

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE *Mr.* )  
JUSTICE *Pearny* )  
 )  
 )  
 ) TUESDAY, THE 20<sup>TH</sup>  
 ) DAY OF OCTOBER , 2015

BETWEEN:



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

Applicants

and

**NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE  
GROUP LTD. and THOSE CORPORATIONS LISTED ON SCHEDULE B  
HERETO**

Respondents

and

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

**APPROVAL, VESTING AND DISTRIBUTION ORDER**

THIS MOTION, made by Collins Barrow Toronto Limited, in its capacity as court appointed Receiver (the "Receiver") of the assets, undertakings and properties of West Mall Holdings Ltd. (the "Debtor"), for an order (i) approving the sales transaction (the "Transaction") contemplated by an accepted agreement of purchase and sale (the "Bridgeport APS") between the

Receiver and Bridgeport West Mall Inc. (the "Purchaser") dated as of September 8, 2015 attached as Exhibit "F" to the First Report of the Receiver of West Mall Holdings Ltd. dated October 9, 2015 (the "First Report"); (ii) vesting in the Purchaser, or its nominees or as the Purchaser shall direct, the Debtor's right, title and interest in and to the Purchased Assets as such term is defined in the Bridgeport APS (the "Purchased Assets"); (iii) sealing Appendix "F" to the First Report (iv) approving the Receiver's statement of receipts and disbursements attached as Exhibit "K" to the First Report; (v) approving the Receiver's activities, fees and disbursements as set out in the First Report, and (vi) approving an interim distribution to 295 The West Mall Portfolio Inc., as first ranking mortgagee of the Real Property,

was heard this day at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario.

**ON READING** the First Report and the exhibits attached thereto, the Addendum to the First Report, the Affidavit of Daniel Weisz sworn October 8, 2015 (the "Weisz Fee Affidavit") and the Affidavit of Michael Cass sworn October 9, 2015 (the "Cass Fee Affidavit") and on hearing the submissions of the lawyer for the Receiver, the Purchaser, and 295 The West Mall Portfolio Inc., no other person appearing for any other party although properly served as appears from the affidavit of service filed herein,

### **Service**

1. **THIS COURT ORDERS** that the time for service of the Receiver's notice of motion, the motion record dated October 9, 2015 and the Receiver's Supplementary Motion Record dated October 15, 2015 is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**Approval and Vesting**

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved and the execution of the Bridgeport APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Receiver's Certificate"), all the Debtor's right, title and interest in and to the Purchased Assets described in the Bridgeport APS and listed in Schedule "B" hereto shall vest absolutely in the Purchaser or in whomever it may direct or nominate, free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed, and whether secured, unsecured or otherwise, and all agreements of purchase and sale, reservation contracts and leases (collectively the "Claims") including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order herein of the Honourable Mr. Justice Newbould dated February 3, 2015 (the "Receivership Order") and the order of the Honourable Mr. Justice Newbould dated November 5, 2013 appointing Schonfeld Inc. as Manager;

- (b) all charges, security interests, agreements, leases or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Land Titles Act* (Ontario), or any other personal or real property registry system;
- (c) those claims listed on Schedule “C” hereto (all of which are collectively referred to as the “Encumbrances”) which term shall not include the assumed encumbrances listed on Schedule “D” hereto;
- (d) any other claims against the Debtor registered or otherwise existing, potential or contingent arising out of circumstances prior to the registration of this order (the “Additional Encumbrances”) and for greater certainty, this Court orders that all of the Encumbrances and Additional Encumbrances relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon registration in the Toronto Land Registry Office (No. 66) of an application for vesting order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the land registrar is hereby directed to enter the Purchaser, and/or whomever it may nominate or direct as the owner(s) of the subject real property identified in Schedule “B” hereto (the “Real Property”) in fee simple and is hereby directed to delete and expunge from title to the Real Property all of the claims listed in Schedule “C” hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims, Encumbrances and Additional Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets

immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DECLARES** that all current and former tenants of the Real Property shall not be entitled to withhold rental payments, set off any claim with respect to overpayment of rent (including, without limitation, overpayment of additional rent), or claim remedies as against the Purchaser with respect to any sums that may be owing to them pursuant to their respective leases, if any, for the period prior to the closing date of the Transaction (collectively, the “Tenant Claims”), and that the Tenant Claims shall be included as Claims subject to the provisions of paragraph 5 of the within Approval, Vesting and Distribution Order.

7. **THIS COURT ORDERS** that the Receiver shall within a reasonable time after the closing of the Transaction complete the Tenant Reconciliations, as referenced in the Bridgeport APS.

8. **THIS COURT ORDERS** that upon completion of the Tenant Reconciliations as referenced in the Bridgeport APS the Receiver shall notify the said tenants listed therein of any overpayment made by them (collectively the “Tenant Overpayments”).

9. **THIS COURT ORDERS** that the Receiver and any party that may have an interest in the resolution and determination of the amounts and/or priorities of the Tenant Claims including, but not limited to, lenders having security over the Purchased Assets and all persons having Tenant Claims may apply to This Honourable Court on notice to all of the persons who received notice of this Motion for such orders and directions with respect to same, provided that no such future order may affect paragraph 6 or the provisions of sale as set out in the within Order.

10. **THIS COURT ORDERS** that DTZ Canada Inc. and Cushman & Wakefield Ltd. (the “Brokers”) shall not be permitted to claim remedies as against the Purchaser with respect to any sums that may be owing to them (collectively the “Brokers’ Claims”) and that the Brokers’ Claims shall be included as Claims subject to the provisions of paragraph 5 of the within Approval, Vesting and Distribution Order.

11. **THIS COURT ORDERS** that the Brokers are entitled to apply to this Honourable Court as part of the determinations as set out in paragraph 9 of the within Approval, Vesting and Distribution Order, and that the Brokers are to receive notice from any other party who brings an application as set out in the said paragraph 9.

12. **THIS COURT ORDERS** that any and all amounts paid by the Receiver or for which the Receiver may be obligated to pay pursuant to the Tenant Overpayments or the Brokers’ Claims in priority to the Secured Lenders (as defined in the First Report) shall form and be part of the Receiver’s Charge as defined in the Receivership Order including any amendments or variances of that order.

#### **Holdback and Distribution**

13. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to hold back the sum of \$1,325,000.00 (the “Receiver’s Holdback”) from the proceeds of the Transaction as described in the First Report and the Receiver shall not distribute the Receiver’s Holdback without further order of the Court, with the exception that the Receiver may apply portions of the Receiver’s Holdback in accordance with paragraph 19 of the Receivership Order.

14. **THIS COURT ORDERS** that the net proceeds received by the Receiver from the Transaction, less the Receiver's Holdback, shall be paid to 295 The West Mall Portfolio Inc.

**Variance of Receivership Order**

15. **THIS COURT ORDERS** that the Receivership Order is hereby amended and varied in accordance with the provisions of Schedule "E" herein and that the Receivership Order shall be read as if the amendments in the said Schedule "E" form and are part of that order; the Receiver may submit a formal Amended Receivership Order to the Court for signing and issuance.

**Sealing**

16. **THIS COURT ORDERS** that the Supplemental Report of the Receiver to the First Report, including the APS and all other Appendices attached thereto, included in Appendix "F" to the First Report be and is hereby sealed <sup>closing of 2 APS</sup> until the Receiver is discharged or upon further order of the Court. MAJ

17. **THIS COURT ORDERS** and directs the Receiver to file with the court a copy of the Receiver's Certificate forthwith after delivery thereof.

18. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

19. **THIS COURT ORDERS** that notwithstanding:

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

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

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

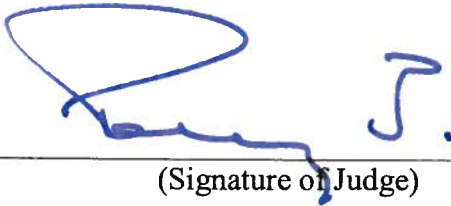
#### **Approval of Activities**

21. **THIS COURT ORDERS** that the (i) First Report of the Receiver and the Addendum to the First Report, (ii) the activities that the Receiver described therein, (iii) the statement of receipts and disbursements contained therein and (iv) the fees and disbursements of the Receiver described therein and in the Weisz Fee Affidavit and the Cass Fee Affidavit be and are hereby approved.



**Aid and Recognition**

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



(Signature of Judge)

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



OCT 20 2015

SCHEDULE "A"

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

**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 THOSE CORPORATIONS LISTED ON SCHEDULE "B" HERETO**

**Respondents**

- and -

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

**RECEIVER'S CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order herein of the Honourable Justice Newbould of the Ontario Superior Court of Justice (the "Court") dated February 3, 2015, Collins Barrow Toronto Limited was appointed as the receiver (the "Receiver") without security of all of the assets, undertakings and properties of West Mall Holdings Ltd. (the "Debtor") as described in the said Order.
- B. Pursuant to an Order of the Court dated XX, 2015 (the "Approval Order") the Court approved the accepted offer to purchase made as of September 8, 2015 (the "Bridgeport

APS”) between the Receiver and Bridgeport West Mall Inc. (the “Purchaser” ) and provided for the vesting in the Purchaser or whomever it may direct or nominate of the Debtor’s right, title and interest in and to the Purchased Assets as defined in the Bridgeport APS, which vesting is to be effective with respect to the Purchased Assets upon delivery by the Receiver to the Purchaser with a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii ) that the conditions to closing as set out in section 4 of the Bridgeport APS have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

- C. Unless otherwise indicated herein, terms with initial capitals have the meaning as set out in the Bridgeport APS and the Approval Order.

The Receiver certifies the following:

1. The Purchaser or its nominee has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Bridgeport APS.
2. The conditions to Closing as set out in section 4 of the Bridgeport APS have been satisfied or waived by the Receiver and the Purchaser.
3. The Transaction has been completed to the satisfaction of the Receiver.
4. The Certificate was delivered by the Receiver at \_\_\_\_\_ (time) on \_\_\_\_\_ (date).

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Collins Barrow Toronto Limited  
In its capacity as Court appointed  
Receiver of West Mall Holdings Ltd.  
and not in its personal capacity

Per: Daniel Weisz, CPA, CA, CIRP  
Title: Senior Vice-President

**DBDC SPADINA LTD. et al.**  
Applicants

**NORMA WALTON et al.**  
Respondents  
Court File No. CV-14-10493-00CL

-and-

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**RECEIVER'S CERTIFICATE**

**STEINBERG TITLE HOPE & ISRAEL LLP**  
Barristers & Solicitors  
5255 Yonge Street, Suite 1100  
Toronto, ON M2N 6P4

**David A. Brooker (35787W)**  
Tel: 416-225-2777  
Fax: 416-225-7112

Lawyers for Collins Barrow Toronto Limited,  
court appointed receiver for West Mall Holdings Ltd.

## SCHEDULE "B" – PURCHASED ASSETS

REAL PROPERTY

PT LT 11, CON 5 COLONEL SMITH'S TRACT, PART 1, 2, 3 & 4, 64R6995; ETOBICOKE,  
CITY OF TORONTO  
PIN 07566 – 0041 (LT)

CHATTELS

Office/tools and cleaning equipment:

4 Dell computers, 2 surveillance DVRs, 3 monitors, 1 multifunctional laser printer, 2 Motorola walkie talkies

1 small refrigerator + 1 microwave oven

3x6ft ladders, 2x10ft ladders, 1x12ft ladder

3 dollies, 2 shopping cards, 1 tool cart

2 vacuum cleaners, 1 portable pressure washer

Garden hoses: 1x50ft, 3x25ft

Various tools, wrenches, screwdrivers, brooms, shovels, snow shovel

**Schedule "C"**  
**Claims to be deleted and expunged from title to the Property**

1. Instrument No. EB206290 registered on October 20, 1958 is an Agreement between Islington Park Limited and Town Planning Consultants Limited for the provision of planning and development services to the owner of the property for the development of the property.
2. Instrument No. AT3258026 registered on March 19, 2013 is a transfer of the property from 295 The West Mall Portfolio Inc. to West Mall Holdings Ltd., the current registered owner of the property.
3. Instrument No. AT3258027 registered on March 19, 2013 is a Vendor take back mortgage from West Mall Holdings Ltd. to and in favour of 295 The West Mall Portfolio Inc. for \$9,687,500.
4. Instrument No. AT3258028 registered on March 19, 2013 is a Notice of Assignment of Rents from West Mall Holdings Ltd. to and in favour of 295 The West Mall Portfolio Inc.
5. Instrument No. AT3258029 registered on March 19, 2013 is a Charge given by West Mall Holdings Ltd. to and in favour of Computershare Trust Company of Canada in the principal amount of \$1,937,500.
6. Instrument No. AT3258030 registered on March 19, 2013 is a Notice of Assignment of Rents from West Mall Holdings Ltd. to Computershare Trust Company of Canada.
7. Instrument No. AT3806578 registered on February 9, 2015 is a Court Order by the Ontario Superior Court of Justice appointing Collins Barrow Toronto Limited as receiver for West Mall Holdings Ltd.

**Schedule "D"****Permitted Encumbrances, Easements and Restrictive Covenants related to the Property**

1. Instrument No. EB198502 registered on May 21, 1958, being an Agreement with The Corporation of the Township of Etobicoke.
2. Instrument No. EB488822 registered on January 11, 1978 being an Agreement with The Borough of Etobicoke.
3. Instrument No. EB488842 registered on January 12, 1978 being an Agreement with The Borough of Etobicoke.
4. Instrument No. 64R6995 registered on July 10, 1978 being a Plan Reference.
5. Instrument No. E317117 registered on March 27, 2000 being a Notice from Her Majesty the Queen in Right of the Department of Transport Canada with respect to Pearson Airport Zoning Regulation.
6. Instrument No. AT1090347 registered on March 20, 2006 being a Notice by Her Majesty the Queen in Right of Canada as Represented by the Minister of Transport with respect to Pearson Airport Zoning Regulation.
7. Instrument No. E264872 registered on July 28, 1999 is a Notice of Lease registered by Clearnet PCS Inc.



**Schedule "E"**

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that from the date of its appointment hereunder until May 6, 2015, the Receiver's Charge shall form a second charge on the Property subsequent in priority to the mortgage of 295 The West Mall Portfolio Inc. registered as instrument number AT3258026 (the "First Mortgage") and in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. From and after May 6, 2015, the Receiver's Charge shall form a first charge on the Property respecting the reasonable fees and disbursements of the Receiver and its counsel incurred or arising on or after May 6, 2015.

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

**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**

PROCEEDING COMMENCED AT  
TORONTO

**APPROVAL, VESTING AND DISTRIBUTION ORDER  
DATED OCTOBER 20<sup>TH</sup>, 2015**

**STEINBERG TITLE HOPE & ISRAEL LLP**  
Barristers & Solicitors  
5255 Yonge Street, Suite 1100  
Toronto, Ontario  
M2N 6P4

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Lawyers for Collins Barrow Toronto Limited,  
court appointed receiver for West Mall Holdings Ltd.