settle any liability claims.

3.10 COUNSEL AND CONSULTANTS. Subject to subsection 3.02(f), and with the prior written approval of the Owner, the Manager may in its discretion retain the services of outside counsel and consultants in connection with any of the matters for which under the terms of this Agreement, the Manager has responsibility. The charges of any such outside counsel or consultants shall be for the account of the Owner.

3.11 TENANT NEGOTIATIONS RECHARGES. From time to time, the Owner may wish to make minor changes to the Property. The Manager shall conduct to the best of its ability in its capacity as the Manager any negotiations with any Tenants which may be required in respect of business interruption, physical changes to premises or relocations (whether temporary or permanent) and shall consult with the Owner on a regular basis during such required negotiations as to what actions are most desirable. If required by the Owner, the Manager shall also arrange for and supervise all work required to be performed by the Owner in order to prepare space in the Property for marketing or occupancy by Tenants and any alterations of the common areas or the systems or structures of the Property. The Manager shall not, without the consent of the Owner, charge any supervisory or other fees in connection herewith for any services so provided by existing staff but, subject to the Owner's consent not to be unreasonably withheld, will be entitled to an additional and fair fee for its services in this endeavour as provided by the Manager's off-site resources.

3.12 NON RECOVERABLE COSTS. Except in case of emergency, the Manager shall not incur any expenses that are not recoverable from the tenant that are not included in the Approved Budget or in the case of items not included in the Approved Budget or exceed the provisions of the Approved Budget, are approved in advance by the Owner. Recoverable expenses so incurred in an emergency shall be limited to those expenses as may be necessary during the emergency, at the Manager's discretion acting reasonably, to avoid damages to persons or property.

ARTICLE FOUR MANAGEMENT FEES

4.01 MANAGEMENT FEE. For services to be performed by the Manager under the provisions of this Agreement in respect of the administration and the management of the Property, the Manager shall receive from the Owner and the Owner shall pay to the Manager in each year of the Term a fee equal to 5% of the Annual Gross Revenue (the

"Management Fee"). The Management Fee shall be payable in equal monthly installments in arrears on the last day of each month. At the commencement of the Term and at the commencement of each Fiscal Year thereafter, the Manager shall estimate on a reasonable basis Annual Gross Income anticipated from that Fiscal Year and the Management Fee herein shall be paid by the Owner to the Manager during such Fiscal Year based upon such estimate of the Annual Gross Income. Within 90 days following the end of each Fiscal Year, actual Annual Gross Income for that Fiscal Year shall be determined by the Manager and Owner and any necessary adjustment of the Management Fee as in this Section 4.01 provided shall be made between the Owner and the Manager within 30 days thereafter.

4.02 LEASING FEE. The Owner agrees to pay to the Manager reasonable leasing fees and commissions ("Leasing Fee") with respect to premises in the Property leased by the Manager, which leasing fees and commissions shall be agreed upon in writing between the Owner and Manager, acting reasonably. The Owner and Manager agree that the Leasing Fee is to be competitive with those charged by nationally-recognized and accredited real estate agents and brokers and shall take into account the time and effort expended by the Manager and whether the lease is with a new or existing Tenant, and whether or not the lease provides for leasing commissions to third party brokers or agents. No Leasing Fee shall be payable to the Manager in respect of any renewal option exercised and effected pursuant to an option to renew any existing lease, save as may be provided in writing between it and the Owner.

The Leasing Fee shall be payable on the later of:

- (i) the execution and delivery of the new Tenant lease, renewal or extension agreement, or lease of additional space as the case may be, by the Tenant and the taking of possession of the premises by the Tenant; and
- (ii) the later of the commencement of the term of the new Tenant lease, renewal or extension agreement, or lease of additional space and the date the lease is signed, as the case may be.

Notwithstanding the foregoing, no commission shall be payable in the event any tenant fails to take possession of the premises so leased, and further, any commission held or paid to the Manager for any renewal option exercised pursuant to an option to renew any existing lease, save as may be provided in writing between the Manager and the Owner, shall be refunded to the Owner.

4.03 CONSTRUCTION FEES. If the Manager is called upon to perform or coordinate construction work, either in connection with tenants or on behalf of the owner, the Owner and Manager agree to negotiate a reasonable fee structure for the work to be performed.

4.04 FINANCING FEES. If the Manager is requested by the Owner in writing to assist in the financing or refinancing of the Property by any work outside the ordinary scope and course of usual duties as Manager, it shall provide such assistance at an hourly rate to be agreed and shall be entitled to a fee not to exceed to 0.25% of the financing (or refinancing) so arranged unless otherwise agreed in writing between the parties, such fee to be earned by the Manager upon execution of any commitment and payable upon closing of the financing (or refinancing).

4.05 PAYMENT OF FEES. The amounts payable to the Manager under sections 4.01, 4.02, 4.03, 4.04 and 4.09 shall be paid to the Manager as and when due without either set-off or other deductions.

4.06 EXPENSES. The Owner shall pay to the Manager all out-of-pocket expenses incurred by the Manager, without profit or duplication, either in accordance with an Approved Budget or otherwise as approved in writing by the Owner in connection with the performance by the Manager of its services under this Agreement including, without limitation, reasonable costs of brochures, postage, couriers, printing, copying and stationary, accounting costs, market surveys, advertising and other promotion and travel, and parking expenses including without limitation, all reasonable expenses which are recoverable from Tenants in accordance with their leases. For greater certainty, out-of-pocket expenses shall not include any expenses other than printing and copying directly related to the business office of the Manager with respect to the performance of the duties of the Manager hereunder.

4.07 LIABILITY FOR FEES. Notwithstanding anything else herein contained, the Owner acknowledges and agrees that the Leasing Fee is earned by the Manager forthwith upon the later of a Tenant entering into a lease with the Owner and possession of the leased premises, and shall be paid by the Owner to the Manager pursuant to the terms and provisions of section 4.02 whether or not earned during the Term and whether or not this Agreement is terminated pursuant to the provisions of Article 5.00.

4.08 CONCESSIONS. The Manager hereby covenants, undertakes and agrees not to accept, directly or indirectly, for its own account in the execution of its duties hereunder any commissions, reductions, finder's fees or other concessions of any nature or kind from tradesmen, suppliers, contractors, insurers or Tenants. If the Manager accepts such concessions they shall be remitted to or credited to the Owner forthwith after receipt. If the Manager fails to remit or credit to the Owner such concessions, it shall be grounds for termination of this agreement and such other rights as the Owner may have.

4.09 ADDITIONAL SERVICES. If the Manager, with the prior written approval of the Owner, provides services in addition to those which it is required to provide under this Agreement (examples of such additional services being legal services, design and construction services, repairs, maintenance and security), the Owner shall pay the Manager a fair fee for those services but nothing shall obligate the Manager to provide

those services until the Manager and the Owner agree to such fee and to any reimbursement of the costs and expenses of the Manager.

4.10 ABILITY TO SELL SERVICES. Notwithstanding anything contained in this Agreement, the Manager shall, subject to Owner's prior written consent which may not be unreasonably withheld, have the right to sell and provide design, construction or other services to any Tenant or proposed Tenant of the Building provided that doing so shall not conflict with the interests of the Owner, and the Owner shall have no responsibility to the Manager or any Tenant in respect of those services. The Manager shall carry out such activities subject to all standards consistent with the nature and quality of the Building and to all regulations and directions as are imposed upon other contractors by or on behalf of the Owner in relation to the same or similar services. Any payment received by the Manager on account of such services shall not be included in Operating Expenses for the purposes of this Agreement.

ARTICLE FIVE TERMINATION

5.01 TERMINATION

- (a) Default. If an Event of Default occurs, the non-defaulting party may give notice (in this section 5.01(a) called a "Notice of Complaint") to the defaulting party specifying in reasonable detail the Event of Default and if within ten (10) days of receipt of any Notice of Complaint the defaulting party fails to cure the Event of Default in a reasonable manner, or if more than ten (10) days are required fails to proceed and continue diligently to cure or give reasonable assurances to the non-defaulting party that such Event of Default will be cured within a reasonable period of time, the non-defaulting party may terminate this Agreement by notice (in this subsection 5.01(a) called a "Notice of Termination") to the defaulting party stating that this Agreement is terminated and the reason for termination. Such termination shall be effective as and from the last day of the month in which the defaulting party receives the Notice of Termination.
- (b) Pre-emptive Termination. If an Event of Insolvency occurs, the solvent party may terminate this Agreement by notice (in this subsection 5.01(b) called a "Notice of Termination") to the insolvent party stating that this Agreement is terminated and the reason for termination; any such Notice of Termination may only be given within forty-five (45) days of the date of the occurrence of the event to which it relates. Such termination shall be effective as and from the date on which the insolvent party receives the Notice of Termination.

- (c) Sale. The Owner may terminate this Agreement in the event of a bona fide sale to an arm's length third party of the Owner's interest in the Building at the date of the conveyance thereof to the purchaser, provided the Owner shall notify the Manager in writing of the sale of the Owner's interest forthwith after an agreement of purchase and sale or accepted offer is entered into by the Owner, and in any event no less than 60 days prior to the effective date of termination.

5.02 DELIVERY OF RECORDS. If this Agreement is terminated, notwithstanding such termination, the Manager shall forthwith upon termination and from time to time thereafter deliver to the Owner all records and documents including, without limitation, all leases, agreements to lease and any other agreements with Tenants, all operating and maintenance agreements, and all other operating records, books of account and ancillary documents maintained with respect to the Property which are then in the possession or control of the Manager, which the Owner reasonably requires and which relate directly to the Property; provided, however, that the Manager may elect to retain copies of such records, documents and books of account and notwithstanding such termination the Owner shall thereafter and from time to time produce at its office the originals of such records, documents and books of account whenever the Manager reasonably requires them for up to two years for its purposes in connection with its prior management of the Property.

5.03 EFFECT OF CONTINUED PERFORMANCE. If this Agreement is terminated, the Owner shall be under no obligation to pay to the Manager any amount whatsoever for services performed by the Manager after the appointment of its successor unless such performance has been encouraged by or acquiesced to by the Owner and in that event, the Manager shall be entitled to be paid on a quantum merit basis.

5.04 DUTIES FLOWING FROM TERMINATION. Upon termination of this Agreement, the Owner shall:

- (a) assume any contracts entered into by the Manager as provided in this Agreement on behalf of the Owner if such contracts have been entered into in accordance with the provisions of the Agreement and indemnify the Manager against any liability by reason of anything done or required to be done under any such contract after the effective date of termination; and
- (b) pay for and indemnify and save the Manager harmless against the cost of all services, materials and supplies ordered by the Manager in accordance with the provisions of this Agreement but which may not have been charged to and paid by the Manager at the time of termination.

ARTICLE SIX GENERAL

6.01 NO PARTNERSHIP. Nothing in this Agreement shall be construed as or shall constitute a partnership between the Manager and the Owner.

6.02 COMPETITIVE SERVICES. Nothing in this Agreement shall be deemed to restrict in any way the freedom of the Manager or any Affiliate, Subsidiary, Parent or other party in any way related to the Manager to conduct any business or activity whatsoever (including the acquisition, development, leasing, sale, operation and management of any real property other than the Building) without any accountability to the Owner whatsoever even if such activity or business may compete with the operation of the Building. Each party hereto shall have the absolute right to engage in any other business and other ventures for its own individual profit.

6.03 INDEMNITY BY OWNER. Notwithstanding the termination of this Agreement, the Owner agrees to indemnify and save the Manager harmless from any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever at law or in equity, in connection with the performance by the Manager or of its employees, servants, agents, subcontractors or other persons for whom it is responsible, of any and all of its obligations under this Agreement or pursuant to the policies or instructions of the Owner including, without limitation, any liability in respect of Hazardous Substances, unless caused by the acts or negligence of the Manager or its employees, agents, servants or others for whom it is in law responsible, resulting in any damage or injury whatsoever to any employee or other person or property arising out of the use, administration or control of the Property or any other assets of the Owner relating to the Property, and subject to the foregoing qualifications shall not hold the Manager liable for any loss of revenue from the Property by reason of vacancies or by reason of tenant or occupant failing to pay rent or for any damage to or destruction of any part of the Property and the Owner further acknowledges that the Manager shall not be liable for any depreciation in the value of the Property nor shall the Manager be liable for any errors in judgment of its officers, servants, agents or independent contractor providing that the Manager has acted in good faith and has exercised reasonable care in the selection of its officers, servants, agents or independent contractors and due diligence in their supervision, guidance and control, during the term of this Agreement, but the indemnity provided under this section shall not extend to any negligence or willful misconduct of the Manager or of its employees, servants, agents, or other persons for whom it is responsible and shall not extend to any action taken by the Manager outside the provisions of this Agreement or to any action which is an Event of Default.

6.04 INDEMNITY BY MANAGER. Notwithstanding the termination of this Agreement, the Manager shall indemnify and save the Owner harmless in respect of any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever, at law or in equity, arising by way of any breach during the term of this Agreement by the Manager, its employees, servants, agents, subcontractors, or other persons for whom it is

responsible, of any of the provisions of this Agreement or by reason of any negligence or willful misconduct of the Manager, its employees, servants, agents, subcontractors or other persons for whom it is responsible.

6.05 NOTICES. Any notice, objection or request to be given hereunder shall be in writing and shall be addressed and delivered in the case of:

(a) To the Owner: 165 Bathurst Inc.
 15 Alderbrook Drive, Toronto M3B 1E3
 Toronto, Ontario, _____

Attention: Mr. _____

(b) To the Manager: Esbin Property Management Inc.
 162 Cumberland Street, Suite 300
 Toronto, Ontario
 M5R 3N5

Attention: Ross Lyndon

or to such other address as a party may from time to time advise the other party by notice in writing. The date of receipt of any such notice, objection or request shall be deemed to be the date of delivery thereof.

6.06 FURTHER ASSURANCES. The Owner and the Manager shall, from time to time and upon every reasonable written request so to do, give all such further assurances as may be required for more effectively implementing and carrying out the true intent and meaning of this Agreement.

6.07 ASSIGNMENTS. This Agreement and all rights, entitlements, duties and obligations arising from it shall not be assignable in whole or in part by the Manager except with the prior written consent of the Owner which consent may not be arbitrarily withheld, unless such assignment is by the Manager to a Subsidiary, in which event the Manager may, on notice to the Owner, assign its rights and obligations hereunder to such Subsidiary without obtaining such prior written consent provided that the Manager remains responsible for the obligations of the Subsidiary hereunder and the Manager and such Subsidiary agree that the Subsidiary shall remain a Subsidiary of the Manager so long as the Subsidiary acts as the Manager hereunder. Such Subsidiary may likewise assign its rights and obligations hereunder to the Manager, who may reassign it to another Subsidiary from time to time in accordance with this section.

6.08 SUCCESSORS. This Agreement and all rights, entitlements, duties and obligations arising from it shall, subject to the respective provisions of sections 6.06 and

6.07, enure to the benefit of and be binding upon the parties to it and their respective successors and permitted assigns.

6.09 INDEX AND HEADINGS. The index and headings in this Agreement are inserted for convenience of reference only and shall not affect the interpretation, effect or construction of this Agreement.

6.10 APPLICABLE LAW. This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario.

6.11 APPROVAL MECHANISM. Wherever the provisions of this Agreement require an approval, consent or agreement (hereinafter in this Article individually or collectively referred to as the "Approval") unless the contrary is expressly provided:

- (a) the party whose approval is required will, within ten business days after receipt of a written request for the Approval accompanied in all cases by reasonable detail if the circumstances require, notify the requesting party in writing either that it approves or that it withholds its approval setting forth in reasonable detail its reasons for withholding; and
- (b) if the notification referred to in subsection 6.11(a) is not given within the applicable period of time, the party whose approval is requested will be deemed conclusively to have given the Approval in writing.
- (c) any dispute as to whether or not such consent or approval has been unreasonably withheld or delayed shall be resolved by arbitration in accordance with Section 6.13.

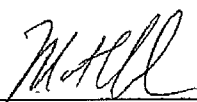
The Owner and the Manager agree that all approvals to be made by each of them shall be made in good faith and strictly upon the merits of the proposed action and, unless expressly provided for herein will not be unreasonably withheld.

6.12 ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes any prior understanding or agreement, whether or not in writing or expressed to be binding among them and such agreement may only be amended by the written consent of both parties.


6.13 ARBITRATION. In the event of any dispute regarding the meaning, effect of, or remedies and rights of the parties hereto in respect of any of the terms or provisions hereof or the performance of the parties hereunder such dispute shall be subject to arbitration in accordance with the provisions of the Arbitrations Act (Ontario) as amended and such arbitration shall be binding and not subject to appeal.

IN WITNESS WHEREOF the parties hereto have executed and delivered this Agreement under their respective seals.

165 Bathurst Inc.

Per: 
Martin Usher

ESBIN PROPERTY MANAGEMENT INC.

By: 
Name: R. LYNDON
Title: ASO.

I have authority to bind the Corporation

Tuesday, October 14, 2008

DBDC SPADINA LTD. et al.

Applicants

- and -

NORMA WALTON et al.

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

**AFFIDAVIT OF MARVIN PERNICA
(sworn December 5, 2013)**

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Lawyers for 165 Bathurst Financial Inc.

DBDC SPADINA LTD. et al.

- and -

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Applicants

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**ONTARIO
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MOTION RECORD

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